

GLOSSARY (MIFID) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the General Provisions Sourcebook (Powers exercised).
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Glossary (MiFID) Instrument 2007.

By order of the Board
25 January 2007

Annex

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

<u>abbreviated distance marketing information</u>	<u>the information listed in COBS 6 Annex 2R (Abbreviated distance marketing information).</u>
<u>advising on investments, advising, advise</u>	the <i>regulated activity</i> , ...
<u>ancillary service</u>	any of the services listed in Section B of Annex I to <i>MiFID</i> -, <u>that is:</u> <ul style="list-style-type: none">(a) <u>safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;</u>(b) <u>granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;</u>(c) <u>advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;</u>(d) <u>foreign exchange services where these are connected to the provision of investment services;</u>(e) <u>investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;</u>(f) <u>services related to underwriting; and</u>(g) <u>investment services and activities as well as ancillary services within (a) to (f), above, related to the underlying of the derivatives included under Section C – 5, 6, 7 and 10, that is (in accordance with that Annex and Recital 21 to, and Article 39 of, the MiFID Regulation):</u><ul style="list-style-type: none">(i) <u>commodities;</u>(ii) <u>climatic variables;</u>(iii) <u>freight rates;</u>(iv) <u>emission allowances;</u>

- (v) inflation rates or other official economic statistics;
- (vi) telecommunications bandwidth;
- (vii) commodity storage capacity;
- (viii) transmission or transportation capacity relating to commodities, where cable, pipeline or other means;
- (ix) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
- (x) a geological, environmental or other physical variable;
- (xi) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (xii) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

where these are connected to the provision of investment services or ancillary services.

[Note: article 4(1)(3) of *MiFID*]

approved reporting mechanism

a trade-matching or reporting system approved by the FSA in accordance with Section 412A of the Act.

BIPRU 50K firm

has the meaning in *BIPRU* 1.1.20R (Types of investment firm: BIPRU 50K firm) which in summary is a *BIPRU investment firm* that satisfies the following conditions:

- (a) ...
- (b) it does not hold clients' money or securities in relation to *investment services* it provides and it is not authorised to do so; ~~and~~
- (c) it is not a *UCITS investment firm*; and
- (d) it does not operate a multilateral trading facility.

BIPRU 125K firm

has the meaning in *BIPRU* 1.1.19R (Types of investment firm: BIPRU 125K firm) which in summary is a *BIPRU investment firm* that satisfies the following conditions:

- (1) ...

	...	
	(4)	it is not a <i>UCITS investment firm</i> ; <u>and</u>
	(5)	<u>it does not operate a multilateral trading facility.</u>
<i>branch</i>	(a)	...
	(b)	(in relation to an <i>investment firm</i>):
	(i)	<u>a place of business which is a part of a <i>investment firm</i>, not being the principal place of business, which has no separate legal personality and which provides <i>investment services</i> for which the <i>investment firm</i> has been authorized; a place of business other than the head office which is a part of an <i>investment firm</i>, which has no legal personality and which provides <i>investment services and/or activities</i> and which may also perform <i>ancillary services</i> for which the <i>firm</i> has been authorized;</u>
	(ii)	<u>for the purposes of the <i>Investment Services Directive</i>, all the places of business set up in the same <i>EEA State</i> by an <i>investment firm</i> with headquarters in another <i>EEA State</i> are to be regarded as a single <i>branch</i>; all the places of business set up in the same <i>EEA State</i> by an <i>investment firm</i> with headquarters in another <i>EEA State</i> are regarded as a single <i>branch</i>;</u>
		[Note: article 4(1)(26) of <i>MiFID</i>]
	(c)	...
<i>CAD investment firm</i>		has the meaning set out <i>BIPRU</i> 1.1.14R (Types of investment firm: CAD investment firm), which in summary is an <i>investment firm</i> that is subject to the requirements imposed by the <i>ISD</i> <i>MiFID</i> (or which would be subject to that Directive if its head office were in an <i>EEA State</i>) but excluding a <i>bank</i> , a <i>building society</i> , an <i>ELMI</i> , a <i>credit institution</i> , a <i>local</i> and an <i>exempt CAD firm</i> .
<i>claim</i>	(1)	...
	(2)	(in <i>COB</i> , <i>ICOB</i> , <i>INSPRU</i> , <i>SUP</i> and <i>TC</i>) a claim under a <i>contract of insurance</i> .
<i>claims handling</i>		[deleted]
<i>client</i>	(1)	(except in <i>PROF</i> , in relation to a <i>home finance transaction</i> and <i>SYSC</i> 10) <u>has the meaning given in <i>COBS</i> 3.2, that is (in summary and without prejudice to the detailed effect of <i>COBS</i> 3.2) a <i>person to whom a firm</i> provides, intends to provide or has provided a service in</u>

the course of carrying on a regulated activity, or in the case of MiFID business or the equivalent business of a third country investment firm, an ancillary service; any person with or for whom a firm conducts or intends to conduct designated investment business or any other regulated activity; and:

...

(3A) ~~(in SYSC 10) any person to whom a common platform firm provides, or intends to provide, a service in the course of carrying on a regulated activity for that person, but does not include:~~

~~(a) a trust beneficiary;~~

~~(b) a corporate finance contact; or~~

~~(c) a venture capital contact.~~

(4) (in relation to a regulated mortgage contract, except in PROF and SYSC 10) the individual or trustee who is the borrower or potential borrower under that contract.

(5) ...

...

client agreement [deleted]

client agreement rules the rules in COBS 9 (Client agreements).

client bank account (1) (other than in CASS 7 and principally in CASS 4 and CASS 5):

(a) ...

(2) (in CASS 7):

(a) an account at a bank which:

(i) holds the money of one or more clients;

(ii) is in the name of the firm; and

(iii) is a current or a deposit account; or

(b) a money market deposit account of client money which is identified as being client money.

client's best interests rule COBS 2.1.1R.

client equity the amount which a firm would be liable (ignoring any non-cash collateral held) to pay to a client (or the client to the firm) in respect

balance of his margined transactions if each of his open positions was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and his account closed. This refers to cash values and does not include non-cash collateral or other designated investments held in respect of a margined transaction.

client money (1) ~~(in COB and CASS 2 to CASS 4) subject to the client money rules, money of any currency which, in the course of carrying on designated investment business, a firm holds in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules.~~

(in CASS 2 and CASS 4, and, in so far as it relates to matters covered by CASS 2 or CASS 4, COBS) subject to the client money rules, money of any currency which, in the course of carrying on designated investment business that is not MiFID business, a firm holds in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules.

(2) (in CASS 5) ... ;

(2A) (in CASS 6 and CASS 7 and, in so far as it relates to matters covered by CASS 6 or CASS 7, COBS) subject to the client money rules, money of any currency that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its MiFID business.

(3) (in PRU 9 MIPRU):

(a) ...

client money (MiFID business) distribution rules CASS 7.9.

client money rules (a) (in CASS 2, UPRU and ~~COB~~ CASS 4) CASS 4.1 to CASS 4.3;
(b) (in CASS 5) CASS 5.1 to CASS 5.5; ;
(c) (in CASS 6 and CASS 7) CASS 7.1 to CASS 7.8;
(d) (in CASS 3 and in COBS) CASS 4.1 to CASS 4.3 and CASS 7.1 to CASS 7.8.

close links (1) (in relation to MiFID business) a situation in which two or more persons are linked by:
(a) participation which means the ownership, direct or by

way of control, of 20% or more of the voting rights or capital of an undertaking;

- (b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

[Note: article 4 (1)(31) of MiFID]

A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.

~~(1)(2)~~ (except in where (1) applies, in SUP 3 (Auditors) and SUP 4 (Actuaries)) (in accordance with paragraph 3(2) of Schedule 6 to the Act (Close links)) ...

~~(2)(3)~~ (in except where (1) applies, in SUP 3 (Auditors) and SUP 4 (Actuaries)) ...

COBS the Conduct of Business sourcebook from 1 November 2007.

COB the Conduct of Business sourcebook up to 1 November 2007.

commodity (1) ~~(except for the purpose of calculating position risk requirements)~~ (except for (2) and (3)) a physical asset ...

(2) ...

(3) (in relation to the MiFID Regulation, including the definitions of a financial instrument and an ancillary service) any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity, not including services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.

[Note: article 2(1) of the MiFID Regulation]

common platform outsourcing rules SYSC 8.1.1R to SYSC 8.1.12R.

communicate (in relation to a financial promotion) ~~(in accordance with section 21(13) of the Act (Restrictions on financial promotion) and article 6(d) of the Financial Promotion Order (Interpretation: communications))~~ to communicate in any way, including causing a

communication to be made or directed.

[Note: section 21(13) of the *Act* (Restrictions on financial promotion) and article 6(d) of the *Financial Promotion Order* (Interpretation: communications)]

community issuer an issuer which has its registered office in the Community.

[Note: article 2(3) of the *MiFID Regulation*]

competent authority (1) ...

...

(4) the authority, designated by each EEA State in accordance with Article 48 of *MiFID*, unless otherwise specified in *MiFID*.

[Note: article 4(1)(22) of *MiFID*]

(5) (in *REC*) in relation to an investment firm or credit institution, means the competent authority in relation to that firm or institution for the purposes of *MiFID*.

(6) (in *COBS* 13.4) the authority designated by each EEA State in accordance with Article 11 of the *Market Abuse Directive*.

[Note: article 1(7) of the *Market Abuse Directive*]

complaint (1) (in *COAF*) any expression of dissatisfaction about the manner in which the *FSA* has carried out its statutory functions other than its legislative functions.

(2) (only in relation to *MiFID* business in *DISP* 1.1, the complaints handling rules and the complaints record rules) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, where such complaint involves an allegation that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience.

complaints handling rules *DISP* 1.2.

complaints record rules *DISP* 1.5.

consumer (1) (except as specified in this definition) any natural person

acting for purposes outside his trade, business or profession.

[Note: article 2 of the *Distance Marketing Directive*, article 2 of the *Unfair Terms in Consumer Contracts Directive* (93/13/EEC) and article 2 of the *E-Commerce Directive*]

~~(1)~~(2) in relation to ...

...

~~(2)~~(3) (in relation to the protection of consumers objective ...

...

~~(3)~~(4) (in relation to the establishment and maintenance of the *Consumer Panel* (section 10 of the *Act* (The Consumer Panel))) (as defined in section 10(7) of the *Act*) a *person* within (3) other than an *authorised person*.

(4) (~~in *ECO* and *ENF* 19~~) an individual who is acting for purposes other than those of his trade, business or profession.

(5) (~~in *ENF* 20~~) any natural person who, in contracts covered by the *Unfair Terms Regulations*, is acting for purposes which are outside his trade, business or profession.

consumer awareness rules

DISP 1.4.

contract for differences

the *investment*, specified in article 85 of the *Regulated Activities Order* (Contracts for differences etc), which is rights under:

- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in:
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in the contract; or

(c) a derivative instrument for the transfer of credit risk to which article 85(3) of the *Regulated Activities Order* applies.

[Note: paragraph 8 of Section C of Annex 1 to *MiFID*]

controlled activity

(in accordance with section 21(9) of the *Act* (The classes of activity and investment)) any of the following activities specified in Part 1 of Schedule 1 to the Financial Promotions Order (Controlled Activities):

(a) ...

...

(fa) operating a multilateral trading facility (paragraph 4A);

(g) ...

...

(m) arranging qualifying credit etc. (paragraph 10A-coming into force 31st October 2004);

(n) advising on qualifying credit etc. (paragraph 10B-coming into force 31st October 2004);

(o) agreeing to carry on specified kinds of activity (paragraph 11) which are specified in paragraphs 3 to 10B ~~(10B from 31 October 2004)~~ (other than paragraph 4A) of Part 1 of Schedule 1 to the *Financial Promotion Order*;

(p) (in relation to COBS 5.2.4R and COBS 5.4.1R) also a marketing communication made by a MiFID investment firm or a third country investment firm that relates to an ancillary service.

~~core investment service~~

[deleted]

~~corporate finance contact~~

(when a firm carries on ~~designated investment business regulated activities~~ with or for a person in the course of or as a result of either carrying on *corporate finance business* with or for a client, or carrying on *corporate finance business* for the firm's own account) that person in connection with that ~~designated investment business regulated activity~~ if:

(a) ...

~~credit institution~~

(1) (except in REC) (in accordance with Articles 4(1) and 107 of the BCD):

~~(1)~~ (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or

~~(2)~~ (b) an electronic money institution within the meaning of the *E-Money Directive*;

but so that:

- (3) (c) (except for the purposes of *GENPRU*, *ELM* and *BIPRU*) an institution within (2) that does not have the right to benefit from the mutual recognition arrangements under *BCD* is excluded; and
- (4) (d) for the purposes of *BIPRU* 10 (Concentration risk requirements) it means:
- (a) (i) a credit institution as defined by (1) to (2) that has been authorised in an *EEA State*; or
- (b) (ii) any private or public undertaking which meets the definition in (1) to (2) and which has been authorised in a *non-EEA state*.

(see also *BCD credit institution*, *full credit institution*, *full BCD credit institution* and *Zone A credit institution*.)

(2) (in *REC*):

- (a) a credit institution authorised under the *Banking Consolidation Directive*; or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under the *Banking Consolidation Directive* if it had its registered office (or if it does not have a registered office, its head office) in an *EEA State*.

custody rules

- (1) (in *CASS* 2) *CASS* 2.
- (2) (in *CASS* 6) *CASS* 6.

customer

- (1) (except in relation to ~~*COB* 3~~, *ICOB*, *MCOB* 3 and *CASS* 5) a client who is not a ~~market counterparty~~ an eligible counterparty for the relevant purposes.
- (2) (in relation to ~~*COB* 3~~ and *MCOB* 3) a *person* in (1) or a *person* who would be such a *person* if he were a *client*.
- (3) (in relation to *ICOB*) a *policyholder*, or a prospective *policyholder* but (except in *ICOB* 2 (general rules), *ICOB* 7 (claims handling) and (in respect of those chapters) *ICOB* 1 (application and purpose)) excluding a *policyholder* or prospective *policyholder* who does not make the arrangements preparatory to him concluding the *contract of insurance*.
- (4) (in relation to *CASS* 5) a *client*.

dealing on own

trading against proprietary capital resulting in the conclusion of

<u>account</u>	<p>transactions in one or more <i>financial instruments</i>.</p> <p>[Note: article 4(1)(6) of <i>MIFID</i>]</p>
<u>detailed requirements on costs and associates charges</u>	<p>(in <i>COBS</i>) the requirements of <i>COBS 7.1.8R</i>.</p>
<u>disclosure obligations</u>	<p>(in <i>REC</i>) the initial, ongoing and ad hoc disclosure requirements contained in the <i>relevant articles</i> and given effect:</p> <p>(1) <u>in the <i>United Kingdom</i> by Part 6 of the <i>Act</i> and Part 6 rules (within the meaning of section 73A of the <i>Act</i>); or</u></p> <p>(2) <u>in another <i>EEA State</i> by legislation transposing the <i>relevant articles</i> in that State.</u></p>
<u>discretionary investment manager</u>	<p>(in <i>COBS</i> and (in relation to <i>firm type</i>) in <i>SUP 16.10</i> (Confirmation of <i>standing data</i>)) a person who, ...</p>
<u>designated investment business</u>	<p>any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business:</p> <p>(a) ...</p> <p>(da) <u><i>operating a multilateral trading facility</i> (article 25D);</u></p> <p>(e) ...</p> <p>...</p>
<u>distance communications rules</u>	<p><u>the <i>rules</i> in <i>COBS 6</i> (Distance communications).</u></p>
<u>distance contract</u>	<p>any contract concerning financial services, the making or performance of which constitutes or is part of a <i>regulated activity</i>, concluded between a <u>supplier</u> and a <u>consumer</u> under an organised distance sales or service provision scheme run by the <u>supplier</u> contractual provider of the service who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more <i>means of distance communication</i> up to and including the time at which the contract is concluded.</p> <p>[Note: articles 2(a) and (e) of and recital 19 to the <i>Distance Marketing Directive</i>]</p>

<u>distance marketing disclosure rules</u>	<u>COBS 6.1.1R to COBS 6.1.4R.</u>
<u>distance marketing information</u>	(1) <u>(in COBS) the information listed in COBS 6 Annex 1R.</u> (2) <u>(in MCOB) the information listed in MCOB 6 Annex 1R.</u>
<u>distribution channels</u>	<u>a channel through which information is, or is likely to become, publicly available. Information which is “likely to become publicly available” means information to which a large number of persons have access.</u> <u>[Note: article 2(1) of the MiFID implementing Directive]</u>
<u>ECA provider</u>	<u>an electronic commerce activity provider; that is, a firm carrying on an electronic commerce activity from an establishment in the United Kingdom.</u>
<u>EEA market operator</u>	<u>(in REC) a person who is a market operator whose home state is an EEA State other than the United Kingdom.</u>
<u>EEA MiFID investment firm</u>	<u>a MiFID investment firm whose Home State is not the United Kingdom.</u>
<u>EEA registered tied agent</u>	<u>a tied agent of a UK MiFID investment firm that is not an appointed representative and would have been an FSA registered tied agent but for the fact that it does business in an EEA State that permits investment firms authorised by the competent authority of that state to appoint tied agents.</u>
<u>EEA simplified prospectus</u>	<u>a marketing document which contains information about an EEA simplified prospectus scheme and meets the requirements of Article 28 of the UCITS directive.</u>
<u>EEA simplified prospectus scheme</u>	<u>a UCITS scheme which is a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States).</u>
<u>EEA territorial scope rule</u>	<u>COBS Appendix 1, Part 3 paragraph 1(1) (which provides that the territorial scope of COBS is modified to the extent necessary to be compatible with European law).</u>
<u>EEA tied agent</u>	<u>a tied agent who is an FSA registered tied agent or an EEA registered tied agent.</u>
<u>elective eligible counterparty</u>	<u>a client categorised as an elective eligible counterparty in accordance with COBS 3.6 (Eligible counterparties).</u>
<u>elective professional client</u>	<u>a client categorised as an elective professional client in accordance with COBS 3.5 (Professional clients).</u>
<u>electronic</u>	(1) <u>(except in COBS) a person who carries on an electronic</u>

<i>commerce activity provider</i>	<p><i>commerce activity.</i></p> <p>(2) <u>(in COBS) a firm carrying on an electronic commerce activity from an establishment in the United Kingdom.</u></p>
<i>eligible counterparty</i>	<p>[delete the existing definition and replace with the following]</p> <p><u>(in accordance with COBS 3.6.1R) a client that is either a per se eligible counterparty or an elective eligible counterparty.</u></p>
<i>eligible counterparty business</i>	<p><u>the following services and activities carried on by a firm:</u></p> <p>(a) <u>dealing on own account, execution of orders on behalf of clients or reception and transmission of orders; or</u></p> <p>(b) <u>any ancillary service directly related to a service or activity referred to in (a),</u></p> <p><u>but only to the extent that the service or activity is carried on with or for an eligible counterparty.</u></p>
<i>exempt person</i>	<p>(1) ...</p> <p>(c) <u>section 285(2) or (3) of the Act (Exemption for recognised investment exchanges and clearing houses);</u></p> <p><u>and</u></p> <p>(2) <u>a person who is exempt from the general prohibition as a result of section 312A(2) of the Act.</u></p>
<i>execution criteria</i>	<p><u>the criteria set out in COBS 12.2.6R, that is:</u></p> <p>(a) <u>the characteristics of the client including the categorisation of the client as retail or professional;</u></p> <p>(b) <u>the characteristics of the client order;</u></p> <p>(c) <u>the characteristics of financial instruments that are the subject of that order;</u></p> <p>(d) <u>the characteristics of the execution venues to which that order can be directed.</u></p>
<i>execution factors</i>	<p><u>price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.</u></p>
<i>execution of orders on behalf</i>	<p><u>acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients.</u></p>

<u>of clients</u>	[Note: article 4 (1)(5) of <i>MiFID</i>]
<u>execution venue</u>	for the purposes of the provisions relating to best execution in <i>COBS 12.2</i> , execution venue means a <u>regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.</u>
	[Note: article 44(1) of the <i>MiFID implementing Directive</i>]
<u>execution-only transaction</u>	a transaction <i>executed</i> by a <i>firm</i> upon the specific instructions of a <i>client</i> where the <i>firm</i> does not give <i>advice on investments</i> relating to the merits of the transaction <u>and in relation to which the rules on assessment of appropriateness (<i>COBS 11</i>) do not apply.</u>
<u>exempt CAD firm</u>	(1) (except in <i>SYSC and IPRU(INV)</i>) has the meaning set out <i>BIPRU 1.1.16R</i> (Types of investment firm: exempt CAD firm) which is in summary an <i>investment firm</i> that satisfies certain specified conditions. (2) (in <i>SYSC and IPRU(INV)</i>) a <i>firm</i> in (1) whose head office (or, if it has a registered office, that office) is in the <i>United Kingdom</i> .
<u>fair, clear and not misleading rule</u>	<u><i>COBS 4.2.1R</i>.</u>
<u>facilities</u>	(in relation to a <i>recognised body</i>) the facilities and services which it provides in the course of carrying on <i>exempt activities</i> , <u>and references to the use of the facilities of an RIE are to be construed as follows:</u> <u>references to</u> (1) <u>dealings on an RIE; or</u> (2) <u>transactions on an RIE are</u> (3) <u>references to dealings or transactions which are effected by means of the RIE's facilities; or</u> (4) <u>which are governed by the rules of the RIE; and</u> (5) <u>references to the use of the facilities of an RIE include use which consists of any such dealings or entering into any such transactions.</u>
<u>fees and commission statement</u>	[deleted]

financial analyst a relevant person who produces the substance of investment research.

[Note: article 2(4) of the *MiFID implementing Directive*]

Financial
Collateral
Directive

the Council Directive of 6 June 2002 relating to financial collateral arrangements (No. 2002/47/EC).

financial instrument (1) (~~other than for the purposes of *BIPRU* and *GENPRU* other than in (2)~~) as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):

(a) ...

...

(2) (for the purposes of *BIPRU*, ~~and~~ *GENPRU*, the common platform requirements and in relation to *MiFID business*) an instrument listed in Section ~~BC~~ of ~~the Annex I to the ISDMiFID~~, that is: ~~;~~ and

(a) transferable securities;

(b) money-market instruments;

(c) units in collective investment undertakings;

(d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

(e) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;

(g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned

in (f) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the MiFID Regulation);

- (h) derivative instruments for the transfer of credit risk;
- (i) financial contracts for differences; and
- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to
 - (i) climatic variables;
 - (ii) freight rates;
 - (iii) emission allowances;
 - (iv) inflation rates or other official economic statistics;
 - (v) telecommunications bandwidth;
 - (vi) commodity storage capacity;
 - (vii) transmission or transportation capacity relating to commodities, where cable, pipeline or other means;
 - or (viii) an allowance, credit, permit, right similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
 - (ix) a geological, environmental or other physical variable;
 - (x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
 - (xi) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

where the conditions in Articles 38(3) and (4) of the *MiFID Regulation* are met.

[Note: article 4(1)(17) and section C of annex 1 to *MiFID* and articles 38 and article 39 of the *MiFID Regulation*].

(3) ~~(for the common platform requirements) any of the instruments specified in Section C of Annex I of *MiFID*.~~

financial promotion

(1) ~~(in accordance with section 21(1) of the Act (Restrictions on financial promotion))~~ an invitation or inducement to *engage in investment activity*;

[Note: section 21 of the Act (Restrictions on financial promotion)]

(2) ~~(in relation to COBS 5.2.4R and COBS 5.4.1R) (in addition to (1) a marketing communication made by a *MiFID investment firm* or a *third country investment firm* that relates to an ancillary service.~~

financial promotion rules

(1) ~~(in relation to COBS) any or all of the rules in COBS 4 and COBS 5 that impose requirements in relation to a *financial promotion* but only to the extent that they apply to a *financial promotion*.~~

(2) ~~(in relation to ICOB) *COB 3*, and *ICOB 3*.~~

(3) ~~(in relation to MCOB) *MCOB 3*.~~

FSA registered tied agent

~~a *tied agent* who is an *agent* for the purposes of section 39A of the Act.~~

general application rule

~~*COBS 1.1.1R* (which in summary provides that *COBS* applies to a *firm* with respect to certain activities carried on from an establishment maintained by it in the *United Kingdom*).~~

Home State

(1) ~~(in relation to a *credit institution*) the *EEA State* in which the *credit institution* has been authorised in accordance with the *Banking Consolidation Directive*.~~

(2) ~~(in relation to an *investment firm*):~~

(a) ~~if the *investment firm* is a *natural person*, the *EEA State* in which his head office is situated;~~

(b) ~~if the *investment firm* is a *legal person*, the *EEA State* in which its registered office is situated or, if under its national law it has no registered office, the *EEA State*~~

~~in which its head office is situated~~; or

- (c) if the investment firm has, under its national law, no registered office, the EEA State in which its head office is situated.

[Note: article 4(1)(20) of *MiFID*]

...

- (6) (except in REC)...

- (7) ...

- (8) (in relation to a UCITS):

- (a) with regard to a UCITS constituted as a unit trust/common fund, the EEA State in which the management company's registered office is situated;

- (b) with regard to a UCITS constituted as an investment company, the EEA State in which the investment company's registered office is situated.

- (9) (in REC) in relation to an EEA market operator, the EEA State in which it has its registered office, or if it has no registered office, its head office.

*Home State
regulator*

- (1) ...

...

- (4) (in REC) the competent authority (within the meaning of Article (4)(1)(22) of *MiFID*) of the EEA State which is the Home State in relation to the EEA market operator concerned.

Host State

- (1) (in LR and PR) as defined in Article 2.1(n) of the ~~p~~Prospectus Directive) the EEA State where an offer to the public is made or admission to trading is sought, when different from the Home State.

- (2) (except in LR and PR and except in relation to *MiFID*) the EEA State in which an EEA firm, a UK firm, or a Treaty firm is exercising an EEA right or Treaty right to establish a branch or provide cross border services.

- (3) (in relation to *MiFID*) the EEA State, other than the Home State, in which an investment firm has a branch or performs investment services and/or activities or the EEA State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote

members or participants established in that same EEA State.

[Note: article 4(1)(21) of *MiFID*]

Host State regulator

- (1) (in relation to an *EEA firm* ~~or a Treaty firm exercising an EEA right or Treaty right in the UK~~) (as defined in paragraph 9 of Schedule 3 to the *Act* (EEA Passport Rights)) the competent authority (under the relevant *Single Market Directive*) of an *EEA State* (other than the *United Kingdom*) in relation to the *EEA firm* concerned.
- (2) ...
- (3) (in *REC* in relation to a *UK RIE*) the competent authority (within the meaning of Article (4)(1)(22) of *MiFID*) of the *EEA State* in which the *UK RIE* intends to make, or has made, arrangements to facilitate access to, or use of, a regulated market or a multilateral trading facility operated by the *UK RIE*.

ICD claim

a *claim*:

- (a) against an ~~an~~ *ISD MiFID investment firm* (including a *credit institution* which is a ~~an~~ *ISD MiFID investment firm*), whether established in the *United Kingdom* or in another *EEA State*; and
- (b) in relation to any ~~of the~~ *investment services or activities*.
~~Listed in Section A and paragraph 1 of Section C of the Annex to the ISD.~~

information about designated investments

the information required to be provided to a *retail client* by the *rules* in *COBS 15.3* (Information about designated investments).

insurance client money chapter

CASS 5.

~~*investment analyst*~~

[deleted]

investment firm

[delete existing definition and replace with the following]

- (1) any person whose regular occupation or business is the provision of one or more *investment services* to third parties and/or the performance of one or more investment activities on a professional basis.

[Note: article 4(1)(1) of *MiFID*]

- (2) (in *REC*) a *MiFID investment firm*, or a person who would be a *MiFID investment firm* if it had its head office in the *EEA*.

*investment
research*

[delete existing definition and replace with the following]

research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several *financial instruments* or the issuers of *financial instruments*, including any opinion as to the present or further value or price of such instruments, intended for *distribution channels* or for the public, and in relation to which the following conditions are met:

- (a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
- (b) if the recommendation in question were to be made by an *investment firm* to a *client*, it would not constitute the provision of a *personal recommendation*.

[Note: article 24(1) of the *MiFID implementing Directive*]

investment service

[delete existing definition and replace with the following]

any of the following involving the provision of a service in relation to a *financial instrument*:

- (a) reception and transmission of orders in relation to one or more *financial instruments*;
- (b) execution of orders on behalf of *clients*;
- (c) *dealing on own account*;
- (d) *portfolio management*;
- (e) the making of a *personal recommendation*;
- (f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;
- (g) placing of *financial instruments* without a firm commitment basis;
- (h) operation of *multilateral trading facilities*.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID*]

*investment
services and
activities; or*

any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*-, that is:

- (a) reception and transmission of orders in relation to one or more

investment services or activities; or

financial instruments;

(b) *execution of orders on behalf of clients;*

investment services and/or activities

(c) *dealing on own account;*

(d) *portfolio management;*

(e) *the making of a personal recommendation;*

(f) *underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;*

(g) *placing of financial instruments without a firm commitment basis;*

(h) *operation of multilateral trading facilities.*

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID*]

issuer

(1) (except in *CIS, LR, PR* and *DR*)

(a) ...

(d) (in relation to *certificates representing certain securities*) the *person* who issued or is to issue the *security* to which the certificate or other instrument relates;

(e) *an entity which issues transferable securities and, where appropriate, other financial instruments.*

[Note: article 2(2) of the *MiFID Regulation*]

key facts disclosure document key features

a document required to be prepared by the rules in COBS 14 (Preparing product information) and to be provided to a retail client by the rules in COBS 15 (Providing product information). information about a life policy, key features scheme, or stakeholder pension scheme which is required to be produced in the format specified in COB 6.1 (Packaged products and ISA disclosure) to COB 6.5 (Content of key features and important information: life policies, key features schemes, cash deposit ISAs and stakeholder pension schemes).

key facts scheme key features scheme

means a *scheme* that is not:

(a) a *simplified prospectus scheme*; or

(b) a *qualified investor scheme*; or

(c) a recognised scheme under section 264 of the *Act* (Schemes constituted in other EEA States).

licensee (1) (in DISP 2 to DISP 4 and FEES 5) a person who is not a firm but who is:

- (a) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or
- (b) authorized to carry on an activity by virtue of section 34(a) of that Act;

(2) (in DISP 1) a person within (1)(a) above only;

and expressions in that Act have the same meaning in this definition.

limit order an order to buy or sell a financial instrument at its specified price limit or better and for a specified size.

[Note: article 4(1)(16) of MiFID]

Lloyd's market activities any of the following activities specified in Part II of the Regulated Activities Order which is carried on by way of business:

- (1) advising on syndicate participation at Lloyd's;
- (2) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;
- (3) (a) arranging (bringing about) deals in investments; or
(b) making arrangements with a view to transactions in investments;

in relation to:

- (i) underwriting capacity of a Lloyd's syndicate;
 - (ii) membership of a Lloyd's syndicate; or
 - (iii) rights to or interests in investments in them;
- (4) agreeing to carry on any of these activities.

local firm a firm which falls within the definition of "local firm" in Article 3.1P of CAD, that is a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets.

MAD Investment Recommendations The Commission Directive of 22 December 2003 implementing the Market Abuse Directive as regards the fair presentation of investment

<u>Directive</u>	<u>recommendations and the disclosure of conflicts of interest (No. 2003/125/EC).</u>
<u>mandate rules</u>	CASS 4.5 <u>8.</u>
<u>margined contract</u>	(in <u>COLL</u> , and <u>CASS 4 and CASS 7</u>) any contract in <i>derivatives</i> .
<u>margined transaction</u>	(1) (except in <u>CASS 4 and CASS 7</u>) a transaction ... (2) (in <u>CASS 4 and CASS 7</u>): (a) ...
<u>market maker</u>	(1) (except in <u>COBS</u>)(in relation to an <i>investment</i>) ... (2) (in <u>COBS</u>) a <i>person</i> who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling <i>financial instruments</i> against his proprietary capital at prices defined by him. [Note: article 4 (1)(8) of <i>MiFID</i>]
<u>market operator</u>	<u>a person who manages and/or operates the business of a regulated market. The market operator may be the regulated market itself.</u> [Note: article 4(1)(13) of <i>MiFID</i>]
<u>MiFID client money chapter</u>	<u>CASS 7</u>
<u>MiFID client money (minimum implementing) rules</u>	<u>CASS 7.3.1R, CASS 7.3.2R, CASS 7.4.1R, CASS 7.4.5R, CASS 7.4.7R, CASS 7.4.8R, CASS 7.4.11R, CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R.</u>
<u>MiFID client money segregation requirements</u>	<u>CASS 7.4.1R and CASS 7.4.11R.</u>
<u>MiFID custody chapter</u>	<u>CASS 6.</u>
<u>MiFID implementing requirement</u>	(1) (in relation to a <i>UK RIE</i>) any of the requirements applicable to that body under the <i>MiFID Regulation</i> . (2) (in relation to a body applying for recognition as a <i>UK RIE</i>) any of the requirements under the <i>MiFID Regulation</i> which, if its application were successful, would apply to it.
<u>MiFID information rules</u>	<u>the rules transposing article 19(2) of <i>MiFID</i> and articles 27, 29(7) and (8) of the <i>MiFID implementing Directive</i>, which are: <i>COBS 4.2.1R</i>;</u>

COBS 4.3.2R; COBS 4.3.6R; COBS 4.3.7R; COBS 5.2.4R, COBS 5.3.2R, COBS 5.3.6R, COBS 5.3.7R, COBS 5.4.1R and GEN 1.2.2R.

MiFID
outsourcing rules

SYSC 8.1.1R to SYSC 8.1.11R.

MTF

a multilateral trading facility.

MTF transaction

a transaction concluded by a firm under the rules governing an MTF with another member or participant of that MTF.

money-market instruments

those classes of financial instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

[Note: article 4(1)(19) of MiFID]

multilateral trading facility

a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of MiFID.

[Note: article 4(1)(15) of MiFID]

non-core investment service

[deleted]

non-directive client money chapter

CASS 4

non-directive custody chapter

CASS 2.

non-independent research

a research recommendation which:

- (a) relates to financial instruments; and
- (b) does not constitute investment research.

[Note: article 24(2) of the MiFID implementing Directive]

normal trading hours

(in relation to a trading venue or an investment firm) those hours which the trading venue or investment firm establishes in advance and makes public as its trading hours.

[Note: article 2(5) of the MiFID Regulation]

operating a multilateral

the regulated activity in article 25D of the Regulated Activities Order, which is, in summary, the operation of a multilateral trading facility on which MiFID instruments are traded.

trading facility

In this definition “MiFID instrument” means any investment:

- (a) of the kind specified by articles 76, 77, 78, 79, 80, 81, 83, 84 or 85 of the *Regulated Activities Order*; or
- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a),

that is a *financial instrument*.

option

the *investment*, specified in article 83 of the *Regulated Activities Order* (Options), which is an option to acquire or dispose of:

- (a) a *designated investment* (other than an option or one to which (d) or (e) applies); or
- (b) currency of the *United Kingdom* or of any other country or territory; or
- (c) palladium, platinum, gold or silver; or
- (d) a commodity to which article 83(2) of the *Regulated Activities Order* applies; or
- (e) a *financial instrument* in paragraph 10 of Section C of Annex 1 to *MiFID* to which article 83(3) of the *Regulated Activities Order* applies; or
- (f) an option to acquire or dispose of an option specified in (a), (b) ~~or~~ (c), (d) or (e)

but so that for the purposes of calculating capital requirements for *BIPRU firms* and *BIPRU 10* (Concentration risk requirements) it also includes any of the items listed in the table in *BIPRU 7.6.18R* (Option PRR: methods for different types of option) and any cash settled option.

overseas firm

- (1) (in relation to *MAR 5*) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom* excluding an *incoming EEA firm*.
- (2) (in any other case) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.

participant firm

- (1) (except in *FEES 1* and *FEES 6*) a *firm* or a *member* other than:
 - (a) (as defined in section 213(10) of the *Act*) (The compensation scheme) and regulation 2 of the *Electing*

Participants Regulations (Persons not to be regarded as relevant persons) an *incoming EEA firm* which is:

- (i) a *credit institution*;
- (ii) an ~~ISD~~ *MiFID investment firm*; or

...

<u>payment information</u>	<u>the information described in COBS 7.3.4R, that is, the amount and nature of any payments that the client will have to make, directly or indirectly, for the personal recommendation.</u>
<u>per se eligible counterparty</u>	<u>a client categorised as a per se eligible counterparty in accordance with COBS 3.6.</u>
<u>per se professional client</u>	<u>a client categorised as a per se professional client in accordance with COBS 3.5.</u>
<u>periodic information</u>	<u>the information identified in the table in COBS 17 Ann 1 R(2), and if the client has not elected to receive trade confirmation information on a transaction by transaction basis under COBS 17.3.3R, the information identified in column (2) of COBS 17 Ann 1R(1).</u>
<u>periodic statement</u>	<u>a report which a firm is required to provide to a customer client under COB 8.2 COBS 17.3 (Periodic reporting statements).</u>
<u>personal account transaction</u>	[deleted]
<u>personal recommendation</u>	[delete the existing definition and replace with the following] <u>a recommendation that is advice on investments and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.</u> <u>A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.</u> [Note: article 52 of the <i>MiFID implementing Directive</i>]
<u>personal transaction</u>	<u>a trade in a designated investment effected by or on behalf of a relevant person, where at least one of the following criteria are met:</u> <ul style="list-style-type: none">(1) <u>that relevant person is acting outside the scope of the activities he carried out in that capacity;</u>(2) <u>the trade is carried out for the account of any of the following persons:</u><ul style="list-style-type: none">(a) <u>the relevant person;</u>

- (b) the spouse or civil partner of the *relevant person* or any partner of that *person* considered by national law as equivalent to a spouse;
- (c) a dependent child or stepchild of the *relevant person*;
- (d) any other relative of the *relevant person* who has shared the same household as that *person* for at least one year on the date of the *personal transaction* concerned;
- (e) any *person* with whom he has *close links*;
- (f) a *person* whose relationship with the *relevant person* is such that the *relevant person* has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

[Note: article 2(7) and article 11 of the *MiFID implementing Directive*]

portfolio management

managing portfolios in accordance with mandates given by *clients* on a discretionary *client-by-client* basis where such portfolios include one or more *financial instruments*.

[Note: article 4(1)(9) of *MiFID*]

portfolio trade

a transaction in more than one security where those securities are grouped and traded as a single lot against a specific reference price.

[Note: article 2(6) of the *MiFID Regulation*]

primary pooling event

- (1) ...
- ...
- (3) (in CASS 7) an event that occurs in the circumstances described in CASS 7.9.4R (Failure of the authorised firm: primary pooling event).

product provider

- (1) (except in *ICOB* and *COB*) a *firm* which is:
 - (i) a *long-term insurer*;
 - (ii) a *friendly society*;
 - (iii) the *operator* of a *regulated collective investment scheme* or an *investment trust savings scheme*; or
 - (iv) the operator of a *personal pension scheme* or *stakeholder pension scheme*.

(2) ...

professional client ~~means an intermediate customer.~~

a client that is either a per se professional client or an elective professional client (see COBS 3.5.1R).

[Note: article 4(1)(12) of MiFID].

provision rules (in COBS) the rules from COBS 15.2.1R to COBS 15.2.5R.

qualifying holding (1) (in GENPRU and BIPRU) has the meaning in GENPRU 2.2.203R (Qualifying holdings), which is in summary a direct or indirect holding of a bank or building society in a non-financial undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking.

(2) (otherwise) any direct or indirect holding in an investment firm which represents 10% or more of the capital or of the voting rights, as set out in Article 92 of the European Parliament and Council Directive on the admission of securities to official stock exchange listing and on information to be published on those securities (No. 2001/34/EC) or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists.

[Note: article 4(1)(27) of MiFID]

qualifying money market fund (1) (in CASS 7) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which satisfies the following conditions:

(a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;

(b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary

basis in deposits with credit institutions;

(c) it must provide liquidity through same day or next day settlement.

(2) For the purposes of (1)(b), a money market instrument is to be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality.

(3) For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD.

[Note: article 18(2) of the *MiFID implementing Directive*]

regulated market [delete existing definition and replace with the following]

a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID.

[Note: article 4(1)(14) of *MiFID*]

regulated market transaction a transaction concluded by a firm on a regulated market with another member or participant of that regulated market.

regulatory provisions

(a) ...

(b) (in relation to an investment exchange):

(i) ...

(ii) if it provides, or proposes to provide, clearing services in respect of transactions other than those effected on the exchange, the criteria which it applies, or proposes to apply, when determining to whom it will provide those services;

(c)

related financial means a financial instrument, the price of which is closely affected by price movements in another financial instrument which is the subject

<u>instrument</u>	<u>of investment research</u> , and includes a derivative on that other <u>financial instrument</u> . [Note: article 25(2) of the <u>MiFID implementing Directive</u>]
<u>relevant articles</u>	(in <u>REC</u>): (1) <u>Article 6.1 to 6.4 of the Market Abuse Directive</u> ; (2) <u>Articles 3, 5, 7, 8, 10, 14 and 16 of the Prospectus Directive</u> ; (3) <u>Articles 4 to 6, 14, 16 to 19 and 30 of the Transparency Directive</u> ; and (4) <u>Community legislation made under the provisions mentioned in (1) to (3)</u> .
<u>relevant business</u>	(1) (in <u>DISP</u>) ... (2) (in relation to information communicated to a <u>client</u> other than a <u>financial promotion</u>) <u>designated investment business</u> . (3) (in relation to a <u>financial promotion</u>) a <u>controlled activity</u> .
<u>relevant investment</u>	(1) (in <u>COBS 13.4</u> in relation to investment research a <u>research recommendation</u> or a public appearance), a <u>designated investment</u> that is the subject of that <u>research</u> , <u>recommendation</u> or <u>public appearance</u> , (2) (in <u>COBS 4</u> and <u>COBS 5</u>) otherwise ... (a) ... (3)
<u>relevant issuer</u>	(1) (in relation to a <u>designated investment</u> that is the subject of investment research , a <u>research recommendation</u> or a public appearance) the <u>issuer</u> of that <u>designated investment</u> ; or (2) (in relation to a <u>related designated investment</u> that is the subject of investment research or a public appearance <u>public appearance</u>) either the ...
<u>relevant liquid market</u>	<u>a market for a share determined in accordance with paragraph 2 and 8 of Article 9 of the MiFID Regulation</u> , in many cases this will be the <u>Member State where the share or the unit was first admitted to trading on a regulated market</u> . [Note: article 9 of the <u>MiFID Regulation</u>]
reportable transaction	[deleted]

requirement to disclose information before providing services

COBS 2.2.2R.

requirement to disclose information on designated investments and investment strategies

(in COBS) the requirement in COBS 2.2.2R(1)(b).

requirement to disclose information on costs and associated charges

(in COBS) the requirement in COBS 2.2.2R(1)(d).

research recommendation

research or other information:

- (a) ...
- ...
- (c) which:
 - (i) ...
 - (ii) ...
 - (iii) expresses an opinion as to the present or future value or price of such instruments.

In this definition, "financial instruments" means the following (as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):

- (a) transferable securities;
- (b) units in collective investment undertakings;
- (c) money-market instruments;
- (d) financial futures contracts, including equivalent cash-settled instruments;
- (e) forward interest-rate agreements;

- (f) interest-rate, currency and equity swaps;
- (g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
- (h) derivatives on commodities; and
- (i) any other instrument admitted to trading on a regulated market in an EEA State or for which a request for admission to trading on such a market has been made.

retail client means ~~a private customer.~~

- (1) (other than in relation to the provision of basic advice on stakeholder products) in accordance with COBS 3.4.1R, a client who is neither a professional client or an eligible counterparty; or

[Note: article 4(1)(12) of MiFID]

- (2) (in relation to basic advice) the person to whom a firm provides basic advice on stakeholder products.

rule on voice telephony communications

COBS 6.1.9R.

rules on the disclosure of commission and commission equivalent

(in COBS) the rules in COBS 7.4 (Disclosure of charges, remuneration and commission).

scheme

- (1) (except in COBS, CASS and SUP) a collective investment scheme.
- (2) (in COBS, CASS and SUP)
 - (a) ...

secondary pooling event

- (1) (in CASS 4) an event that occurs in the circumstances described in CASS 4.4.14R (Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events).
- (2) (in CASS 5) an event that occurs in the circumstances described in CASS 5.6.14R (Failure of a bank, other broker or settlement agent: secondary pooling events).
- (3) (in CASS 7) an event that occurs in the circumstances

	<u>described in CASS 7.9.14R (Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events).</u>
<i>securities financing transaction</i>	<p>(1) <u>(in COBS, in CASS) an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.</u></p> <p>[Note: article 2(10) of the <i>MiFID Regulation</i>]</p> <p>(2) <u>(in any other case) any of the following:</u></p> <p>(a) a <i>repurchase transaction</i>; or</p> <p>(b) a <i>securities or commodities lending or borrowing transaction</i>; or</p> <p>(c) a <i>margin lending transaction</i>.</p> <p><u>(2)</u></p>
<i>share</i>	<p>(1) (except in <i>CIS, LR, and DR and REC</i>) the <i>investment ...</i></p> <p>...</p> <p>(4) <u>(in REC) shares admitted to trading on a regulated market.</u></p>
<i>simplified prospectus</i>	(in relation to a <i>simplified prospectus scheme</i>) a marketing document containing information about the <u>scheme, which complies with scheme and complying with the requirements in COLL 4.6.2R COB 6.2.26R</u> (Production and publication of simplified prospectus) and <u>COLL 4.6.8R COB 6.2.37R</u> (Table: Contents of the simplified prospectus).
<i>simplified prospectus scheme</i>	<p>means:</p> <p>(a) ...</p> <p>(b) a <u>key facts scheme in respect of which a firm has chosen to produce a simplified prospectus instead of a key facts disclosure document (see COBS 14.2.3R(2)); key features scheme for which an election that is permitted by COB 6.2.22R(2) (Key features schemes) has been made;</u></p> <p>whether or not the <i>units</i> are held within a <i>PEP, ISA or personal pension scheme</i>.</p>
<i>Single Market Directives</i>	(as defined in paragraph 1 of Schedule 3 to the Act (EEA Passport Rights));

- (a) the *Banking Consolidation Directive*;
- (b) the Insurance Directives (within the meaning of paragraph 1 of Schedule 3 to the Act);
- (c) ~~the *Investment Services Directive*~~ *MiFID*;
- (d) the *Insurance Mediation Directive*; and
- (e) ~~(from 13 February 2004)~~ the *UCITS Directive*.

statement of demands and needs

a statement which complies with COBS 10.4.7R (Contents).

statutory status disclosure statement

the statutory status disclosure statement required by GEN 4 (Statutory status disclosure).

subsidiary

- (1) (except in relation to *MiFID business*) (as defined in section 736 of the Companies Act 1985 ...
- (2) (in relation to *MiFID business*) a subsidiary undertaking as defined in Articles 1 and 2 of Seventh Council Directive on consolidated accounts (No. 83/349/EEC), including any subsidiary of a subsidiary undertaking of an ultimate *parent undertaking*.

[Note: article 4 (1)(29) of *MiFID*]

~~suitability letter report~~

[delete the existing definition and replace with the following]

a report which a *firm* must provide to its *client* under COBS 10.4 (Suitability reports) which, among other things, explains why the *firm* has concluded that a recommended transaction is suitable for the *client*.

standard method of internal client money reconciliation

CASS 7 Annex 1.

systematic internaliser

investment firm which, on an organised, frequent and systematic basis, *deals on own account* by executing *client* orders outside a regulated market or an *MTF*.

[Note: article 4(1)(7) of *MiFID*]

third country issuer

an issuer which is not a *community issuer*.

[Note: article 2(4) of the *MiFID Regulation*]

tyed agent a *person* who, under the full and unconditional responsibility of only one *MiFID investment firm* or *third country investment firm* on whose behalf it acts, promotes *investment services* and/or *ancillary services* to *clients* or prospective *clients*, receives and transmits instructions or *orders* from the *client* in respect of *investment services* or *financial instruments*, places *financial instruments* and/or provides advice to *clients* or prospective *clients* in respect of those *financial instruments* or *investment services*.

[Note: article 4(1)(25) of *MiFID*]

top-up cover cover provided by the *compensation scheme* for *claims* against an *incoming EEA firm* (which is a *credit institution*, an *IMD insurance intermediary*, an *IMD reinsurance intermediary* or ~~an *ISD*~~ a *MiFID investment firm* or a *UCITS management company*) in relation to ...

trade confirmation information the information identified in column (1) of the table in COBS 17 Ann 1R(1).

trading day (in *MAR 7* (Disclosure of information on certain trades undertaken outside a regulated market or MTF) and *SUP 17* (Transaction reporting)) in relation to post-trade information to be made public about a share under MAR 7.2.10EU, any day of normal trading in a share on a trading venue in the relevant liquid market for this share.

[Note: article 4(2) of the *MiFID Regulation*]

trading venue a regulated market, MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the Community with similar functions to a regulated market or MTF.

[Note: article 2(8) of the *MiFID Regulation*]

transaction only the purchase and sale of a financial instrument. For the purposes of the *MiFID Regulation*, excluding Chapter II, this does not include:

- (a) securities financing transactions; or
- (b) the exercise of options or covered warrants; or
- (c) primary market transactions (such as issuance allotment or subscription) in financial instruments falling within Article 4(1)(18)(a) and (b) of *MiFID*.

[Note: article 5 of the *MiFID Regulation*]

transaction report [delete the existing definition and replace with the following]

a report of a transaction which meets the requirements of SUP 17.4.1R and SUP 17.4.2R (Information to appear in transaction reports).

transferable security

- (1) (in *PR* and *LR*) (as defined in section 102A of the *Act*) anything which is a transferable security for the purposes of ~~the investment services directive~~ *MiFID*, other than *money-market instruments* for the purposes of that directive which have a maturity of less than 12 months.
- (2) ...
- (3) those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
 - (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
 - (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and
 - (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

[Note: article 4(1)(18) of *MiFID*]

Transparency Directive

the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC).

turnover

(in relation to a *financial instrument*) means the sum of the results of multiplying the number of units of that instrument exchanged between buyers and sellers in a defined period of time, pursuant to *transactions* taking place on a *trading venue* or otherwise, by the unit price applicable to each such *transaction*.

[Note: article 2(9) of the *MiFID Regulation*]

UCITS investment firm

[delete existing definition and replace with the following]

a *firm* which:

- (1) is the operator of a *UCITS scheme* (whether or not it is also the operator of other schemes); and
- (2) has a *Part IV permission to manage investments* where:
 - (a) the *investments managed* include one or more of the

instruments listed in Section C of Annex 1 to MiFID;
and

(b) the permission extends to activities permitted by article 5(3) of the UCITS Directive as well as those permitted by article 5(2).

UCITS management company

(1) (except in relation to MiFID business) a firm which is either:

(a) a UCITS firm; or

(b) a UCITS investment firm.

(2) (in relation to MiFID business) a management company as defined in the UCITS Directive.

[Note: article 4 (1)(24) of MiFID]

UK firm

(1) (except in REC) (as defined in paragraph 10 of Schedule 3 to the Act (EEA Passport Rights)) ...

(2) (in REC) means an investment firm or credit institution which has a Part IV permission to carry on one or more regulated activities.

UK MiFID investment firm

a MiFID investment firm whose Home State is the United Kingdom (this may include a natural person provided the conditions set out in Article 4(1)(1) of MiFID are satisfied).

voice telephony communication

includes a telephone call.

website conditions

the following conditions (which must be satisfied if a firm provides information to a client by means of a website containing information that is not addressed personally to that client):

(1) the provision of that information in that medium must be appropriate to the context in which the business between the firm and the client is, or is to be, carried on (that is, there is evidence that the client has regular access to the internet, such as the provision by the client of an e-mail address for the purposes of the carrying on of that business);

(2) the client must specifically consent to the provision of that information in that form;

(3) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(4) the information must be up to date; and

- (5) the information must be accessible continuously by means of that website for such period of time as the *client* may reasonably need to inspect it.

[Note: article 3 of the *MiFID implementing Directive*]

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES
(EXEMPT CAD FIRMS) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA’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)
Interim Prudential sourcebook for Investment Business (IPRU(INV))	Annex A
Interim Prudential sourcebook for Investment Business (IPRU(INV))	Annex B
Prudential sourcebook for Mortgage Firms and Insurance Intermediaries (MIPRU)	Annex C

Citation

- E. This instrument may be cited as the Interim Prudential sourcebook for Investment Businesses (Exempt CAD firms) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

Amendments to the Contents page:

Chapter

....

9 Exempt CAD firms

...

Amendments to Chapter 1:

...

1.2.5 R Table

This table belongs to *IPRU(INV)* 1.2.4R

<i>Professional firm</i>	Chapters 1 and 2
<i>Securities and futures firm</i> (which is not an ISD <u>a MiFID investment firm</u>) or a category D firm (as defined in <i>IPRU(INV)</i> 10 App1)	Chapters 1 and 3
<u><i>Securities and futures firm</i> (which is an exempt BIPRU commodities firm)</u>	<u>Chapters 1 and 3</u>
<u><i>Securities and futures firm</i> (which is an exempt CAD firm other than a firm which was subject to the requirements of Chapter 10 before 1 November 2007)</u>	<u>Chapters 1, 3 and 9</u>
The <i>Society of Lloyd's</i> (in relation to <i>underwriting agents</i>) and <i>members' advisers</i>	Chapters 1 and 4
<u><i>Investment management firm</i> (which is not an exempt CAD firm)</u>	Chapters 1 and 5
<u><i>Investment management firm</i> (which is an exempt CAD firm)</u>	<u>Chapters 1, 5 and 9</u>

<i>Service company</i>	Chapters 1 and 6
<i>Securities and futures firm which is also an ISD a <u>MiFID investment firm</u> or a category D firm (as defined in <u>IPRU(INV) 10 App1</u>) and a <u>local firm</u></i>	Chapters 1 and 10
<i><u>Securities and futures firm (which is an exempt CAD firm and was subject to the requirements of Chapter 10 before 1 November 2007)</u></i>	<u>Chapter 1, 9 and 10</u>
<i>Personal investment firm</i>	Chapters 1 and 13
...	

...

Amendments to Chapter 3:

...

- 3-1 R This chapter applies to a *securities and futures firm* which:
- (a) is not an MiFID investment firm or a ~~category D firm~~;
 - (b) is a securities and futures firm which is an exempt CAD firm and which was not subject to the requirements of chapter 10 before 1 November 2007; or
 - (c) is an exempt BIPRU commodities firm.

...

- 3-6 G The financial resources rules for an exempt CAD firm are set out in IPRU(INV) chapter 9. As such, rules 3-61 to 3-182 do not apply to an exempt CAD firm unless it carries on any regulated activity other than MiFID business (see IPRU(INV) 9.2.3R). An exempt CAD firm remains subject to the non-financial resources rules (rule 3-10 to rule 3-41(9)) contained in this chapter.

...

- 3-10(2) R A *firm* must keep accounting records in such a manner that they are sufficient to show and explain the *firm's* transactions and commitments (whether effected on its own behalf or on behalf of others) and in particular so that these records:

...

- (a) ...
- (b) demonstrate whether or not the *firm* is or was at that time complying

with its *financial resources requirement* or, in the case of an *exempt CAD firm*, its obligations under *IPRU(INV) 9*; and

...

3-60 Firms to which Rules 3-61 to 3-182 apply

...

Exempt CAD firms

3-60(8) R Rules 3-61 to 3-182 do not apply to an *exempt CAD firm*, unless it carries on any regulated activity other than *MiFID business*.

...

Appendix 1 – Glossary of Terms for IPRU(INV) 3

~~*category D firm* means a firm, the only core investment service for which it has permission is receiving and transmitting on behalf of investors orders in relation to one or more of the instruments listed in Section B of the Annex to the *ISD*, and whose permission is subject to a limitation or requirement preventing it from holding client money or clients' assets and for that reason may not at any time place itself in debit with its clients, which benefits from the freedom of establishment or to provide services under Articles 14 or 15 of the *ISD*;~~

...

Amendments to Chapter 5:

...

5.1.1(1)(a) R ...

TABLE 5.1.1(1)(A)		APPLICATION OF CHAPTER 5		
	ISD <i>Firms Exempt CAD firms</i>	OPS <i>Firms</i> (see Note 1 below)	Non-OPS Life Offices and Non-OPS Local Authorities	Individuals admitted to membership collectively
Financial resources rules				
5.2.1(1) to 5.2.7(5)	Yes No (see <u>Note 3</u> below)	...		

...

...

Note 2 ...

Note 3 The financial resources rules for an exempt CAD firm are set out in IPRU(INV) chapter 9. However, rules 5.2.1(1) to 5.2.7(5) apply to an exempt CAD firm for the purpose of calculating its own funds requirement (see IPRU(INV) 9.2.8R(2)(a)) and if it carries on any regulated activity other than MiFID business (see IPRU(INV) 9.2.3R). An exempt CAD firm remains subject to the non-financial resources rules (rule 5.3.1(1) to rule 5.5.1(1)) contained in this chapter.

....

5.3.1(1) R A firm must ensure that it maintains adequate accounting records and must prepare and submit such reports as are required by the FSA in a timely manner. A firm's records must:

(1) ...

(2) enable the firm to demonstrate its continuing compliance with its financial resources requirements or, in the case of an exempt CAD firm, its obligations under IPRU(INV) 9; and

...

Amendments to Chapter 10:

...

10-B R This chapter applies to a securities and futures firm which is:

(1) an exempt CAD firm (which was subject to Chapter 10 before 1 November 2007); or

(2) a MiFID investment firm, and to a category D firm which is a local firm.

G ...

...

10-C G The financial resources rules for an exempt CAD firm are set out in IPRU(INV) chapter 9. However, rules 10-61 to 10-176 apply to an exempt CAD firm for the purpose of calculating its own funds (see IPRU(INV) 9.2.8R(2)(b)) and if it carries on any regulated activity other than MiFID business (see IPRU(INV) 9.2.3R). An exempt CAD firm remains subject to the non-financial resources rules (rule 10-10 to rule

10-12(6)) contained in this chapter.

...

10-10(2) R A *firm* must keep records in such a manner that they are sufficient to show and explain the *firm's* transactions and commitments (whether effected on its own behalf or on behalf of others) and in particular so that these records:

- (a) ...
- (b) demonstrate whether or not the *firm* is or was at that time complying with its *financial resources requirement* or, in the case of an exempt CAD firm, its obligations under IPRU(INV) 9; and

...

~~Category D firms~~ Exempt CAD firms

10-60(2) R Rules 10-61 to 10-176 apply to an *category D exempt CAD firm* only for the purpose of calculating its own funds and if it carries on any regulated activity other than MiFID business; ~~except that a corporate finance advisory firm, which is a category D firm must instead comply with rules 3-60(3), 3-62, 10-61 and 10-63.~~

...

10-61(8) R A *firm's* initial capital must be:

- (a) ...
- (b) for a *category B firm*: € 125,000; or
- (c) for a *category C firm*: €50,000; ~~or~~
- ~~(d) for an *category D firm*: euro 50,000.~~
- (d) for an exempt CAD firm which carries on any regulated activity other than MiFID business and a local firm: €50,000.

[Note: Article 67(2) of MiFID and Article 6 of CAD (in relation to a local firm)]

...

10-73(1) R ~~A *firm's*~~ The expenditure requirement for a *local firm* must be 1/4 of its relevant annual expenditure calculated in accordance with (2) to (4) below:

- ~~(a) for a *category D firm* which is not responsible for its counterparties' performance: 6/52nds of its relevant annual expenditure calculated in accordance with (2) to (4) below; or~~

- (b) for any other *firm*: 1/4 of its relevant annual expenditure calculated in accordance with (2) to (4) below.

...

Appendix 1 – Glossary of Terms for IPRU(INV) 10

category D firm means a *firm*, the only *core investment service* for which it has *permission* is receiving and transmitting on behalf of investors orders in relation to one or more of the instruments listed in Section B of the Annex to the *ISD*, and whose *permission* is subject to a *limitation or requirement* preventing it from holding *client money* or *clients' assets* and for that reason may not at any time place itself in debit with its *clients*, which benefits from the freedom of establishment or to provide services under Articles 14 or 15 of the *ISD*;

Amendments to Chapter 13:

In the following provisions, references to "Category A firm" are changed to "exempt CAD firm":

- Table 13.1(1) (paragraphs 2 and 3)
- 13.2.1R
- 13.2.2G
- Table 13.A
- 13.3.1R
- 13.3.2R
- 13.3.2AR (1), (2), (3), (4), (5)
- 13.4.1R
- 13.4.2R
- 13.5.1R
- 13.5.2R (1), (2), (3)
- 13.5.4R
- 13.5.4AR
- 13.5.5R
- 13.5.5CR
- 13.6.1R
- 13.6.2R
- 13.6.2AR
- 13.6.2BR
- 13.6.2CR
- 13.6.2DR
- 13.7.2BR
- 13.8.2R
- the definitions of 'Category A1 firm', 'Category A2 firm', 'Category A3 firm' and 'Category B firm' in the IPRU (INV) 13 glossary

- 13.1 R (1) This chapter applies to a *firm* which is a *personal investment firm*.
- (2) ~~Sections 13.1 to 13.8 apply to~~ For a *personal investment firm* which is an ~~Category A exempt CAD firm~~ the following apply:
- (a) sections 13.1 and 13.1A; and
- (b) sections 13.2 to 13.8 or (if prior to 1 November 2007 the *firm* was subject to sections 13.9 to 13.12) 13.9 to 13.12 (see 13.1A.2).
- (3) ...

...

- 13.1.4(1) R (1) *A firm must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements of 13.1.4(2) to 13.1.4(15).*
- (2) Paragraph (1) does not apply to an exempt CAD firm unless it chooses to comply with these rules (see 13.1A).

Policy Terms

13.1.4(2) R ...

...

Limits of Indemnity – IMD insurance intermediary or an exempt CAD firm

- (b) if the firm is an IMD insurance intermediary or an exempt CAD firm that maintains professional indemnity insurance under 13.1A.3(1)(b), appropriate minimum limits of indemnity per year, which are, if the firm is an IMD insurance intermediary, no lower than:
- (i) €1,000,000 for a single claim against the firm; and
 - (ii) €1,500,000 in the aggregate;

[Note: Article 67(3) of MiFID and Article 7 of CAD (see also rule 13.1A.3)]

- (c) if the firm is both an IMD insurance intermediary and an exempt CAD firm that maintains professional indemnity insurance under 13.1A.4(1)(b), appropriate additional limits of indemnity to 13.1.4(2)(b) per year which are no lower than:
- (i) €500,000 for a single claim against the firm; and
 - (ii) €750,000 in the aggregate.

[Note: Article 67(3) of MiFID and Article 8 of CAD (see also rule 13.1A.4)]

Limits of Indemnity – ~~Non-IMD insurance intermediary~~ Other firms

- ~~(e)~~(d) if the firm is not an IMD insurance intermediary or an exempt CAD firm, then the following limits of indemnity apply:
- (i) ...

...

The following text is all new and is not underlined.

After section 13.1 insert section 13.1A as follows:

13.1A Financial resources requirements for an exempt CAD firm

Application

13.1A.1 R This section applies to a *personal investment firm* which is an *exempt CAD firm*.

Initial capital and professional indemnity insurance requirements

13.1A.2 R The financial resources requirement for a *personal investment firm* which is an *exempt CAD firm* is the higher of:

- (1) the requirement that is applied by section 13.1A; and
- (2) (a) the requirement that is applied by sections 13.2 to 13.8; or
(b) (if prior to 1 November 2007 the *firm* was subject to sections 13.9 to 13.12) the requirement that is applied by those sections (but reading references to *Category B firm* as references to the *firm*).

13.1A.3 R (1) A *firm* which is not an *IMD insurance intermediary* must have:

- (a) *initial capital* of €50,000; or
- (b) professional indemnity insurance at least equal to the requirements of 13.1.4(2)(b) and 13.1.4(3) to 13.1.6; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and Article 7 of *CAD* (see also rule 13.1.4(2)(b))]

- (2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £5,000.

13.1A.4 R (1) A *firm* that is also an *IMD insurance intermediary* must have professional indemnity insurance at least equal to the limits set out in 13.1.4(2)(b) and in addition has to have:

- (a) *initial capital* of €25,000; or
- (b) professional indemnity insurance at least equal to the requirements of 13.1.4(2)(c) and 13.1.4(3) to 13.1.6; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and Article 8 of *CAD* (see also rule 13.1.4(2)(c))]

- (2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £5,000.

- 13.1.A.5 G A trade-off between *initial capital* and professional indemnity insurance is appropriate such that €1 of *initial capital* is the equivalent of professional indemnity insurance cover of €20 for a single claim against the *firm* and €30 in aggregate.

Ongoing capital requirements

- 13.1.A.6 R A *firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, (*own funds* to be calculated in accordance with 13.3.2R), at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.

Initial capital

- 13.1.A.7 R A *firm's initial capital* consists of the sum of the following items:
- (1) ordinary *share* capital which is fully paid;
 - (2) perpetual non-cumulative *preference share* capital which is fully paid;
 - (3) *share* premium account;
 - (4) reserves excluding revaluation reserves;
 - (5) audited retained earnings;
 - (6) externally *verified* interim net profits;
 - (7) partners' capital;
 - (8) *eligible LLP members' capital* (in accordance with the provisions of *IPRU(INV)* Annex A); and
 - (9) *sole trader* capital.

Perpetual non-cumulative preference share capital

- 13.1.A.8 R A *firm* may include *preference share* capital in *initial capital* only where any *coupon* on it is not cumulative, and the *firm* is under no obligation to pay a *coupon* in any circumstances.

Audited retained earnings

- 13.1A.9 R When calculating *initial capital*, a *firm* may include its audited retained earnings only after making the following adjustments:
- (1) a *firm* must not recognise the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost;
 - (2) in respect of a *defined benefit occupational pension scheme*, a *firm* must derecognise any *defined benefit asset*;
 - (3) a *firm* must not include any unrealised gains from investment property (these should be reported as part of revaluation reserves);
 - (4) where applicable, a *firm* must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but excluding from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

Externally verified interim net profits or current account

- 13.1A.10 R A *firm* may include interim net profits or current account when calculating *initial capital* to the extent that they have been *verified* by the *firm's* external auditor and are net of any foreseeable tax, dividend and other appropriations.
- 13.1A.11 R When calculating *initial capital*, a *firm* may include its partners' capital only after making the following adjustments:
- (1) a *firm* must not recognise the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost;
 - (2) in respect of a *defined benefit occupational pension scheme*, a *firm* must derecognise any *defined benefit asset*;
 - (3) where applicable, a *firm* must deduct any asset in respect of *deferred acquisition costs* and add back in any liability in respect of deferred income (but excluding from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

Defined benefit pension scheme: defined benefit liability

- 13.1A.12 R For the calculation of *initial capital*, a *firm* may substitute for a *defined benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.
- 13.1A.13 G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit*

reduction amount and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

Appendix 13(1)

Defined terms for Chapter 13

initial capital means the initial capital of a *firm* calculated in accordance with 13.1A.7.

In the following text, underlining indicates new text and striking through indicates deleted text.

Amendments to Chapter 14:

...

14.1.1 R Subject to rule 14.1.2, *consolidated supervision* and this chapter apply to a *firm* which is a member of a *group* if:

(1) ...

(b) a *securities and futures firm*, subject to the financial rules in Chapter 10, unless the *firm* is an ~~*category D firm exempt CAD firm*~~; or

...

In the following text, underlining indicates new text.

Annex A: LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS' CAPITAL

...

1.5 G The following *rules* allows inclusion of members' capital within a *firm's* capital if it meets the conditions in this annex:

Chapter	<i>IPRU(INV) rule</i>	How <i>eligible LLP members' capital</i> should be treated for the purposes of the <i>IPRU(INV) rule</i>
...
<u>5</u>	...	...
<u>9</u>	<u>9.3.1</u>	<u><i>Eligible LLP members' capital</i> may be counted as initial capital within <i>IPRU(INV) 9.3.1</i></u>
10	...	...
13	Table 13.3.2(1) Table 13.10(2) <u>13.1A.7</u>	<i>Eligible LLP members' capital</i> may be counted as <i>own funds</i> relating to companies in Table 13.3.2(1) and Table 13.10(2). <u><i>Eligible LLP members' capital</i> may be counted as <i>initial capital</i> within <i>IPRU(INV) 13.1A.7</i>.</u>

Annex B

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, all the text is new and is not underlined.

Insert the following new chapter as Chapter 9 of *IPRU(INV)*:

Chapter 9: Financial resources requirements for an exempt CAD firm

9.1 Application

9.1.1 R This chapter applies to an *exempt CAD firm* which is:

- (1) an *investment management firm*; or
- (2) a *securities and futures firm*.

9.2 General requirements

9.2.1 G For an *exempt CAD firm*, the *rules* contained within this chapter replace the *rules* in respect of financial resources and financial resources requirements contained within Chapter 3, 5 or 10, as applicable. However, an *exempt CAD firm* must continue to comply with the requirements of Chapter 3, 5 or 10, as applicable, for its non-financial resources related requirements and to the extent it is referred to Chapter 3, 5 and 10 by a *rule* in this chapter.

9.2.2 R A *firm* must be able to meet its liabilities as they fall due.

9.2.3 R An *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business* must also have and maintain at all times financial resources calculated in accordance with the chapter of *IPRU(INV)* to which the *firm* is otherwise subject (Chapters 3, 5 or 10) at least equal to the requirements set out in the relevant chapter.

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are not IMD insurance intermediaries

9.2.4 R (1) A *firm* which is not an *IMD insurance intermediary* must have:

- (a) *initial capital* of € 50,000; or
- (b) professional indemnity insurance covering the whole territory of the *EEA* or some other comparable guarantee against liability arising from professional negligence, representing at least €1,000,000 applying to each claim and in aggregate €1,500,000 per year for all claims; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage

equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and Article 7 of *CAD*]

- (2) If a *firm* chooses to meet the requirements of either (b) or (c) above, it must nevertheless have *initial capital* of at least £5,000.

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

- 9.2.5 R (1) A *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements for a *firm* that is not and in addition has to have:
- (a) *initial capital* of €25,000; or
 - (b) professional indemnity insurance covering the whole territory of the *EEA* or some other comparable guarantee against liability arising from professional negligence, representing at least €500,000 applying to each claim and in aggregate €750,000 per year for all claims; or
 - (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and Article 8 of *CAD*]

- (2) If a *firm* chooses to meet the requirements of either (b) or (c) above, it must nevertheless have *initial capital* of at least £5,000.

- 9.2.6 G A trade-off between *initial capital* and professional indemnity insurance is appropriate such that €1 of *initial capital* is the equivalent of professional indemnity insurance cover of €20 for a single claim against the *firm* and €30 in aggregate.

Comparable guarantee

- 9.2.7 R (a) If another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee, a *firm* can treat it as an alternative to effecting or maintaining professional indemnity insurance pursuant to the rules relating to professional indemnity insurance above.
- (b) If the *firm* is a member of a *group* in which there is an *authorised person* with net tangible assets of more than £10 million, the comparable guarantee must be from that *person*.
- (c) A comparable guarantee means a written agreement on terms at least equal to those required by the *initial capital* and professional indemnity insurance requirements above to finance the claims that might arise as a result of the breach by the *firm* of its duties under

the *regulatory system* or civil law.

Ongoing capital requirements

- 9.2.8 R (1) A *firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, (*own funds* to be calculated in accordance with (2)), at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.
- (2) (a) If the *firm* is an *investment management firm* its *own funds* must be calculated in accordance with the *rules* in *IPRU(INV)* 5.2.1(1) to 5.2.7(5).
- (b) If the *firm* is a *securities and futures firm* (subject to either Chapter 3 or Chapter 10) its *own funds* must be calculated in accordance with the *rules* in *IPRU(INV)* 10.61(1)(B) to 10-176.

9.3 Calculating initial capital

Initial capital

- 9.3.1 R A *firm's initial capital* consists of the sum of the following items:
- (1) ordinary *share* capital which is fully paid;
 - (2) perpetual non-cumulative *preference share* capital which is fully paid;
 - (3) *share* premium account;
 - (4) reserves excluding revaluation reserves;
 - (5) audited retained earnings;
 - (6) externally *verified* interim net profits;
 - (7) partners' capital;
 - (8) *eligible LLP members' capital* (in accordance with the provisions of *IPRU(INV)* Annex A); and
 - (9) *sole trader* capital.

Perpetual non-cumulative preference share capital

- 9.3.2 R A *firm* may include *preference share* capital in *initial capital* only where any *coupon* on it is not cumulative, and the *firm* is under no obligation to pay a *coupon* in any circumstances.

Audited retained earnings

- 9.3.3 R When calculating *initial capital*, a *firm* may include its audited retained earnings only after making the following adjustments:
- (1) a *firm* must not recognise the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost;
 - (2) in respect of a *defined benefit occupational pension scheme*, a *firm* must derecognise any *defined benefit asset*;
 - (3) a *firm* must not include any unrealised gains from investment property (these should be reported as part of revaluation reserves);
 - (4) where applicable, a *firm* must deduct any asset in respect of *deferred acquisition costs* and add back in any liability in respect of deferred income (but excluding from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

Externally verified interim net profits or current account

- 9.3.4 R A *firm* may include interim net profits or current account when calculating *initial capital* to the extent that they have been *verified* by the *firm's* external auditor and are net of any foreseeable tax, dividend and other appropriations.

- 9.3.5 R When calculating *initial capital*, a *firm* may include its partners' capital only after making the following adjustments:
- (1) a *firm* must not recognise the fair value reserves related to gains or losses on cash flow hedges of financial instruments measured at amortised cost;
 - (2) in respect of a *defined benefit occupational pension scheme*, a *firm* must derecognise any *defined benefit asset*;
 - (3) where applicable, a *firm* must deduct any asset in respect of *deferred acquisition costs* and add back in any liability in respect of deferred income (but excluding from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

Defined benefit pension scheme: defined benefit liability

- 9.3.6 R For the calculation of *initial capital*, a *firm* may substitute for a *defined benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.
- 9.3.7 G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational*

pension scheme.

9.4 Policy terms for professional indemnity insurance

Insurers whose professional indemnity insurance policies can be used

9.4.1 R A *firm* that has professional indemnity insurance in accordance with this chapter must take out and maintain professional indemnity insurance that is at least equal to the requirements of the rule below from:

- (1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the *EEA*; or
- (2) a person of equivalent status in:
 - (a) a *Zone A country*;
 - (b) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

Terms to be incorporated in the professional indemnity insurance policy

9.4.2 R The policy of professional indemnity insurance must incorporate terms which make provision for:

- (1) cover in respect of claims for which a *firm* may be liable as a result of the conduct of itself, its *employees* and its *appointed representatives* (acting within the scope of their appointment);
- (2) the minimum *levels of indemnity* per year as set out in the rules relating to professional indemnity insurance above;
- (3) appropriate cover in respect of legal defence costs; and
- (4) cover in respect of *Ombudsman* awards made against the *firm*.

Policies in other currencies

9.4.3 R If a professional indemnity insurance policy is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected and at *renewal*, at least equivalent to those required for the purposes of the rules relating to professional indemnity insurance above.

Conditions and exclusions

9.4.4 R A professional indemnity insurance policy must not be subject to conditions or exclusions which unreasonably limit the cover provided (whether by exclusion of cover, by policy excesses or otherwise).

...

APPENDIX 9(1) (INTERPRETATION)

Glossary of defined terms for Chapter 9

Note: If a defined term does not appear in the glossary below, the definition appearing in the Handbook Glossary applies.

<i>initial capital</i>	means the initial capital of a <i>firm</i> calculated in accordance with section 9.3.
<i>own funds</i>	means the own funds of a <i>firm</i> calculated in accordance with rule 9.2.8.
<i>verified</i>	means checked by an external auditor who has undertaken at least to: <ul style="list-style-type: none">(a) satisfy himself that the figures forming the basis of the interim profits have been properly extracted from the underlying accounting records;(b) review the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the <i>firm</i> in drawing up its annual financial statements and are in accordance with the relevant accounting principles;(c) perform analytical procedures on the result to date, including comparisons of actual performance to date with budget and with the results of prior period(s);(d) discuss with management the overall performance and financial position of the <i>firm</i>;(e) obtain adequate comfort that the implications of current and prospective litigation, all known claims and commitments, changes in business activities and provisioning for bad and doubtful debts have been properly taken into account in arriving at the interim profits; and(f) follow up problem areas of which he is already aware in the course of auditing the <i>firm's</i> financial statements,

and a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the *FSA*.

Annex C

Amendments to Prudential Sourcebook for Mortgage Firms and Insurance Intermediaries (MIPRU)

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

...

3 Professional indemnity insurance

...

3.1.1 R Application

...

(5) This chapter does not apply to:

...

- (c) ~~a *personal investment firm* that is required by another *rule* to hold professional indemnity insurance (see *IPRU(INV)* 13.1.4(1))~~ a firm to which *IPRU(INV)* 13.1.4(1) (Financial resource requirements for personal investment firms: requirement to hold professional indemnity insurance) applies; or
- (d) an *exempt CAD firm* to which *IPRU(INV)* 9.2.5R (Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries) applies.

...

**CONDUCT OF BUSINESS SOURCEBOOK (MIFID TRANSPOSITION)
INSTRUMENT 2007**

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 138 (General rule-making power);
- (2) section 139(4) (Miscellaneous ancillary matters);
- (3) section 145 (Financial promotions rules);
- (4) section 149 (Evidential provisions);
- (5) section 156 (General supplementary powers);
- (6) section 157 (Guidance);
- (7) section 213 (The compensation scheme);
- (8) section 214 (General);
- (9) section 226 (Compulsory jurisdiction); and
- (10) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions module of the FSA’s Handbook.

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

D. The provisions of the Conduct of Business sourcebook are deleted and replaced by the provisions in the Annex to this instrument.

Citation

E. This instrument may be cited as the Conduct of Business Sourcebook (MiFID Transposition) Instrument 2007.

By order of the Board
25 January 2007

Annex

Conduct of Business sourcebook (COBS)

In this Annex, the entire text is new and is not underlined. Spaces have been left blank, to enable provisions to be added later.

- 1 Application
 - 1.1 MiFID transposition
 - 1.1.1 R This sourcebook applies to:
 - (1) the *MiFID business* of a *firm*; and
 - (2) the *equivalent business of a third country investment firm*.
 - 1.1.2 R This sourcebook applies only to the extent necessary:
 - (1) to implement *MiFID* and the *MiFID implementing directive*; and
 - (2) to ensure that the establishments in the *United Kingdom of third country investment firms* are treated no less favourably than the *UK branch* of an *EEA investment firm*.
 - 1.2 MiFID territorial scope
 - 1.2.1 R The territorial scope of this sourcebook is that prescribed by *MiFID*.
 - 1.2.2 G For a *UK MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply to its *MiFID business* carried on from an establishment in the *United Kingdom*. They also generally apply to its *MiFID business* carried on from an establishment in another *EEA State*, but only where that business is not carried on within the territory of that State. See Articles 31(1) and 32(1) and (7) of *MiFID*.
 - 1.2.3 G For an *EEA MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply only to its *MiFID business* if that business is carried on from an establishment in, and within the territory of, the *United Kingdom*. See Article 32(1) and (7) of *MiFID*.
 - 1.2.4 G However, the *rules* on the *investment research* and *non-independent research* (*COBS 13.2* and *COBS 13.3*) and the *rules* on *personal transactions* (*COBS 12.7*) apply on a “home state” basis. This means that they apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* and do not apply to an *EEA MiFID investment firm*.
- 2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client*.
- (2) This *rule* applies in relation to *designated investment business* carried on for:
- (a) a *retail client*; and
 - (b) in relation to *MiFID business* or the *equivalent business of a third country investment firm* for any other *client*.

[Note: article 19(1) of *MiFID*]

2.2 Information disclosure before providing services

2.2.1 [intentionally blank]

- 2.2.2 R (1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:
- (a) the *firm* and its services;
 - (b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;
 - (c) *execution venues*; and
 - (d) costs and associated charges,
- so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) A *firm* may provide the information required by this *rule* in a standardised format.
- (3) This *rule* applies in relation to *MiFID business* or the *equivalent business of a third country investment firm*.
- (4) The requirement in this *rule* to provide information about *designated investments* and proposed investment strategies applies to a *firm* in relation to *designated investment business* other than *MiFID business* or the *equivalent business of a third country investment firm* carried on for, a *retail client* in relation to a *derivative* or a *warrant* or *stock lending activity*.

[Note: article 19(3) of *MiFID*]

2.2.3 [intentionally blank]

2.3 Inducements

Rule on Inducements

2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of *MiFID business* or *the equivalent business of a third-country investment firm*, another *ancillary service*, carried on for a *client* other than:

- (1) a fee, commission or non-monetary benefit paid or provided to or by the *client* or a *person* on behalf of the *client*; or
- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
 - (a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and
 - (b) in relation to *MiFID business* or *the equivalent business of a third-country investment firm*:
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, prior to the provision of the service; and
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or
- (3) proper fees which enable or are necessary for the provision of *designated investment business* or *ancillary services*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*.

[Note: article 26 of the *MiFID implementing Directive*]

2.3.2 R A *firm* will satisfy the disclosure obligation under this section if it:

- (1) discloses the essential arrangements relating to the fee, commission or non-monetary benefit in summary form;

- (2) undertakes to the *client* that further details will be disclosed on request; and
- (3) honours the undertaking in (2).

[Note: article 26 of the *MiFID implementing Directive*]

- 2.3.3 [intentionally blank]
- 2.3.4 [intentionally blank]
- 2.3.5 [intentionally blank]
- 2.3.6 [intentionally blank]
- 2.3.7 [intentionally blank]
- 2.3.8 [intentionally blank]
- 2.3.9 [intentionally blank]
- 2.3.10 [intentionally blank]
- 2.3.11 [intentionally blank]
- 2.3.12 [intentionally blank]
- 2.3.13 [intentionally blank]
- 2.3.14 [intentionally blank]
- 2.3.15 [intentionally blank]
- 2.3.16 [intentionally blank]

Record keeping: inducements

- 2.3.17 R (1) In relation to its *MiFID business* or the *equivalent business of a third-country investment firm*, a *firm* must make a record of each fee, commission or non-monetary benefit given to another *firm* that meets the criteria set out in *COBS 2.3.1 R(2)* and must keep that record for at least five years from the date on which it was given.
- (2) A *firm* must make a record of each benefit given to another *firm* in accordance with *COBS 2.3.14 G*, and must keep that record for at least five years from the date on which it was given or received.

[Note: see article 51(3) of the *MiFID implementing Directive*]

2.4 Agent as client and reliance on others

2.4.1 R This section applies to a *firm* that is conducting *designated investment business* or *ancillary activities* or, in the case of *MiFID business* or the *equivalent business of a third country investment firm*, other *ancillary services*.

2.4.2 [intentionally blank]

Agent as client

2.4.3 R (1) If a *firm* (F) is aware that a *person* (C1) with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the *client* of F in respect of that business.

(2) Paragraph (1) does not apply if:

- (a) F has agreed with C1 in writing to treat C2 as its *client*; or
- (b) C1 is neither a *firm* nor an *overseas financial institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.

(3) If there is an agreement under paragraph (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:

- (a) separate risk warnings required under this sourcebook;
- (b) separate confirmations under the requirements on occasional reporting (*COBS 17.3*); and
- (c) separate *periodic statements*.

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID business* or the *equivalent business of a third country investment firm*, receives an instruction to perform an *investment or ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

- (a) a *MiFID investment firm* or a *third country investment firm*; or
- (b) an *investment firm* that is:

- (i) a *firm* or authorised in another *EEA State*; and
 - (ii) subject to equivalent relevant requirements.
- (2) F1 may rely upon:
- (a) any information about C transmitted to it by F2; and
 - (b) any recommendations in respect of the service or transaction that have been provided to C by F2.
- (3) F2 will remain responsible for:
- (a) the completeness and accuracy of any information about C transmitted by it to F1; and
 - (b) the appropriateness for C of any advice or recommendations provided to C.
- (4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[Note: article 20 of *MiFID*]

- 2.4.5 [intentionally blank]
- 2.4.6 [intentionally blank]
- 2.4.7 [intentionally blank]
- 2.4.8 [intentionally blank]
- 2.4.9 [intentionally blank]
- 2.4.10 [intentionally blank]

3 Client Categorisation

3.1 Application

Scope

3.1.1 R The scope of this chapter is the same as that of the *rules* in the *Handbook* to which it relates.

3.1.2 [intentionally blank]

3.2 Clients

General definition

- 3.2.1 R (1) A *person* to whom a *firm* provides, intends to provide or has provided:
- (a) a service in the course of carrying on a *regulated activity*; or
 - (b) in the case of *MiFID business* or the *equivalent business of a third country investment firm*, an *ancillary service*,
- is a "client" of that *firm*.
- (2) A "client" includes a potential client.
- (3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* or marketing communication is or is likely to be *communicated* is a "client" of a *firm* that *communicates or approves* it.
- (4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent* acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act* and *SUP 12.3.5R*).

[Note: article 4(1)(10) of *MiFID*]

3.2.2 [intentionally blank]

- 3.2.3 R (1) If a *firm* provides services to a *person* that is acting as an agent, the identity of its client will be determined in accordance with the *rule* on agents as clients (see *COBS 2.4.3R*).
- (2) [intentionally blank]
- (3) If a *firm* provides services to a *person* that is acting as the trustee of a trust, that *person* will be the *firm's* client and the underlying beneficiaries of the trust will not.
- (4) [intentionally blank]
- (5) [intentionally blank]

3.3 General notifications: MiFID and equivalent business

- 3.3.1 R In relation to *MiFID business* or the *equivalent business of a third country investment firm*, a *firm* must:
- (1) notify a new *client* of its categorisation as a *retail client*, *professional*

client, or *eligible counterparty* in accordance with this chapter; and

- (2) prior to the provision of services, inform a *client* in a *durable medium* about:
 - (a) any right that *client* has to request a different categorisation; and
 - (b) any limitations to the level of *client* protection that such a different categorisation would entail.

[Note: paragraph 2 of section I of annex II to *MiFID* and articles 28(1) and (2) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.4 Retail clients

- 3.4.1 R A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

[Note: article 4(1)(12) of *MiFID*]

- 3.4.2 [intentionally blank]

3.5 Professional clients

- 3.5.1 R A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

[Note: article 4(1)(11) of *MiFID*]

Per se professional clients

- 3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

- (1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an *EEA State* or a third country and whether or not authorised by reference to a directive:
 - (a) a *credit institution*;
 - (b) an *investment firm*;
 - (c) any other authorised or regulated financial institution;
 - (d) an insurance company;

- (e) a collective investment scheme or the management company of such a scheme;
 - (f) a pension fund or the management company of a pension fund;
 - (g) a commodity or commodity derivatives dealer;
 - (h) a local;
 - (i) any other institutional investor.
- (2) a large undertaking meeting two of the following size requirements on a company basis:
- (a) balance sheet total of €20,000,000;
 - (b) net turnover of €40,000,000;
 - (c) own funds of €2,000,000.
- (3) a national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation.
- (4) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID business* or the *equivalent business of a third country investment firm*) or *designated investments* (in relation to the *firm's* other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

[Note: first paragraph of section I of annex II to *MiFID*]

Elective professional clients

3.5.3 R A *firm* may treat a *client* as an *elective professional client* if it complies with paragraphs (1) and (3) and, where applicable, paragraph (2):

- (1) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved (the “qualitative test”);
- (2) in relation to *MiFID business* or the *equivalent business of a third country investment firm*, in the course of that assessment, at least two of the following criteria are satisfied:

- (a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (b) the size of the *client's financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds €500,000;
 - (c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged,
- (the “quantitative test”); and
- (3) the following procedure is followed:
- (a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;
 - (b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
 - (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[Note: first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]

3.5.4 R If the *client* is an entity, the qualitative test should be performed in relation to the *person* authorised to carry out transactions on its behalf.

[Note: fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.5 G The fitness test applied to managers and directors of entities licensed under directives in the financial field is an example of the assessment of expertise and knowledge involved in the qualitative test.

[Note: fourth paragraph of section II.1 of annex II to *MiFID*]

3.5.6 R Before deciding to accept a request for re-categorisation as an *elective professional client*, a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the quantitative test.

[Note: second paragraph of section II.2 of annex II to *MiFID*]

3.5.7 G An *elective professional client* should not be presumed to possess market

knowledge and experience comparable to a *per se professional client*.

[Note: second paragraph of section II.1 of annex II to *MiFID*]

- 3.5.8 G *Professional clients* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

[Note: fourth paragraph of section II.2 of annex II to *MiFID*]

- 3.5.9 R If a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *investment firm* must take the appropriate action.

[Note: fourth paragraph of section II.2 of annex II to *MiFID*]

3.6 Eligible counterparties

- 3.6.1 R (1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.
- (2) In relation to *MiFID business* or the *equivalent business of a third country investment firm*, a *client* can only be an *eligible counterparty* in relation to *eligible counterparty business*.

[Note: article 24(1) of MiFID]

Per se eligible counterparties

- 3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:
- (1) an *investment firm*;
 - (2) a *credit institution*;
 - (3) an insurance company;
 - (4) a *collective investment scheme* authorised under the *UCITS Directive* or its management company;
 - (5) a pension fund or its management company;
 - (6) another financial institution authorised or regulated under European Community legislation or the national law of an *EEA State*;
 - (7) an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive;
 - (8) a national government or its corresponding office, including a public body that deals with the public debt;

- (9) a central bank;
- (10) a supranational organisation.

[Note: first paragraph of article 24(2) and first paragraph of article 24(4) of *MiFID*]

Elective eligible counterparties

3.6.3 R A *firm* may treat a *client* as an *elective eligible counterparty* if:

- (1) the *client* is an undertaking and:
 - (a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under *COBS 3.5.2 R(4)*); or
 - (b) requests such categorisation and is an *elective professional client*, but only in respect of the services or transactions for which it could be treated as a *professional client*; and
- (2) the *firm* has, in relation to *MiFID business* or the *equivalent business of a third country investment firm*, obtained express confirmation from the prospective counterparty that it agrees to be treated as an *eligible counterparty*.

[Note: article 24(3) and the second paragraph of article 24(4) of *MiFID* and article 50(1) of the *MiFID implementing Directive*]

3.6.4 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an *EEA State* provided the above conditions and requirements are satisfied.

3.6.5 R A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

[Note: second paragraph of article 24(3) of *MiFID*]

Client and firm located in different jurisdictions

3.6.6 R In the case of *MiFID business* or the *equivalent business of a third country investment firm*, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.

[Note: first paragraph of article 24(3) of *MiFID*]

3.7 Providing clients with a higher level of protection

3.7.1 R A *firm* must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.

[Note: second paragraph of article 24(2) of, and the second paragraph of section I of annex II to, *MiFID* and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.2 G It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

[Note: third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.3 R A *firm* may, either on its own initiative or at the request of the *client* concerned:

(1) treat as a *professional client* or a *retail client* a *client* that might otherwise be categorised as a *per se eligible counterparty*;

(2) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*,

and if it does so, the *client* will be re-categorised accordingly. Where applicable, this re-categorisation is subject to the requirement for a written agreement in *COBS 3.7.5R*.

[Note: second paragraph of article 24(2) of, and second paragraph of section I of annex II to, *MiFID* and article 28(3) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.4 R If a *per se eligible counterparty* requests treatment as a *client* whose business with the *firm* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *firm* agrees to that request, the *firm* must treat that *eligible counterparty* as a *professional client*.

[Note: first paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.5 R (1) If, in relation to *MiFID business* or the *equivalent business of a third country investment firm* a *per se professional client* or a *per se eligible counterparty* requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.

(2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one

or more *rules*.

[Note: fourth paragraph of section I of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.7.6 [intentionally blank]

3.7.7 G The ways in which a *client* may be provided with additional protections under this section include re-categorisation on:

- (1) a general basis;
- (2) a trade by trade basis;
- (3) in respect of one or more specified *rules*;
- (4) in respect of one or more particular services or transactions; or
- (5) in respect of one or more types of product or transaction.

[Note: second paragraph of article 24(2) of *MiFID*]

3.7.8 [intentionally blank]

3.8 Policies, procedures and records

Policies and procedures

3.8.1 R A *firm* must implement appropriate written internal policies and procedures to categorise its *clients*.

[Note: fourth paragraph of section II.2 of annex II to *MiFID*]

Records

3.8.2 R (1) A *firm* must make a record of the form of each notice provided and each agreement entered into under this chapter. This record must be made at the time that standard form is first used and retained for the relevant period after the *firm* ceases to carry on business with *clients* who were provided with that form.

[Note: see article 51(3) of *MiFID implementing Directive*]

- (2) A *firm* must make a record in relation to each *client* of:
 - (a) the categorisation established for the *client* under this chapter, including sufficient information to support that categorisation;
 - (b) evidence of despatch to the *client* of any notice required under this chapter and if such notice differs from the relevant

standard form, a copy of the actual notice provided; and

[Note: see article 51(3) of *MiFID implementing Directive*]

- (c) a copy of any agreement entered into with the *client* under this chapter.

This record must be made at the time of categorisation and should be retained for relevant period after the *firm* ceases to carry on business with or for that *client*.

- (3) The relevant periods are:
 - (a) [intentionally blank]
 - (b) [intentionally blank]
 - (c) five years in relation to *MiFID business* or the *equivalent business of a third country investment firm*; and

4 Communication to clients

4.1 Application

4.1.1 R This chapter generally applies in relation to:

- (1) communicating information to a *client* in the course of, or in connection with, *designated investment business*;
- (2) *communicating or approving a financial promotion*.

4.1.2 [intentionally blank]

4.1.3 [intentionally blank]

4.1.4 R *COBS 4* does not apply to the provision by a *firm* to a *client* of a copy of a prospectus that has been drawn up and published in accordance with the *Prospectus Directive* if the *firm* is not responsible under that directive for the information given in the prospectus.

[Note: recital 52 to the *MiFID implementing Directive*]

4.1.5 [intentionally blank]

Fair, clear and not misleading communications

4.2.1 R A *firm* must ensure that all information addressed by it to a *client* in relation to a *relevant business*, is fair, clear and not misleading. (The "*fair, clear and not misleading rule*").

[Note: article 19(2) of *MiFID*]

4.2.2 [intentionally blank]

4.2.3 [intentionally blank]

4.2.4 [intentionally blank]

4.2.5 [intentionally blank]

4.2.6 [intentionally blank]

4.3 Communications to retail clients

4.3.1 R This section applies in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

General rule

4.3.2 R A *firm* must ensure that information:

- (1) includes the name of the *firm*;
- (2) is accurate and in particular does not emphasise any potential benefits of *relevant business* or a *relevant investment* without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important items, statements or warnings.

[Note: article 27(2) of the *MiFID implementing Directive*]

4.3.3 [intentionally blank]

4.3.4 [intentionally blank]

4.3.5 [intentionally blank]

Comparative information

4.3.6 R A *firm* must ensure that, if information compares *relevant business*, *relevant investments*, or *persons* who carry on *relevant business*;

- (1) the comparison is meaningful and presented in a fair and balanced way; and
- (2) (in relation to a *financial promotion*, *MiFID business* or the *equivalent business of a third country investment firm*);
 - (a) the sources of the information used for the comparison are

specified; and

(b) the key facts and assumptions used to make the comparison are included.

(3) In this rule, *relevant business* includes *ancillary services* in relation to *MiFID business* or the *equivalent business of a third country investment firm*.

[Note: article 27(3) of the *MiFID implementing Directive*]

Referring to tax

4.3.7 R A *firm* must ensure that:

(1) any information in relation to *MiFID business* or the *equivalent business of a third country investment firm*; or

(2) otherwise, any *financial promotion*;

that refers to a particular tax treatment prominently states that the tax treatment depends on the individual circumstances of each *client* and may be subject to change in future.

[Note article 27(7) of the *MiFID implementing Directive*]

4.3.8 [intentionally blank]

5 Financial promotion

5.1 Application

5.1.1 R *COBS 5 Annex 1R* governs the application of this chapter and of the *financial promotion rules* in *COBS 4* and also deals with certain aspects of the interpretation of these provisions. *COBS 5 Annex 1* does not affect the application of the *rules* in *COBS 4* to the extent that they are not *financial promotion rules*.

5.1.2 [intentionally blank]

5.1.3 [intentionally blank]

5.1.4 [intentionally blank]

5.2 [intentionally blank]

5.2.1 [intentionally blank]

5.2.2 [intentionally blank]

5.2.3 [intentionally blank]

5.2.4 R A *firm* must ensure that a *financial promotion* is:

- (1) clearly identifiable as such; and
- (2) consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business* or *ancillary services*.

[Note: article 19(2) of *MiFID*, article 29(7) of the *MiFID implementing Directive*]

5.2.5 [intentionally blank]

5.3 Past, simulated past and future performance

5.3.1 R This section applies:

- (1) in relation to all *financial promotions*, except the *rule* on future performance (*COBS 5.3.7R*) which only applies in relation to *financial promotions* that relate to a *financial instrument*;
- (2) in the case of business that is *MiFID business* or the *equivalent business of a third country investment firm*, in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.

Past performance

5.3.2 R A *firm* must ensure that information that contains an indication of past performance of *relevant business* or of a *relevant investment*, satisfies the following conditions:

- (1) that indication is not the most prominent feature of the communication;
- (2) the information includes appropriate performance information which covers at least the immediately preceding 5 years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided if less than 5 years, or such longer period as the *firm* may decide, and in every case that performance information must be based on and show complete twelve month periods;
- (3) the reference period and the source of information are clearly stated;
- (4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

- (5) if the indication relies on figures denominated in a currency other than that of the *EEA State* in which the *retail client* is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

[Note: article 27(4) of the *MiFID implementing Directive*]

5.3.3 [intentionally blank]

5.3.4 [intentionally blank]

5.3.5 [intentionally blank]

Simulated past performance

- 5.3.6 R A *firm* must ensure that if information includes or refers to simulated past performance of *relevant business* or a *relevant investment*:
- (1) it relates to an investment or a financial index;
 - (2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, or underlie, the investment concerned;
 - (3) in respect of the actual past performance, the conditions set out in the *rule* on past performance (*COBS 5.3.2R*) are complied with; and
 - (4) the information contains a prominent warning that the figures refer to simulated past performance.

[Note: article 27(5) of the *MiFID implementing Directive*]

Future performance

- 5.3.7 R A *firm* must ensure that where the communication contains any information on the future performance of a *financial instrument* it:
- (1) is not based on and does not refer to simulated past performance;
 - (2) is based on reasonable assumptions supported by objective data;
 - (3) discloses the effect of commissions, fees or other charges if the indication is based on gross performance;
 - (4) contains a prominent warning that such forecasts are not a reliable indicator of future performance.

[Note: article 27(6) of the *MiFID implementing Directive*]

5.3.8 [intentionally blank]

5.4 Financial promotions containing offers or invitations

5.4.1 R (1) A *firm* must ensure that a *financial promotion* contains:

(a) such of the information referred to in the *rules* implementing Articles 30 to 33 of the *MiFID implementing Directive* (*COBS 7.1.4R, COBS 7.1.6R, COBS 7.1.7R, COBS 7.1.8R, COBS 15.3.2R, COBS 15.3.3R, COBS 15.3.4R, and COBS 15.3.5R*) as is relevant to that offer or invitation; and

(b) [intentionally blank]

(2) This *rule* applies if a *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by a *retail client* and contains:

(a) an offer to enter into a *controlled agreement* with any *person* who responds to the communication; or

(b) an invitation to any *person* who responds to the communication to make an offer to enter into an agreement of that kind;

and specifies the manner of response or includes a form by which any response may be made.

(3) However, this *rule* does not apply to a communication if, in order to respond to an offer or invitation contained in it, the *retail client* must refer to another document or documents, which, alone or in combination, contain that information.

[Note: article 29(8) of the *MiFID implementing Directive*]

5.4.2 [intentionally blank]

5.4.3 [intentionally blank]

5.5 [intentionally blank]

5.6 [intentionally blank]

5.7 [intentionally blank]

5.8 [intentionally blank]

Record keeping: financial promotion

5.8.1 R (1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in

the course of a personal visit, telephone conversation or other interactive dialogue.

- (2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (3) A *firm* must retain the record:
 - (a) in relation to a *financial promotion* relating to a *pension transfer, pension opt-out* or *FSAVC*, indefinitely;
 - (b) in relation to an *life policy, OPS, a SSAS, a personal pension scheme* or a *stakeholder pension scheme*, for six years;
 - (c) in relation to a *financial promotion* relating to *MiFID business* or *ancillary services* or the *equivalent business of a third country investment firm*, for five years; and
 - (d) for three years in any other case.

[Note: see article 51(3) of the *MiFID implementing Directive*]

5.8.2 [intentionally blank]

5.8.3 [intentionally blank]

Annex 1R : application

This annex forms part of *COBS 5.1.1R*.

1. Application

1.1 Who? General

1.1.1 R This chapter applies to a *firm* (including an *ICVC*) which *communicates* or *approves a financial promotion*.

1.1.2 R *COBS 5.3* also applies where appropriate and proportionate to a *firm* in relation to information that is not a *financial promotion* communicated to a *retail client* and which contains information on past, simulated past or future performance and which relates to *MiFID business* or the *equivalent business of a third country investment firm*.

[Note: recital 46 to the *MiFID implementing Directive*]

1.1.3 [intentionally blank]

1.1.4 [intentionally blank]

1.2 Application: what?

Interpreting the rules in this section

- 1.2.1 R If there is a conflict between two *rules* in this section, the *rule* that appears first takes precedence over the later *rule* except and to the extent specifically provided in the first *rule*. The fact that the first *rule* is specifically subject to a later *rule* does not mean that the later *rule* takes precedence over any *rule* that comes between it and the first *rule*.

Rules about application and interpretation

- 1.2.2 R The *rules* in COBS 4.1, COBS 5.1 and COBS 5 Annex 1 always apply to a *financial promotion*.

- 1.2.3 [intentionally blank]

Mortgages, general insurance and prohibited promotions

- 1.2.4 R The *financial promotion rules* do not apply in relation to a *financial promotion* to the extent that:
- (1) [intentionally blank]
 - (2) [intentionally blank]
 - (3) its *communication* by a *firm* would contravene section 238(1) of the *Act* (Restrictions on promotion).

Image advertising

- 1.2.5 R (1) The *fair, clear and not misleading rule* is the only *financial promotion rule* that applies to "image advertising", that is a *financial promotion* which consists only of one or more of the following:
- (a) the name of the *firm*;
 - (b) a logo or other image associated with the *firm*;
 - (c) a contact point; and
 - (d) a reference to the types of *regulated activities* provided by the *firm*, or to its fees or commissions.
- (2) But this *rule* is subject to:
- (a) the *rule* on approving *financial promotions* (see COBS 5 Annex 1.2.8R); and
 - (b) in relation to business other than *MiFID business* and the *equivalent business of a third country investment firm*, the general exemptions (see COBS 5 Annex 1, 1.2.9R).

[Note: recital 41 of the *MiFID implementing Directive*]

MiFID business and the equivalent business of a third country investment firm

- 1.2.6 R (1) The *MiFID information rules* apply in relation to a *financial promotion* for *MiFID business* or the *equivalent business of a third country investment firm*.
- (2) However, the *MiFID information rules* do not apply if such a *financial promotion* consists of a *firm* providing a *client* with a copy of a prospectus that has been drawn up and published in accordance with the *Prospectus Directive* if the *firm* is not responsible under that directive for the information given in the prospectus.

[Note: recital 52 to *MiFID*]

1.2.7 [intentionally blank]

1.2.8 [intentionally blank]

1.2.9 [intentionally blank]

1.2.10 [intentionally blank]

1.3 Application: where?

Default position

- 1.3.1 R The *financial promotion rules* generally apply to a *firm* only in relation to:
- (1) the communication of a *financial promotion* to a *person* inside the *United Kingdom*;
- (2) the communication of a *cold call* to a *person* outside the *United Kingdom*, unless:
- (a) it is made from a place outside the *United Kingdom*; and
- (b) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and
- (3) [intentionally blank]

1.3.2 [intentionally blank]

1.3.3 [intentionally blank]

1.3.4 [intentionally blank]

1.3.5 [intentionally blank]

1.4 Words and phrases used in the financial promotion rules

1.4.1 [intentionally blank]

1.4.2 R

For the purposes of this chapter, the words and phrases set out in the following table have the meaning set out in the row immediately below them:

(1)	made to, directed at and recipient	
	The words "made to", "directed at" and "recipient" are to be interpreted as though article 6 of the <i>Financial Promotion Order</i> (Interpretation: communications) applied to them.	
(2)	directed only at	
	(a)	If all the conditions set out in (c) are met, a communication is to be regarded as "directed only at" a certain <i>group of persons</i> .
	(b)	In any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is directed only at a certain <i>group of persons</i> (but a communication may still be regarded as so directed even if none of the conditions in (c) are met).
	(c)	The conditions are that:
	(i)	the communication includes an indication of the description of <i>persons</i> to whom it is directed and an indication of the fact that the <i>investment</i> or service to which it relates is available only to such <i>persons</i> ;
	(ii)	the communication includes an indication that <i>persons</i> of any other description should not rely upon it;
	(iii)	there are in place proper systems and procedures to prevent recipients other than <i>persons</i> to whom it is directed engaging in the investment activity, or participating in the <i>collective investment scheme</i> , to which the communication relates with the <i>person</i> directing the communication, a <i>close relative</i> of his or a member of the same <i>group</i> .
(3)	communicated to a <i>person</i> inside or outside the <i>United Kingdom</i>	
	(a)	a <i>financial promotion</i> is communicated to a <i>person</i> outside the <i>United Kingdom</i> if it is:
	(i)	made to a <i>person</i> who receives it outside the <i>United Kingdom</i> ; or

	(ii)	directed only at <i>persons</i> outside the <i>United Kingdom</i> ; and
	(b)	a <i>financial promotion</i> is communicated to a <i>person</i> inside the <i>United Kingdom</i> if it is communicated to a <i>person</i> other than as described in (a);
and see (2), above, which amplifies this <i>rule</i> .		
(4)	directed only at <i>persons</i> outside the <i>United Kingdom</i>	
	(a)	If the conditions set out in (d)(i), (ii), (iii) and (iv) are met, a <i>financial promotion</i> directed from a place inside the <i>United Kingdom</i> will be regarded as directed only at <i>persons</i> outside the <i>United Kingdom</i> .
	(b)	If the conditions set out in (d)(iii) and (iv) are met a <i>financial promotion</i> directed from a place outside the <i>United Kingdom</i> will be regarded as directed only at <i>persons</i> outside the <i>United Kingdom</i> .
	(c)	In any other case in which one or more of the conditions in (d)(i) to (v) is met, that fact will be taken into account in determining whether a <i>financial promotion</i> is directed only at <i>persons</i> outside the <i>United Kingdom</i> (but a <i>financial promotion</i> may still be regarded as directed only at <i>persons</i> outside the <i>United Kingdom</i> even if none of these conditions is met).
	(d)	The conditions are that:
	(i)	the <i>financial promotion</i> is accompanied by an indication that it is directed only at <i>persons</i> outside the <i>United Kingdom</i> ;
	(ii)	the <i>financial promotion</i> is accompanied by an indication that it must not be acted upon by <i>persons</i> in the <i>United Kingdom</i> ;
	(iii)	the <i>financial promotion</i> is not referred to in, or directly accessible from, any other <i>financial promotion</i> which is made to a <i>person</i> or directed at <i>persons</i> in the <i>United Kingdom</i> by the same <i>person</i> ;
	(iv)	there are in place proper systems and procedures to prevent recipients in the <i>United Kingdom</i> (other than those to whom the <i>financial promotion</i> might otherwise lawfully have been made) engaging in the investment activity to which the <i>financial promotion</i> relates with the <i>person</i> directing the <i>financial promotion</i> , a <i>close</i>

			<i>relative</i> of his or a member of the same <i>group</i> ;
	(v)		the <i>financial promotion</i> is included in:
		(A)	a website, newspaper, journal, magazine or periodical publication which is principally accessed in or intended for a market outside the <i>United Kingdom</i> ;
		(B)	a radio or television broadcast or teletext service transmitted principally for reception outside the <i>United Kingdom</i> .

6 Distance communications

6.1 The information and other requirements of the Distance Marketing Directive

The distance marketing disclosure rules

- 6.1.1 R A *firm* must provide a *consumer* with the *distance marketing information*, the contractual terms and conditions and any other pre-contractual information required to be provided by a *rule* in the *Handbook*, in a *durable medium* and in good time before the *consumer* is bound by a *distance contract* or offer.

[Note: articles 3(1) and 5(1) of the *Distance Marketing Directive*]

- 6.1.2 R The *distance marketing information*, the commercial purpose of which must be made clear, must be provided in a clear and comprehensible manner in any way appropriate to the *means of distance communication* used.

[Note: article 3(2) of the *Distance Marketing Directive*]

- 6.1.3 R When a *firm* makes a *voice telephony communication* to a *consumer*, it must also make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

- 6.1.4 R A *firm* must ensure that the information on contractual obligations provided to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations that will result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

6.1.5 [intentionally blank]

6.1.6 [intentionally blank]

6.1.7 [intentionally blank]

6.1.8 [intentionally blank]

Exception: voice telephony communications

6.1.9 R In the case of a *voice telephony communication*, and subject to the explicit consent of the *consumer*, only the *abbreviated distance marketing information* must be provided during that communication. However, a *firm* must still comply with the *distance marketing disclosure rules*, unless another exception applies.

[Note: articles 3(3) and 5(1) of the *Distance Marketing Directive*]

6.1.10 [intentionally blank]

6.1.11 [intentionally blank]

6.1.12 [intentionally blank]

6.1.13 [intentionally blank]

6.1.14 [intentionally blank]

6.2 [intentionally blank]

COBS 6 Annex 1R [intentionally blank]

COBS 6 Annex 2R: Abbreviated distance marketing disclosure

This Annex belongs to *COBS 6.1.9R*

- (1) The identity of the *person* in contact with the *consumer* and his link with the supplier.
- (2) A description of the main characteristics of the financial service.
- (3) The total price to be paid by the *consumer* to the supplier for the financial service including all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (4) Notice of the possibility that other taxes and/or costs may exist that are not paid via the supplier or imposed by him.
- (5) The existence or absence of a right to cancel or withdraw in accordance with the *cancellation rules* and, where the right to cancel or withdraw exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay on the

basis of the *cancellation rules*.

- (6) That other information is available on request and of what the nature of that information is.

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

7 Information about the firm, its services and remuneration

7.1 Information about the firm and compensation information

Application

- 7.1.1 R (1) This section applies to a *firm* that carries on *designated investment business* for:
- (a) a *retail client*; and
 - (b) in the case of *MiFID business* or the *equivalent business of a third country investment firm*, a *client*.
- (2) If expressly provided, this section also applies to *ancillary services* not covered by (1) but only in the course of a *MiFID business* or the *equivalent business of a third country investment firm* carried on with or for a *client*.
- 7.1.2 [intentionally blank]
- 7.1.3 [intentionally blank]
- 7.1.4 R A *firm* must provide a *retail client* with the following general information, if relevant:
- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
 - (2) the languages in which the *client* may communicate with the *firm*, and receive documents and other information from the *firm*;
 - (3) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
 - (4) a statement of the fact that the *firm* is authorised and the name and contact address of the *competent authority* that has authorised it;
 - (5) if the *firm* is acting through an *appointed representative* or, where applicable, a *tied agent*, a statement of this fact specifying the *EEA State* in which that *appointed representative* or *tied agent* is registered;

- (6) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rule* on reporting to *clients* on the provision of services (*COBS 17*);
- (7) if the *firm* holds *designated investments* belonging to a *client* or *client money*, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the *firm* by virtue of its activities in an *EEA State*;
- (8) a description, which may be provided in summary form, of the *conflicts of interest policy*;
- (9) at any time that the *client* requests it, further details of the *conflicts of interest policy*.

[Note: article 30(1) of the *MiFID implementing Directive*]

7.1.5 [intentionally blank]

- 7.1.6 R
- (1) A *firm* that *manages investments* for a *client* must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the *client* and the types of *designated investments* included in the *client* portfolio, so as to enable the *client* to assess the *firm's* performance.
 - (2) If a *firm* proposes to *manage investments* for a *retail client*, the *firm* must provide the *client* with such of the following information as is applicable:
 - (a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;
 - (b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;
 - (c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;
 - (d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and
 - (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

[Note: article 30(2) and (3) of the *MiFID implementing Directive*]

Information concerning safeguarding of designated investments belonging to clients and client money

- 7.1.7 R (1) A *firm* that holds a *designated investments* or *client money* for a *retail client* must provide that *client* with the following information:
- (a) if applicable,
 - (i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;
 - (ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and
 - (iii) the consequences for the *client* of the insolvency of the third party;
 - (b) if applicable, that the *designated investments* belonging to the *retail client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
 - (c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;
 - (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of a *EEA State*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;
 - (e) if applicable, information about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and
 - (f) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.
- (2) Such a *firm* must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *retail client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information

on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.

- (3) A *firm* that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(d)(e) and (f).

[Note: article 29(3) and 32 of the *MiFID implementing Directive*]

Information about costs and associated charges

7.1.8 R A *firm* must provide a *retail client* with information on costs and associated charges including, if applicable:

- (1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business* or *ancillary service*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;
- (2) if any part of the total price referred to paragraph (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
- (3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *designated investment* or the *designated investment business* may arise for the *client* that are not paid via the *firm* or imposed by it; and
- (4) the arrangements for payment or other performance.

[Note: article 33 of the *MiFID implementing Directive*]

7.1.9 [intentionally blank]

Timing of disclosure

- 7.1.10 R
- (1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* or *ancillary services* unless otherwise provided by this *rule*.
 - (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* or *ancillary services* if:
 - (a) the *firm* was unable to comply with paragraph (1) because, at the request of the *client*, the agreement was concluded using a *means of distance communication* which prevented the *firm*

from doing so; and

- (b) in any case where the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

[Note: article 29(2) and 29(5) of the *MiFID implementing Directive*]

7.1.11 [intentionally blank]

Medium of disclosure

- 7.1.12 R Except where expressly provided, a *firm* must provide the information required by this section in a *durable medium* or via a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

[Note: article 29(4) of the *MiFID implementing Directive*]

Changes to information provided to the client

- 7.1.13 R (1) A *firm* must notify a *client* in good time about any material change to the information provided under this section which is relevant to a service that the *firm* is providing to that *client*.
- (2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[Note: article 29(6) of the *MiFID implementing Directive*]

7.1.14 [intentionally blank]

7.2 [intentionally blank]

7.3 [intentionally blank]

7.4 [intentionally blank]

COBS 7 Annex 1 [intentionally blank]

COBS 7 Annex 2 [intentionally blank]

COBS 7 Annex 3 [intentionally blank]

COBS 7 Annex 4 [intentionally blank]

COBS 7 Annex 5 [intentionally blank]

COBS 7 Annex 6 [intentionally blank]

Chapter 8 [intentionally blank]

9 Client Agreements

9.1 Client Agreements: designated investment business

- 9.1.1 R (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for:
- (a) a *retail client*; and
 - (b) in relation to *MiFID business* or the *equivalent business of a third country investment firm*, any other *client*.
- (2) If expressly provided, this section also applies to a *firm* in relation to other *ancillary services* carried on for a *client*, but only in relation to its *MiFID business* or the *equivalent business of a third country investment firm*.

- 9.1.2 R If a *firm* carries on *designated investment business*, other than *advising on investments*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or another *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.

[Note: article 39 of the *MiFID implementing Directive*]

- 9.1.3 R (1) A *firm* must, in good time before a *retail client* is bound by any agreement relating to *designated investment business* or *ancillary services* or before the provision of those services, whichever is the earlier, provide that *client* with:
- (a) the terms of any such agreement; and
 - (b) the information about the *firm* and its services relating to that agreement or to those services required by *COBS 7.1.4R*, including information on communications, conflicts of interest and authorised status.
- (2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.
- (3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:
- (a) the *firm* was unable to comply with paragraph (1) because, at the request of the *client*, the agreement was concluded

using a *means of distance communication* which prevented the *firm* from doing so; and

- (b) if the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.
- (4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.
- (b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[Note: article 29(1), (4), (5) and (6) of the *MiFID implementing Directive*]

Record keeping: client agreements

- 9.1.4 R (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* that set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.
- (2) The record must be maintained for at least whichever is the longer of:
- (a) 5 years; or
 - (b) the duration of the relationship with the *client*,
 - (c) in the case of a record relating to a *pension transfer*, *pension opt-out* or *FSAVC*, indefinitely.

[Note: article 19(7) of *MiFID* and article 51(1) of the *MiFID implementing Directive*. See article 51(3) of *MiFID implementing Directive*]

- 9.1.5 R For the purposes of this chapter a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[Note: article 19(7) of *MiFID* and article 39 of the *MiFID implementing Directive*]

9.1.6 [intentionally blank]

10 Identifying client needs and advising

10.1 Application and purpose provisions

Making personal recommendations

10.1.1 R This chapter applies to a *firm* which makes a *personal recommendation* in relation to a *designated investment*.

10.1.2 [intentionally blank]

Managing investments

10.1.3 R This chapter applies to a *firm* which *manages investments*.

10.1.4 [intentionally blank]

10.1.5 [intentionally blank]

10.1.6 [intentionally blank]

10.1.7 [intentionally blank]

10.1.8 [intentionally blank]

10.2 Assessing suitability

Assessing suitability: the obligations

10.2.1 R (1) A *firm* must take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*.

(2) When making the *personal recommendation* or *managing his investments*, the *firm* must obtain the necessary information regarding the *client's*:

- (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
- (b) financial situation; and
- (c) investment objectives;

so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for him.

[Note: article 19(4) of *MiFID*, article 12(2) of the *Insurance Mediation Directive*]

10.2.2 R (1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided that the specific transaction to be recommended, or entered into in the course of managing:

- (a) meets his investment objectives;

- (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
 - (3) The information regarding the financial situation of a *client* must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

[Note: article 35(1), (3) and (4) of the *MiFID implementing Directive*]

10.2.3 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

[Note: article 37(1) of the *MiFID implementing Directive*]

10.2.4 R A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

[Note: article 37(2) of the *MiFID implementing Directive*]

10.2.5 R A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 37(3) of the *MiFID implementing Directive*]

10.2.6 R If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to

trade for him.

[Note: article 35(5) of the *MiFID implementing Directive*]

Professional clients (MiFID business and the equivalent business of a third country investment firm)

- 10.2.7 R (1) If a *firm* makes a *personal recommendation* or *manages investments* for a *professional client* in the course of *MiFID business* or the *equivalent business of a third country investment firm*, it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of *COBS 10.2.2R(1)(c)*.
- (2) If the service consists of making a *personal recommendation* to a *per se professional client*, the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with his investment objectives for the purposes of *COBS 10.2.2R(1)(b)*.

[Note: article 35(2) of the *MiFID implementing Directive*]

10.2.8 [intentionally blank]

10.3 Guidance on assessing suitability

- 10.3.1 G (1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.
- (2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[Note: recital 57 to the *MiFID implementing Directive*]

Churning and switching

- 10.3.2 G (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
- (2) [intentionally blank]

[Note: recital 57 to the *MiFID implementing Directive*]

10.3.3 [intentionally blank]

10.3.4 [intentionally blank]

10.4 [intentionally blank]

10.5 [intentionally blank]

10.6 [intentionally blank]

COBS 10 Annex 1 [intentionally blank]

11 Non-advised services

11.1 Application and purpose provisions

11.1.1 R This chapter applies to a *firm* which provides *investment services* in the course of *MiFID business* or the *equivalent business of a third country investment firm* other than making a *personal recommendation and managing investments*.

11.1.2 [intentionally blank]

11.1.3 R This chapter applies to a *firm* which assesses appropriateness on behalf of another *MiFID investment firm* so that the other *firm* may rely on the assessment under *COBS 2.4.4R* (Reliance on other investment firms: MiFID and equivalent business).

11.1.4 [intentionally blank]

11.2 Assessing appropriateness: the obligations

11.2.1 R (1) When providing a service to which this chapter applies, a *firm* must ask the *client* to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.

(2) When assessing appropriateness, a *firm*:

(a) must determine whether the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;

(b) may assume that a *professional client* has the necessary experience and knowledge in order to understand the risks involved in relation to those particular *investment services* or transactions, or types of transaction or product, for which the

client is classified as a *professional client*.

[Note: article 19(5) of *MiFID* and article 36 of the *MiFID implementing Directive*]

11.2.2 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
- (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the *client*.

[Note: article 37(1) of the *MiFID implementing Directive*]

11.2.3 R A *firm* must not encourage a *client* not to provide information required for the purposes of its assessment of appropriateness.

[Note: article 37(2) of the *MiFID implementing Directive*]

11.2.4 R A *firm* is entitled to rely on the information provided by a *client* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 37(3) of the *MiFID implementing Directive*]

11.2.5 [intentionally blank]

11.2.6 [intentionally blank]

11.2.7 [intentionally blank]

11.2.8 [intentionally blank]

11.3 Warning the client

11.3.1 R (1) If a *firm* considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

[Note: article 19(5) of *MiFID*]

- 11.3.2 R (1) If the *client* elects not to provide the information to enable the *firm* to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the *firm* must warn the *client* that such a decision will not allow the *firm* to determine whether the service or product envisaged is appropriate for him.
- (2) This warning may be provided in a standardised format.

[Note: article 19(5) of *MiFID*]

11.3.3 [intentionally blank]

11.4 Assessing appropriateness: when it need not be done

- 11.4.1 R (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:
- (a) the service relates to particular *financial instruments*;
 - (b) the service is provided at the initiative of the *client*;
 - (c) the *client* has been clearly informed (whether the warning is given in a standardised format or not) that in the provision of this service the *firm* is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the protection of the *rules* on assessing suitability; and
 - (d) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* are:
- (a) shares admitted to trading on a *regulated market* or an equivalent third country market (that is, one which is included in the list which is published by the European Commission and updated periodically); or
 - (b) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a *derivative*); or
 - (c) *units* in a *scheme* authorised under the *UCITS directive*; or
 - (d) other non-complex *financial instruments*.
- (3) A *financial instrument* is non-complex if it satisfies the following

criteria:

- (a) it is not a *derivative* or other security giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- (b) there are frequent opportunities to dispose of, redeem, or otherwise realise the instrument at prices that are publicly available to the market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
- (c) it does not involve any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument; and
- (d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument.

[Note: article 19(6) of *MiFID* and article 38 of the *MiFID implementing Directive*]

- 11.4.2 R If a *client* engages in a course of dealings involving a specific type of product or service through the services of a *firm*, the *firm* is not required to make a new assessment on the occasion of each separate transaction. A *firm* complies with the *rules* in this chapter provided that it makes the necessary appropriateness assessment before beginning that service.

[Note: recital 59 to the *MiFID implementing Directive*]

11.5 Assessing appropriateness: guidance

The initiative of the client

- 11.5.1 G A service should be considered to be provided at the initiative of a *client* (see *COBS* 11.4.1R(1)(b)) unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that particular *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument* or specific transaction.

[Note: recital 30 to *MiFID*]

- 11.5.2 G A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion or offer of *financial instruments* made by any means that by its very nature is general and addressed to the

public or a larger group or category of *clients*.

[Note: recital 30 to *MiFID*]

11.5.3 [intentionally blank]

11.5.4 [intentionally blank]

Independent valuation systems

11.5.5 G The circumstances in which valuation systems will be independent of the issuer (see *COBS* 11.4.1R(3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in a *EEA State*.

[Note: recital 61 to the *MiFID implementing Directive*]

11.6 [intentionally blank]

12 Dealing and managing

12.1 Application

General application

12.1.1 R This chapter other than the sections on the use of dealing commission (*COBS* 12.6) and personal account dealing (*COBS* 12.7) applies in relation to:

- (1) *MiFID business* carried on by a *MiFID investment firm*; or
- (2) *equivalent business of a third country investment firm*.

12.1.2 R In this chapter, provisions marked "EU" apply to a *third country investment firm* as if they were rules.

12.1.3 [intentionally blank]

Application to section on personal account dealing

12.1.4 R The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.

12.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS* 12.7) to the extent necessary to be compatible with European law (see Paragraph 1.1 of Part 3 of *COBS App 1*). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment*

firm from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

12.2 Best Execution

Obligation to execute orders on terms most favourable to the client

12.2.1 R A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[Note: article 21 (1) of *MiFID*]

12.2.2 G The obligation to take all reasonable steps to obtain the best possible result for its *clients* should apply to a *firm* which owes contractual or agency obligations to the *client*.

[Note: recital 33 to *MiFID*]

12.2.3 G Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.

[Note: first sentence of recital 69 to the *MiFID implementing Directive*]

12.2.4 G If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[Note: second sentence of recital 69 to the *MiFID implementing Directive*]

12.2.5 G The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

[Note: recital 70 to the *MiFID implementing Directive*]

Best execution criteria

- 12.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:
- (1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
 - (2) the characteristics of the *client* order;
 - (3) the characteristics of *financial instruments* that are the subject of that order;
 - (4) the characteristics of the *execution venues* to which that order can be directed.

[Note: article 44(1) of the *MiFID implementing Directive*]

Role of price

- 12.2.7 R Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[Note: paragraph 1 of article 44(3) of the *MiFID implementing Directive*]

- 12.2.8 G For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[Note: recital 67 to the *MiFID implementing Directive*]

- 12.2.9 [intentionally blank]

Delivering best execution where there are competing execution venues

- 12.2.10 R For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that

order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

[Note: article 44(3) of paragraph 2 of the *MiFID implementing Directive*]

- 12.2.11 G The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

[Note: recital 71 to the *MiFID implementing Directive*]

- 12.2.12 R A *firm* must not structure or charge its commissions in such a way as to discriminate unfairly between *execution venues*.

[Note: article 44(4) of the *MiFID implementing Directive*]

- 12.2.13 G A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

[Note: recital 73 to the *MiFID implementing Directive*]

Requirement for an order execution policy

- 12.2.14 R A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

[Note: article 21(2) of *MiFID*]

- 12.2.15 R The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[Note: paragraph 1 of article 21(3) of *MiFID*]

- 12.2.16 G (1) When establishing its execution policy, a *firm* should determine the relative importance of the *execution factors*, or at least establish the

process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.

- (2) In order to give effect to that policy, a *firm* should select the *execution venues* that enable it to obtain on a consistent basis the best possible result for the execution of *client* orders.
- (3) A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the *client* in accordance with that policy.
- (4) The obligation to take all reasonable steps to obtain the best possible result for the *client* should not be treated as requiring a *firm* to include in its execution policy all available *execution venues*.

[Note: recital 66 to the *MiFID implementing Directive*]

- 12.2.17 G The provisions of this section that provide that costs of execution include a *firm's* own commissions or fees charged to the *client* for the provision of an *investment service* should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy.

[Note: recital 72 to the *MiFID implementing Directive*]

- 12.2.18 G The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[Note: recital 74 to the *MiFID implementing Directive*]

Following specific instructions from a client

- 12.2.19 R (1) Whenever there is a specific instruction from the *client*, the *firm* must execute the order following the specific instruction.

[Note: article 21(1) of *MiFID*]

- (2) A *firm* satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a *client* to the extent that it executes an order or a specific aspect of an order following specific instructions from the *client* relating to the order or the specific aspect of the order.

[Note: article 44(2) of the *MiFID implementing Directive*]

- 12.2.20 G When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the *client* has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other

parts or aspects of the *client* order that are not covered by such instructions.

[Note: recital 68 to the *MiFID implementing Directive*]

- 12.2.21 G A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm* inviting a *client* to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the *firm*.

[Note: recital 68 to the *MiFID implementing Directive*]

Information about the order execution policy

- 12.2.22 R A *firm* must provide appropriate information to its *clients* on its order execution policy.

[Note: paragraph 2 of article 21(3) of *MiFID*]

- 12.2.23 R A *firm* must provide a *retail client* with the following details on its execution policy in good time prior to the provision of the service:

- (1) an account of the relative importance the *firm* assigns, in accordance with the *execution criteria*, to the *execution factors*, or the process by which the *firm* determines the relative importance of those factors;
- (2) a list of the *execution venues* on which the *firm* places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of *client* orders;
- (3) a clear and prominent warning that any specific instructions from a *client* may prevent the *firm* from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

That information must be provided in a *durable medium*, or by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied.

[Note: article 46(2) of the *MiFID implementing Directive*]

- 12.2.24 R Where the order execution policy provides for the possibility that *client* orders may be executed outside a *regulated market* or an *MTF*, the *firm* must, in particular, inform its *clients* about this possibility.

[Note: paragraph 3 of article 21(3) of *MiFID*]

Client consent to execution policy and execution of orders outside a regulated market or MTF

12.2.25 R A *firm* must obtain the prior consent of its *clients* to the execution policy.

[Note: paragraph 2 of article 21 (3) of *MiFID*]

12.2.26 R A *firm* must obtain the prior express consent of its *clients* before proceeding to execute their orders outside a *regulated market* or an *MTF*. The *firm* may obtain this consent either in the form of a general agreement or in respect of individual transactions.

[Note: paragraph 3 of article 21(3) of *MiFID*]

Monitoring the effectiveness of execution arrangements and policy

12.2.27 R A *firm* must monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

[Note: article 21(4) of *MiFID*]

Review of the order execution policy

12.2.28 R A *firm* must review annually its execution policy, as well as its order execution arrangements.

Such a review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[Note: article 46(1) of the *MiFID implementing Directive*]

Demonstration of execution of orders in accordance with execution policy

12.2.29 R A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

[Note: article 21(5) of *MiFID*]

Duty of portfolio managers and receivers and transmitters to act clients' best interests

12.2.30 R A *firm* must, when providing the service of *portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from

decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

[Note: article 45(1) of *MiFID implementing Directive*]

- 12.2.31 R A *firm* must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its *clients* when transmitting *client* orders to other entities for execution.

[Note: article 45(2) of the *MiFID implementing Directive*]

- 12.2.32 R In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

[Note: article 45(3) of the *MiFID implementing Directive*]

- (1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for retail clients, to the requirement to determine the best possible result in terms of the total consideration (see *COBS 12.2.7R*).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

[Note: paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive*]

- (2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section when it places and order with, or transmits an order to, that entity for execution;

[Note: paragraph 1 of article 45(5) of the *MiFID implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with this section;

[Note: paragraph 2 of article 45(5) of the *MiFID implementing Directive*]

- (4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

[Note: first paragraph of article 45(6) of the *MiFID implementing Directive*]

- (5) review the policy annually. Such a review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

[Note: second paragraph of article 45(6) of the *MiFID implementing Directive*]

- 12.2.33 G This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

[Note: recital 75 to the *MiFID implementing Directive*]

- 12.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see *COBS 12.2.30R* to *COBS 12.2.33G*) will not apply when the *firm* that provides the service of *portfolio management* and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its *client's* portfolio. In those cases the requirements of this section for *firms* who execute orders apply (see *COBS 12.2.1R* to *COBS 12.2.29R*).

[Note: article 45(7) of the *MiFID implementing Directive*]

12.3 Client order handling

General principles

- 12.3.1 R (1) A *firm* which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other *client* orders or the trading interests of the *firm*.

[Note: paragraph 1 of article 22(1) of *MiFID*]

- (2) These procedures or arrangements must allow for the execution of otherwise comparable *client* orders in accordance with the time of their reception by the *firm*.

[Note: paragraph 2 of article 22(1) of *MiFID*]

- 12.3.2 R A *firm* must satisfy the following conditions when carrying out *client* orders:
- (1) it must ensure that orders executed on behalf of *clients* are promptly and accurately recorded and allocated;
- (2) it must carry out otherwise comparable *client* orders sequentially and promptly unless the characteristics of the order or prevailing market

conditions make this impracticable, or the interests of the *client* require otherwise;

- (3) it must inform a *retail client* about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

[Note: article 47(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.3 G Without prejudice to the *Market Abuse Directive*, for the purposes of the provisions of this section, *client* orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially.

[Note: recital 78 to the *MiFID implementing Directive*]

- 12.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order, it must take all reasonable steps to ensure that any *client financial instruments* or *client* funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client*.

[Note: article 47(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.5 R A *firm* must not misuse information relating to pending *client* orders, and shall take all reasonable steps to prevent the misuse of such information by any of its *relevant persons*.

[Note: article 47(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.6 G For the purposes of the rule on the misuse of information (see *COBS* 12.3.5R), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that market makers or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[Note: recital 78 to the *MiFID implementing Directive*]

Aggregation and allocation of orders

- 12.3.7 R A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:

- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;
- (2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
- (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

[Note: article 48(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.8 R If a *firm* aggregates an order with one or more other *client* orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy.

[Note: article 48(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

Aggregation and allocation of transactions for own account

- 12.3.9 R A *firm* which has aggregated transactions for own account with one or more *client* orders must not allocate the related trades in a way which is detrimental to a *client*.

[Note: article 49(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.10 R (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.
- (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[Note: article 49(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.11 R A *firm* must, as part of its order allocation policy, put in place procedures to prevent the reallocation, in a way that is detrimental to the *client*, of transactions for own account which are executed in combination with *client* orders.

[Note: article 49(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 12.3.12 G For the purposes of the provisions of this section, the reallocation of transactions should be considered as detrimental to a *client* if, as an effect of that reallocation, unfair precedence is given to the *firm* or to any particular *client*.

[Note: recital 77 to the *MiFID implementing Directive*]

- 12.3.13 [intentionally blank]

12.4 Client limit orders

Obligation to make unexecuted client limit orders public

- 12.4.1 R Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* which are not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[Note: article 22(2) of *MiFID*]

- 12.4.2 G In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[Note: recital 42 to *MiFID*]

How client limit orders may be made public

- 12.4.3 EU An *investment firm* shall be considered to disclose *client limit orders* that are not immediately executable if it transmits the order to a *regulated market* or *MTF* that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow.

[Note: article 31 of *MiFID Regulation*]

- 12.4.4 [intentionally blank]

Orders that are large in scale

- 12.4.5 R The obligation to make public a *limit order* will not apply to a *limit order* that is large in scale compared with normal market size.

[Note: article 22(2) of *MiFID*]

- 12.4.6 [intentionally blank]

12.5 Record keeping: client orders and transactions

Record keeping of client orders and decisions to deal

12.5.1	EU	An <i>investment firm</i> shall, in relation to every order received from a <i>client</i> , and in relation to every decision to deal taken in providing the service of <i>portfolio management</i> , immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:
	(a)	the name or other designation of the <i>client</i> ;
	(b)	the name or other designation of any relevant person acting on behalf of the <i>client</i> ;
	(c)	the details specified in point 4, 6, and in points 16 to 19, of Table 1 of Annex I;
	(d)	the nature of the order if other than buy or sell;
	(e)	the type of the order;
	(f)	any other details, conditions and particular instructions from the <i>client</i> that specify how the order must be carried out;
	(g)	the date and exact time of the receipt of the order, or of the decision to deal, by the <i>investment firm</i> .

[Note: article 7 of *MiFID Regulation*]

Record-keeping of transactions

12.5.2	EU	Immediately after executing a <i>client</i> order, or, in the case of <i>investment firms</i> that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, <i>investment firms</i> shall record the following details of the transaction in question:
	(a)	the name or other designation of the <i>client</i> ;
	(b)	the details specified in points 2, 3, 4, 6, and in points 16 to 21, of Table 1 of Annex I;
	(c)	the total price, being the product of the unit price and the quantity;
	(d)	the nature of the transaction if other than buy or sell;
	(e)	the natural person who executed the transaction or who is responsible for the execution.

[Note: article 8(1) of *MiFID Regulation*]

12.5.3	EU	If an <i>investment firm</i> transmits an order to another person for execution, the
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<i>investment firm</i> shall immediately record the following details after making the transmission:	
(a)	the name or other designation of the <i>client</i> whose order has been transmitted;
(b)	the name or other designation of the person to whom the order was transmitted;
(c)	the terms of the order transmitted;
(d)	the date and exact time of transmission.

[Note: article 8(2) of *MiFID Regulation*]

12.5.4 EU

Points 2, 3, 4, 6, 16 – 21 of Table 1 of Annex 1 of the MiFID Regulation		
2.	Trading day	The trading day on which the transaction was executed.
3.	Trading time	The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
4.	Buy/sell indicator	Identifies whether the transaction was a buy or sell from the perspective of the reporting investment firm or, in the case of a report to a <i>client</i> , of the <i>client</i> .
6.	Instrument identification	This shall consist in: - a unique code to be decided by the competent authority (if any) to which the report is made identifying the <i>financial instrument</i> which is the subject of the transaction; - if the <i>financial instrument</i> in question does not have a unique identification code, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract.
16.	Unit price	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
17.	Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.

18.	Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the transaction.
19.	Quantity notation	An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
20.	Counterparty	<p>Identification of the counterparty to the transaction. That identification shall consist of:</p> <ul style="list-style-type: none"> - where the counterparty is an <i>investment firm</i>, a unique code for that firm, to be determined by the competent authority (if any) to which the report is made; - where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with Article 13(2); - where the counterparty is not an <i>investment firm</i>, a <i>regulated market</i>, an <i>MTF</i> or an entity acting as central counterparty, it should be identified as ‘customer/client’ of the <i>investment firm</i> which executed the transaction.
21.	Venue identification	<p>Identification of the venue where the transaction was executed. That identification shall consist in:</p> <ul style="list-style-type: none"> - where the venue is a trading venue: its unique harmonised identification code; - otherwise: the code ‘OTC’.

12.6 [intentionally blank]

12.7 Rule on personal account dealing

12.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Directive* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him on behalf of the *firm*:

- (1) entering into a *personal transaction* which meets at least one of the following criteria:
 - (a) that *relevant person* is prohibited from entering into it under the *Market Abuse Directive*;
 - (b) it involves the misuse or improper disclosure of that confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID*;
- (2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
- (3) disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:
 - (a) to enter into a transaction in designated investments which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
 - (b) to advise or procure another *person* to enter into such a transaction.

[Note: article 12(1) of *MiFID implementing Directive*]

12.7.2 R For the purposes of this section, the relevant provisions are:

- (1) the *rules on personal transactions* undertaken by *financial analysts* in *COBS 13.2.5 R (1) and (2)*;
- (2) the *rule on the misuse information relating to pending client orders in COBS 12.3.5*.

12.7.3 [intentionally blank]

12.7.4 R The arrangements required under this *section* must in particular be designed to ensure that:

- (1) each *relevant person* covered by this *section* is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this *section*;

- (2) the *firm*:
 - (a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions;
or
 - (b) in the case of *outsourcing* arrangements, ensures that the *service provider* to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;
- (3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.

[Note: article 12(2) of *MiFID implementing Directive*]

- 12.7.5 R This *section* does not apply to the following kinds of *personal transaction*:
- (1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction is executed;
 - (2) *personal transactions* in *units* or *shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an *EEA State* which requires an equivalent level of risk spreading in their assets, where the *relevant person* and any other *person* for whose account the transactions are effected are not involved in the management of that undertaking;
 - (3) *personal transactions* in *life policies*.

[Note: article 12(3) of *MiFID implementing Directive*]

12.7.6 [intentionally blank]

- 12.7.7 R Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this *section* do not apply:
- (1) separately to each successive transaction if those instructions remain in force and unchanged; or
 - (2) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.

Obligations under this *section* do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[Note: *recital 17* to *MiFID implementing Directive*]

13 Investment Research

13.1 Purpose and Application

Purpose

13.1.1 G (1) The purpose of this chapter is to implement the provisions of *MiFID* relating to the production and dissemination of *investment research* and *non-independent research*.

(2) [intentionally blank]

Application

Who?

13.1.2 R This chapter applies in relation to *MiFID business* carried on by a *MiFID investment firm*.

Where?

13.1.3 G The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1. of Part 3 of *COBS App 1*). This means that *COBS 13.2* also applies to passported activities carried on by a *UK MiFID investment firm* from a *branch* into another *EEA state* but does not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

13.2 Investment Research

Application

13.2.1 R This section applies to a *firm* which produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*.

[Note: article 25(1) of the *MiFID implementing Directive*]

13.2.2 [intentionally blank]

Measures and arrangements required for investment research

- 13.2.3 R A *firm* must ensure the implementation of all of the measures for managing conflicts of interest in SYSC 10.1.11 R in relation to the *financial analysts* involved in the production of *investment research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom *investment research* is disseminated.

[Note: article 25(1) of the *MiFID implementing Directive*]

13.2.4 [intentionally blank]

- 13.2.5 R A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied:

- (1) if a *financial analyst* or other *relevant person* has knowledge of the likely timing or content of *investment research* which is not publicly available or available to *clients* and cannot readily be inferred from information that is so available, that *financial analyst* or other *relevant person* must not undertake *personal transactions* or trade on behalf of any other *person*, including the *firm*, other than:

(i) as *market maker* acting in good faith and in the ordinary course of market making; or

(ii) in the execution of an unsolicited *client* order,

in *financial instruments* to which the *investment research* relates, or in any *related financial instruments*, until the recipients of the *investment research* have had a reasonable opportunity to act on it;

[Note: article 25(2)(a) of the *MiFID implementing Directive*]

- (2) in circumstances not covered by (1), *financial analysts* and any other *relevant persons* involved in the production of *investment research* must not undertake *personal transactions* in *financial instruments* to which the *investment research* relates, or in any *related financial instrument*, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the *firm's* legal or compliance function;

[Note: article 25(2)(b) of the *MiFID implementing Directive*]

- (3) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not accept inducements from those with a material interest in the subject matter of the *investment research*;

[Note: article 25(2)(c) of the *MiFID implementing Directive*]

- (4) the *firm* itself, *financial analysts*, and other *relevant persons* involved

in the production of *investment research* must not promise issuers favourable research coverage; and

[Note: article 25(2)(d) of the *MiFID implementing Directive*]

- (5) issuers, *relevant persons* other than *financial analysts*, and any other *persons* must not, before the dissemination of *investment research*, be permitted to review a draft of the *investment research* for the purpose of verifying the accuracy of factual statements made in that *investment research*, or for any other purpose other than verifying compliance with the *firm's* legal obligations, if the draft includes a recommendation or a target price.

[Note: article 25(2)(e) of the *MiFID implementing Directive*]

13.2.5A [intentionally blank]

13.2.6 [intentionally blank]

13.2.7 [intentionally blank]

13.2.8 [intentionally blank]

13.2.9 [intentionally blank]

Exemption from investment research measures and arrangements

13.2.10 R A *firm* which disseminates *investment research* produced by another *person* to the public or to *clients* is exempt from complying with the requirements in *COBS* 13.2.3 R and *COBS* 13.2.5 R if the following criteria are met:

- (1) the *person* that produces the *investment research* is not a member of the *group* to which the *firm* belongs;
- (2) the *firm* does not substantially alter the recommendations within the *investment research*;
- (3) the *firm* does not present the *investment research* as having been produced by it; and
- (4) the *firm* verifies that the producer of the *investment research* is subject to requirements equivalent to those in *COBS* 13.2.3 R and *COBS* 13.2.5 R in relation to the production of that *investment research*, or has established a policy setting such requirements.

[Note: article 25(3) of the *MiFID implementing Directive*]

13.2.11 [intentionally blank]

13.2.12 [intentionally blank]

13.2.13 [intentionally blank]

13.3 Non-independent research

Application

13.3.1 R This section applies to a *firm* that produces or disseminates *non-independent research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

Labelling of non-independent research

13.3.2 R A *firm* which produces or disseminates *non-independent research* must ensure that it:

- (1) is clearly identified as a marketing communication; and
- (2) contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it:
 - (a) has not been prepared in accordance with legal requirements designed to promote the independence of *investment research*; and
 - (b) is not subject to any prohibition on dealing ahead of the dissemination of *investment research*.

[Note: article 24(2) of the *MiFID implementing Directive*]

13.3.3 R The *financial promotion rules* apply to *non-independent research* as though it were a marketing communication.

[Note: article 24(2) of the *MiFID implementing Directive*]

13.3.4 [intentionally blank]

13.4 [intentionally blank]

Chapter 14 [intentionally blank]

15 Providing product information

15.1 [intentionally blank]

15.2 [intentionally blank]

15.3 Information about designated investments

15.3.1 R This section applies:

- (1) to a *firm* in relation to *MiFID business* or the *equivalent business of a third country investment firm*; and
- (2) to any other *firm* in relation to the following *regulated activities* when carried on for a *retail client*:
 - (a) making a *personal recommendation*;
 - (b) acting as a *discretionary investment manager*;
 - (c) *arranging (bringing about) or executing a deal* in a *warrant or derivative*; or
 - (d) engaging in *stock lending activity*.

Providing a description of the nature and risks of designated investments

15.3.2 R A *firm* must provide a *client* with a general description of the nature and risks of *designated investments*, taking into account, in particular, the *client's* categorisation as a *retail client* or a *professional client*. That description must:

- (1) explain the nature of the specific type of *designated investment*, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the *client* to take investment decisions on an informed basis; and
- (2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the *client*, the following elements:
 - (a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;
 - (b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;
 - (c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and
 - (d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

[Note: article 31(1) and (2) of the *MiFID implementing Directive*]

- 15.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Directive*, that *firm* must inform the *retail client* where that prospectus is made available to the public.

[Note: article 31(3) of the *MiFID implementing Directive*]

- 15.3.4 R Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a *firm* must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

[Note: article 31(4) of the *MiFID implementing Directive*]

- 15.3.5 R In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

[Note: article 31(5) of the *MiFID implementing Directive*]

- 15.3.6 [intentionally blank]

Providing information in a durable medium or via a website

- 15.3.7 R If a *rule* in this section requires a *firm* to provide information, that information must be provided in a *durable medium* or by means of a website (where that does not constitute a *durable medium*) that satisfies the *website conditions*.

[Note: article 29(4) of the *MiFID implementing Directive*]

- 15.3.8 R (1) *Information about designated investments* must be provided in good time before a *firm* carries on *designated investment business* or *MiFID business*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
- (a) the *firm* was unable to comply with (1) because the relevant business was concluded at the request of the *retail client* using a *means of distance communication* which prevented the *firm* from complying with that *rule*; or
 - (b) in any case where the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with the requirements of that *rule* as if the client was a *consumer*.

[Note: article 29(2) and (5) of the *MiFID implementing Directive*]

Keeping the client up to date

- 15.3.9 R A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a *durable medium*.

[Note: article 29(6) of the *MiFID implementing Directive*]

Information about UCITS schemes

- 15.3.10 R If a *firm* provides a *client* with a *simplified prospectus* or an *EEA simplified prospectus* which, in either case, meets the requirements of article 28 of the *UCITS Directive*, it will have provided appropriate information for the purposes of the *requirement to disclose information on designated investments and investment strategies*, the *requirement to disclose information on costs and associated charges* and the *detailed requirements on costs and associated charges* in respect of the costs and associated charges related to the *UCITS scheme* itself, including the exit and entry commissions.

[Note: article 34 of the *MiFID implementing Directive*]

- 15.3.11 [intentionally blank]

Chapter 16 [intentionally blank]

17 Reporting information to clients

17.1 General client reporting requirement

- 17.1.1 R A *firm* must ensure in relation to *MiFID business* or the *equivalent business of a third country investment firm* that a *client* receives adequate reports on the services provided to it by the *firm*. The reports must include, where applicable, the costs associated with the transactions and services undertaken by the *firm* on behalf of the *client*.

[Note: article 19(8) of *MiFID*]

17.2 Occasional reporting

Execution of orders other than when managing investments

- 17.2.1 R (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
- (a) promptly provide the *client*, in a *durable medium*, with the essential information concerning the execution of the order;

- (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* as is applicable:
 - i) as soon as possible and no later than the first *business day* following that execution; or
 - ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
 - (c) supply a *client*, on request, with information about the status of his order.
- (2) Paragraph 1 does not apply to a *firm managing investments*.
 - (3) Paragraph 1 (b) does not apply if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *client* by another *person*.
 - (4) Paragraph 1 (a) and (b) do not apply to an order executed on behalf of a *client* that relates to a bond funding a mortgage loan agreement with the *client*. The report on the transaction must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.
 - (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:
 - (a) comply with paragraph 1(b) in relation to that order; or
 - (b) provide the *client* at least once every six months with such of the *trade confirmation information* as is applicable in relation to each transaction in that series carried out in the relevant reporting period.

[Note: article 40(1) to (4) of the *MiFID implementing Directive*]

17.2.2 [intentionally blank]

17.2.3 R For the purposes of calculating the unit price in the *trade confirmation information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[Note: article 40(4) of the *MiFID implementing Directive*]

17.2.4 [intentionally blank]

17.2.5 [intentionally blank]

17.2.6 [intentionally blank]

Record keeping: occasional reporting

17.2.7 R A *firm* must retain a copy of any confirmation despatched to a *client* under this section:

(a) for *MiFID business* or *the equivalent business of third country investment firm* for a period of at least five years; or

(b) for business that is neither *MiFID business* nor *the equivalent business of a third country investment firm* for a period of at least three years,

from the date of despatch.

[Note: see article 51(3) of the *MiFID implementing Directive*]

17.3 Periodic reporting

17.3.1 R (1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless such a statement is provided by another *person*.

(2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* as is applicable.

[Note: article 41(1) and (2) of the *MiFID implementing Directive*]

17.3.2 R (1) In the case of a *retail client*, the *periodic statement* must be provided once every six months, except in the following cases:

(a) if the *retail client* so requests, the *periodic statement* must be provided every three months;

(b) if the *retail client* elects to receive information about executed transactions on a transaction-by-transaction basis (*COBS* 17.3.3R) and there are no transactions in *warrants* or *derivatives*, the *periodic statement* must be provided at least once every twelve months;

(c) if the agreement between a *firm* and a *retail client* for the *managing of investments* authorises a leveraged portfolio, the *periodic statement* must be provided at least once a month.

(2) A *firm* must inform a *retail client* that he has the right to request the provision of a *periodic statement* every three months.

[Note: article 41(3) of the *MiFID implementing Directive*]

- 17.3.3 R (1) If the *client* elects to receive information about executed transactions on a transaction-by-transaction basis, a *firm managing investments* must provide promptly to the *client*, on the execution of a transaction, the *trade confirmation information* concerning that transaction in a *durable medium*.
- (2) If the *client* is a *retail client*, the *firm* must send him a notice confirming the transaction and containing such *trade confirmation information* as is applicable:
- (a) no later than the first *business day* following that execution; or
 - (b) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party;

unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *retail client* by another *person*.

[Note: article 41(4) of the *MiFID implementing Directive*]

- 17.3.4 R For the purposes of calculating the unit price in the *trade confirmation information* or *periodic information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[Note: article 41(4) of the *MiFID implementing Directive*]

- 17.3.5 R If a *firm managing investments* for a *retail client* carries out a transaction in, or operates a *client* account that includes, an uncovered open position in a contingent liability transaction, the *firm* must report to the *retail client* any losses exceeding any predetermined threshold, agreed between the *firm* and the *retail client*:

- (1) no later than the end of the *business day* in which the threshold is exceeded; or
- (2) where the threshold is exceeded on a non-*business day*, the close of the next *business day*.

[Note: article 42 of the *MiFID implementing Directive*]

- 17.3.6 R For the purposes of this section, a contingent liability transaction is one that involves any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument.

[Note: recital 63 of the *MiFID implementing Directive*]

17.3.7 [intentionally blank]

17.3.8 [intentionally blank]

17.3.9 [intentionally blank]

Record keeping: periodic reporting

17.3.10 R A *firm* must make, and retain, a copy of any *periodic statement*:

- (1) for *MiFID business* or *the equivalent business of a third country investment firm* for a period of at least five years; or
- (2) for business that is neither *MiFID business* nor *the equivalent business of a third country investment firm* for a period of at least three years;

from the date of despatch.

[Note: see article 51(3) of the *MiFID implementing Directive*]

17.4 Statements of client designated investments or client money

17.4.1 R (1) A *firm* that holds *client designated investments* or *client money* for a client must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless such a statement has been provided in a *periodic statement*.

(2) A *credit institution* need not send a statement in respect of *deposits* held by it.

[Note: article 43(1) of the *MiFID implementing Directive*]

17.4.2 R A *firm* must include in a statement of *client* assets referred to under this section the following information:

- (1) details of all the *designated investments* or *client money* held by the *firm* for the *client* at the end of the period covered by the statement;
- (2) the extent to which any *client designated investments* or *client money* have been the subject of *securities financing transactions*; and
- (3) the extent of any benefit that has accrued to the *client* by virtue of participation in any *securities financing transactions*, and the basis on which that benefit has accrued.

[Note: article 43(2) of the *MiFID implementing Directive*]

17.4.3 R In cases where the portfolio of a *client* includes the proceeds of one or more unsettled transactions, the information in a statement provided under this

section may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

[Note: article 43(2) of the *MiFID implementing Directive*]

17.4.4 R A *firm* which holds *designated investments* or *client money* and is *managing investments* for a *client* may include the statement under this section in the *periodic statement* it provides to that *client*.

[Note: article 43(3) of the *MiFID implementing Directive*]

17.5 [intentionally blank]

17.6 [intentionally blank]

COBS 17 Annex 1 R

COBS 17 Annex 1 R (1)

	The information below must be provided, where relevant for the purposes of reporting to a retail client, in accordance with SUP 17 Annex 1	(1) <i>Trade confirmation information</i>	(2) <i>Periodic information</i> (where trade confirmation information is not provided on a transaction by transaction basis.)
	General		
1.	the reporting <i>firm</i> identification;	Y	
2.	the name or other designation of the <i>client</i> ;	Y	
3.	the trading day;	Y	Y
4.	the trading time;	Y	Y
5.	the type of the order (for example, a limit order or a market order);	Y	Y
6.	the venue identification;	Y	Y
7.	the instrument identification;	Y	Y
8.	the buy/sell indicator;	Y	Y

9.	the nature of the order if other than buy/sell;	Y	Y
10.	the quantity;	Y	Y
11.	the unit price;	Y	Y
12.	the total consideration;	Y	Y
13.	a total sum of the commissions and expenses charged and, where the <i>retail client</i> so requests, an itemised breakdown;	Y	Y
14.	the amount of any <i>mark-up</i> or <i>mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	
15.	the rate of exchange obtained where the transaction involves a conversion of currency;	Y	
16.	the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the <i>investment</i> , and under the terms of the transaction the benefit of which will not pass to the purchaser;	Y	
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the <i>client</i> ; and	Y	
18.	if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's group</i> or another <i>client</i> of the <i>firm</i> , the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates anonymous trading.	Y	
	For transactions in a <i>derivative</i> :		
19.	the maturity, delivery or expiry date of the <i>derivative</i> ;	Y	Y
20.	in the case of an <i>option</i> , a reference to the last exercise date, whether it can be exercised before maturity and the strike price;	Y	Y

21.	if the transaction <i>closes out</i> an open <i>futures</i> position, all essential details required in respect of each contract comprised in the open position and each contract by which it was <i>closed out</i> and the profit or loss to the <i>client</i> arising out of <i>closing out</i> that position (a difference account).	Y	Y
For transactions in an <i>option</i> :			
22.	the date of exercise, and either the time of exercise or that the <i>client</i> will be notified of that time on request;	Y	Y
23.	whether the exercise creates a sale or purchase in the underlying asset; and	Y	Y
24.	the strike price of the <i>option</i> (for a currency <i>option</i> , the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the <i>client</i> .	Y	Y
[Note: article 40(4) and recital 64 to <i>MiFID implementing Directive</i>]			
A <i>firm</i> may provide the <i>client</i> with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.			
[Note: article 40(5) of <i>MiFID implementing Directive</i>]			

COBS 17 Annex 1 R (2) - Information to be included in a Periodic Statement

	<i>Periodic information (all cases)</i>	
1.	the name of the <i>firm</i> ;	
2.	the name or other designation of the <i>retail client's</i> account;	
3.	a statement of the contents and the valuation of the portfolio, including details of:	
	(a)	each <i>designated investment</i> held, its market value or fair value if market value is unavailable;
	(b)	the cash balance at the beginning and at the end of the reporting period; and
	(c)	the performance of the portfolio during the reporting period;
4.	the total amount of <i>fees</i> and charges incurred during the reporting period, itemising at least total management <i>fees</i> and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on	

	request;
5.	a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the <i>firm</i> and the <i>client</i> ;
6.	the total amount of dividends, interest and other payments received during the reporting period in relation to the <i>client's</i> portfolio;
7.	information about other corporate actions giving rights in relation to <i>designated investments</i> held in the portfolio; and
8.	<p>details of any assets loaned or charged including:</p> <p>(a) which <i>investments</i> (if any) were at the end of the relevant period loaned to any third party and which <i>investments</i> (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and</p> <p>(b) the aggregate of any interest payments made and income received during the period in respect of loans or borrowings made during that period.</p>
[Note: article 41 (2) of <i>MiFID implementing Directive</i>]	

Chapter 18 [intentionally blank]

Chapter 19 [intentionally blank]

Chapter 20 [intentionally blank]

Chapter 21 [intentionally blank]

Appendix 1: Application

Part 1

Who? - modifications to the general rule of application in relation to types of firm

1. [intentionally blank]

Part 2

What? - modifications to the general rule of application in relation to types of activity

1 Eligible counterparty business

1.2 R The *COBS* provisions in the Table do not apply to *eligible counterparty business* that is *MiFID business* or the *equivalent business of a third country investment firm*.

Table

COBS provision	Description
<i>COBS 2</i>	Conduct of business obligations
<i>COBS 4</i> (other than <i>COBS 4.2.5R</i> and <i>COBS 4.2.6G</i>)	Communicating with clients
<i>COBS 5</i>	Financial promotion
<i>COBS 7.1</i>	Information about the firm, its services and remuneration
<i>COBS 9</i>	Client agreements
<i>COBS 11</i>	Non-advised services
<i>COBS 12.2</i> , <i>COBS 12.3</i> and <i>COBS 12.6</i>	Best execution, client order handling and use of dealing commission
<i>COBS 13.3.1R</i> to <i>COBS 13.3.3R</i>	Labelling of non-independent research
<i>COBS 15.3</i>	Information about designated investments
<i>COBS 17</i>	Reporting information to clients

[Note: article 24(1) of *MiFID*]

2 Transactions between an MTF operator and its users

- 2.1 R The *COBS* provisions in the Table to 1.2R and *COBS* 12.4 (client limit orders) do not apply to a transaction between an operator of an *MTF* and a member or participant in relation to the use of the *MTF*.

[Note: article 14(3) of *MiFID*]

3 Transactions between MTF users

- 3.1 R The *COBS* provisions in the Table to 1.2R and *COBS* 12.4 (client limit orders) do not apply to a *MTF transaction* that is *MiFID business* or the *equivalent business of a third country investment firm*. However, a *firm* must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on a *MTF*.

[Note: article 14(3) of *MiFID*]

4 Transactions between regulated market participants

- 4.1 R The *COBS* provisions in the Table to *COBS* 1.2R and *COBS* 12.4 (client limit orders) do not apply to a *regulated market transaction* that is *MiFID business* or the *equivalent business of a third country investment firm*. However, a *firm* must comply with those provisions in respect of its *clients* if, acting on its *clients* behalf, it is executing their orders on a *regulated market*.

[Note: article 42(4) of *MiFID*]

5 Consumer credit products

- 5.1 R If a *firm*, in relation to its *MiFID business*, offers an *investment service* as part of a financial product that is subject to other provisions of European Community legislation or common European standards related to *credit institutions* and consumer credits with respect to risk assessments of clients and/or information requirements, that service is not subject to the *rules* in this sourcebook that implement Article 19 of *MiFID*.

[Note: article 19(9) of *MiFID*]

Part 3

Where? - modifications to the general rule of application in relation to location

1 EEA territorial scope rule: compatibility with European law

- 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).
- (2) This *rule* overrides any other *rule* in this sourcebook.

- 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *Electronic Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 7.3 of Part 4 for *guidance* on this).

[Note: article 3(3) of, and Annex to, the *Electronic Commerce Directive*]

2 Business with UK clients from overseas establishments

- 2.1 R (1) This sourcebook applies to a *firm* which carries on business with a *client* in the *United Kingdom* from an establishment overseas.
- (2) But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
- (a) would fall within the overseas *persons* exclusions in article 72 of the *Regulated Activities Order*; or
- (b) would not be regarded as carried on in the *United Kingdom*.

- 2.2 G One of the effects of the *EEA territorial scope rule* is to override the application of this sourcebook to the overseas establishments of *EEA firms* in a number of cases, including circumstances covered by *MiFID*, the *Distance Marketing Directive* or the *Electronic Commerce Directive*. See Part 4 for *guidance* on this.

Part 3A [intentionally blank]

Part 4

Guidance

- 1 The main extensions and restrictions to the general application rule
- 1.1 G The *general application rule* is modified in Parts 1 to 3A of Appendix 1 and in certain chapters of the *Handbook*. The modification may be an extension of this *rule*. For example, *COBS 4* (Communications to clients) and *COBS 5* (Financial promotion) have extended the application of the rule.
- 1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the *general application rule*, particularly in relation to territorial scope. However, for the majority of circumstances, the *general application rule* is likely to apply.
- 2 The Single Market Directives and other directives
- 2.1 G This *guidance* provides a general overview only and is not comprehensive.
- 2.2 G When considering the impact of a directive on the territorial application of a

rule, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The *EEA territorial scope rule* is unlikely to apply if a *UK firm* is doing business in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *United Kingdom* product. However, if there is a non-UK element, the *firm* should consider whether it is subject to the directive, whether the business it is performing is subject to the directive and whether the particular *rule* is within the scope of the directive. If the answer to all three questions is ‘yes’, the *EEA territorial scope rule* may change the effect of the *general application rule*.

- 2.3 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.

COBS Transitional Provisions

COBS TP Chapter 3 Client categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
			Overview of transitional provisions for client categorisation		
3.1	<i>COBS</i> 3	G	<p>(1) <i>COBS</i> TP 3.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under <i>COBS</i> 3 to their previous categorisation.</p> <p>(2) <i>COBS</i> TP 3.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with <i>COBS 3</i>. <i>COBS TP 3.4</i> provides guidance on how some of the procedural requirements in <i>COBS 3</i> apply in some such cases.</p> <p>(4) <i>COBS TP 3.5</i> contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) <i>COBS TP 3.6</i> contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID business</i> and the <i>equivalent business of a third country investment firm</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se</i> professional <i>client</i>.</p>		
			Categorisation of existing clients		
3.2	<i>COBS 3</i>	R	<p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>,</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>(4) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p> <p>(a) in relation to <i>MiFID business</i> or the <i>equivalent business of a third country investment firm</i>, a <i>per se professional client</i>; and</p> <p>(b) otherwise, an <i>eligible counterparty</i>,</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>[Note: article 71(6) of, and third paragraph of section II.2 of Annex II to <i>MiFID</i>]</p>		
3.3	<i>COBS 3</i>	G	<p>Under <i>COBS 3.5.9</i>, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under <i>COBS TP 3.2R(2)(a)</i>, the initial conditions are those that applied to the <i>client's</i></p>		

			initial categorisation as an <i>intermediate customer</i> .		
			Former inter-professional business		
3.4	COBS 3	G	The requirement to provide notices under COBS 3.3.1 only applies in relation to new <i>clients</i> . The requirement to obtain confirmation under COBS 3.6.3R(2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under COBS 3.	From 1 November 2007 indefinitely	1 November 2007
			Transitional notification obligations		
3.5	COBS 3	R	<p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market</i></p>	From 1 November 2007 indefinitely	1 November 2007

			<p><i>counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[Note: article 28(1) of the <i>MiFID implementing Directive</i>]</p>		
3.6	COBS 3	R	<p>If a <i>firm</i>, in relation to <i>MiFID business</i> or the <i>equivalent business of a third country investment firm</i>, categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS TP 3.2(2)(b)</i> or <i>(3)(a)</i>, it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i>. This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[Note: article 71(6) of <i>MiFID</i>]</p>	From 1 November 2007 indefinitely	1 November 2007
3.7		G	<p>A notice to a <i>professional client</i> under <i>COBS TP 3.5</i> should inform that <i>client</i>:</p> <p>(a) that they have been categorised as a <i>professional client</i>; and</p> <p>(b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i>.</p>		
3.8		R	<p>The record keeping requirements under <i>COBS 3.8.2R</i> apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for <i>COBS 3</i>.</p>		

COBS TP Chapter 11 Appropriateness Assessments

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
1	COBS 11 (Appropriateness assessments)	R	<p>A <i>client</i> who has engaged in a course of dealings involving a specific type of product or service beginning before 1 November 2007 is presumed to have the necessary experience and knowledge in order to understand the risks involved in relation to that specific type of product or service.</p> <p>[Note: recital 59 of the <i>MiFID implementing Directive</i>]</p>	From 1 November 2007 indefinitely	1 November 2007
2	11.1.2R	R	<p>(1) COBS 11.1.2R applies only in relation to <i>MiFID business</i> or <i>equivalent business of a third country investment firm</i>.</p> <p>(2) In relation to business which is neither <i>MiFID business</i> nor <i>equivalent business of a third country investment firm</i>, COB 3.9.5R(2) applies, as it was in force on 31 October 2007.</p>	From 1 November 2007 to 31 May 2008	1 November 2007
3	[intentionally blank]				

COBS TP Chapter 14 [intentionally blank]

COBS TP Chapter 15 [intentionally blank]

COBS TP Chapter 16 [intentionally blank]

COBS TP Chapter 17 [intentionally blank]

COBS TP Chapter 20 [intentionally blank]

COBS Schedules 1-6 [intentionally blank]

CLIENT ASSETS SOURCEBOOK (MIFID BUSINESS) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making powers);
 - (2) section 139 (Miscellaneous ancillary matters);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers);
 - (5) section 157(1) (Guidance); and
 - (6) section 340(1) (Auditors and actuaries).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

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

(1)	(2)
Client Assets sourcebook (CASS)	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Supervision manual (SUP)	Annex C
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex D

Citation

- E. This instrument may be cited as the Client Assets sourcebook (MiFID Business) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where new text is being inserted, the text is not underlined.

...

1.2.4 R ~~CASS 2 (Custody rules), CASS 3 (Collateral rules) and CASS 4 (Client money and mandates: designated investment business)~~ With the exception of this chapter and the *insurance client money chapter*, CASS does not apply to:

- (1) an *authorised professional firm* with respect to its *non-mainstream regulated activities*;
- (2) the *Society*.

1.2.5 R ~~CASS 5 (Client money and mandates: insurance mediation activity)~~ The *insurance client money chapter* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are *insurance mediation activities*, if:

- (1) ...

...

1.2.6 G ~~Authorised professional firms should be aware of *PROF 5.2 (Nature of non-mainstream regulated activities)*. [deleted]~~

General application: what?

1.2.7 G (1) ...

...

- (3) ~~CASS 2 (Custody rules), CASS 3 (Collateral rules)~~ The *non-directive custody chapter* and ~~CASS 4 (Client money and mandates: designated investment business)~~ the *non-directive client money chapter* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* other than *MiFID business*.

(3A) The *collateral rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*).

- (4) ~~CASS 5 (Client money and mandates: insurance mediation activity)~~ The *insurance client money chapter* applies in relation to *regulated activities*, conducted by *firms*, which fall within the definition of

insurance mediation activities.

- (5) The MiFID custody chapter and the MiFID client money chapter apply in relation to regulated activities, conducted by firms, which fall within the definition of:
- (a) MiFID business; and
 - (b) designated investment business other than MiFID business, where the firm has, in accordance with those rules, opted to comply with the provisions of those rules with respect of this business.
- (6) The mandate rules apply in relation to regulated activities, conducted by firms, which fall within the definition of designated investment business (including MiFID business) and insurance mediation activity, except where it relates to a reinsurance contract.

Application for ~~private customers, intermediate customers and market counterparties~~ retail clients, professional clients and eligible counterparties

- 1.2.8 G (1) CASS applies directly in respect of activities conducted with or for all categories of clients, market counterparties as well as with or for customers. The term client refers both to market counterparties and to customers.
- (2) In ~~CASS 2 (Custody rules), CASS 3 (Collateral rules) and CASS 4 (Client money and mandates: designated investment business),~~ except in the insurance client money chapter, MiFID custody chapter and MiFID client money chapter, the term customer refers to private customers retail clients and intermediate customers professional clients, but not market eligible counterparties. Where relevant, each of the provisions of CASS makes clear whether it applies to activities carried on with or for private customers retail clients or intermediate customers, professional clients, or both.
- (3) ~~CASS 5 (Client money and mandates: insurance mediation activity)~~ The insurance client money chapter does not generally distinguish between different categories of client. However, the term retail customer is used for those whom additional obligations are owed, rather than the term private customer retail client. This is to be consistent with the client categories used in relation to the obligations in ICOB in relation to insurance mediation activities.
- (4) Each provision in the MiFID custody chapter and the MiFID client money chapter makes it clear whether it applies to activities carried on or for retail clients, professional clients or both. There is no further modification of the rules in these chapters in relation to activities carried on for eligible counterparties. Such clients are treated in the same way as other professional clients for the purposes of these rules.

1.2.9 G ~~*Firms are reminded that the definition of inter-professional business does not include safekeeping and administration of assets or agreeing to carry on that activity: CASS will apply in this context (and will apply to the holding of money for clients in connection with inter-professional business).*~~
~~[deleted]~~

Investments and money held under different regimes

1.2.10 R Where a firm is subject to both the non-directive custody chapter and the MiFID custody chapter, it must ensure segregation between designated investments held under each chapter, including that designated investments held under different chapters with the same third party, are held in different, separately designated, accounts.

1.2.11 R Where a firm is subject to more than one of the non-directive client money chapter, the insurance client money chapter and the MiFID client money chapter, it must ensure segregation between money held under each chapter, including that money held under different chapters is held, in different, separately designated, client bank accounts or client transaction accounts.

1.2.12 G The purpose of the rules regarding the segregation of investments and money held under different regimes is to reduce the risk of confusion between assets held under different regimes either on an on-going basis or on the failure of a firm or a third party holding those assets.

1.2.13 G A firm may opt to hold under a single chapter designated investments that would otherwise be held under different chapters (see CASS 6.1.17R). A firm may also opt to hold under a single chapter money that would otherwise be held under different chapters (see CASS 4.1.1AR, CASS 5.1.1R(3) and CASS 7.1.3R(1)).

...

Stock lending activity with or for customers

1.4.2 G (1) The non-directive custody chapter and the non-directive client money chapter CASS 2 (Custody rules) to CASS 4 (Client money and mandates: designated investment business) apply in respect of any stock lending activity that is not MiFID business undertaken with or for a customer by a firm. If the stock lending activity involves MiFID business or if the firm has opted to comply with the MiFID custody chapter or the MiFID client money chapter with respect to its non-MiFID business, then the MiFID custody chapter and the MiFID client money chapter apply.

(2) The collateral rules apply, where relevant, in respect of stock lending activity, whether or not the activity amounts to MiFID business.

Corporate finance business

1.4.3 G (1) The non-directive custody chapter and the non-directive client money

chapter CASS 2 (Custody rules) to CASS 4 (Client money and mandates: designated investment business) apply in respect of *corporate finance business* that is not *MiFID business* undertaken by a *firm*. If the *corporate finance business* involves *MiFID business* or if the *firm* has opted to comply with the *MiFID custody chapter* or the *MiFID client money chapter* with respect to its *non-MiFID business*, then the *MiFID custody chapter* and the *MiFID client money chapter* apply.

- (2) The *collateral rules* apply, where relevant, in respect of *corporate finance business*, whether or not the activity amounts to *MiFID business*.

Oil market activity and energy market activity

- 1.4.4 G (1) The *non-directive custody chapter* and the *non-directive client money chapter* CASS 2 (Custody rules) to CASS 4 (Client money and mandates: designated investment business) apply in respect of *oil market activity* and other *energy market activity* that is not *MiFID business* undertaken by a *firm*. If the *energy market activity* (including *oil market activity*) involves *MiFID business* or if the *firm* has opted to comply with the *MiFID custody chapter* or the *MiFID client money chapter* with respect to its *non-MiFID business*, then the *MiFID custody chapter* and the *MiFID client money chapter* apply.
- (2) The *collateral rules* apply, where relevant, in respect of *energy market activity*, whether or not the activity amounts to *MiFID business*.

Appointed representatives

- 1.4.5 G (1) Although *CASS* does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the Act). In determining whether a *firm* has complied with any provision of *CASS*, anything done or omitted by a ~~firm's~~ *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the ~~Act~~ Act).
- (2) ...

Depositories

- 1.4.6 R ~~CASS 4.1 to CASS 4.4~~ The *non-directive client money chapter* and the *MiFID client money chapter* do not apply to a *depository* when acting as such.
- 1.4.7 R The remainder of *CASS* applies to a *depository*, when acting as such, with the following general modifications:

- (1) except in ~~CASS 4.5~~ the mandate rules, 'client' means 'trustee', 'trust' or 'collective investment scheme' as appropriate; and
 - (2) in ~~CASS 4.5~~ the mandate rules, 'client' means 'trustee', 'collective investment scheme' or 'collective investment scheme instrument' as appropriate.
- 1.4.8 R In relation to a *trustee firm* which is not a *depository*, when acting as such, and which falls within COB 11.5.1R(1):
- (1) CASS does not apply, except for the MiFID custody chapter, the MiFID client money chapter and the mandate rules CASS 4.5 (Mandates); and
 - (2) in the MiFID custody chapter, the MiFID client money chapter and the mandate rules CASS 4.5, 'client' means 'trustee', 'trust', or 'trust instrument' or 'beneficiary', as appropriate.
- ...
- 2 ~~Client assets~~ Non-directive custody rules
- 2.1 Custody
- Application and purpose
- 2.1.1 R This ~~section~~ chapter (the custody rules) ~~apply~~ applies to a *firm* when it is safeguarding and administering investments other than:
- (1) when it is holding financial instruments belonging to a client in the course of conducting MiFID business; or
 - (2) subject to in the circumstances set out in CASS 2.1.9R.
- ...
- 2.1.2A G The MiFID custody chapter applies when a firm holds financial instruments belonging to a client in the course of its MiFID business.
- ...
- 2.1.4 G The term 'client' refers to an market eligible counterparty, a professional client ~~intermediate customer~~ or a retail client ~~private customer~~. However, the term 'customer' does not include an market eligible counterparty.
- ...
- 2.1.9 R The *custody rules* do not apply to:
- (1) ...
 - ...

- (3) ...
- (c) makes a record, which must then be retained for a period of 3 years after the record is made, of all the *designated investments* handled in accordance with (3)(a) and (b) together with the details of the *clients* concerned and of any action the *firm* has taken; ;
- (4) a MiFID investment firm that has opted to act in accordance with the MiFID custody chapter in respect of designated investments that it safeguards and administers which are subject to the opt-in to the MiFID custody chapter.

...

2.1.10A G Firms that safeguard and administer designated investments including financial instruments and that are subject to both sets of custody rules, should refer to CASS 6.1.17R (Opt-in to the MiFID custody rules) which contains a provision enabling these firms to opt to comply solely with the MiFID custody chapter.

...

- 2.2.10 R To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *safe custody investment* in the name of:
- (1) ...
- ...
- (4) the *firm* if:
- (a) ...
- (b) the *firm* has notified the *client* in accordance with CASS 2.3.10R (Risk disclosures) if an ~~an~~ market eligible counterparty or an professional client ~~intermediate customer~~, or obtained his prior written consent if a retail client ~~private customer~~; or
- (5) any other *person*, in accordance with the *client's* specific written instruction, provided:
- (a) ...
- (b) in the case of a retail client ~~private customer~~, the other *person* is not an *associate* of the *firm*.

...

2.2.15 R A *firm* must hold any document of title to a *safe custody investment* either in the physical possession of the *firm* or:

(1) for a *retail client* ~~*private customer*~~, with a *custodian* in an account designated for *clients' safe custody investments*;

(2) for an ~~*market eligible counterparty*~~ or a *professional client* ~~*intermediate customer*~~, with one or more of the following:

(a) ...

...

(c) subject to CASS 2.3.11R (Risk disclosures) in accordance with the ~~*market eligible counterparty's*~~ or *professional client's* ~~*intermediate customer's*~~ specific written instructions.

...

2.2.19 R Before a *firm* recommends a *custodian* to a *retail client* ~~*private customer*~~, it must undertake an appropriate risk assessment of that *custodian*.

2.2.20 G A *firm* that holds *safe custody investments* with a *custodian* or recommends *custodians* to *retail clients* ~~*private customers*~~, is expected to establish and maintain a system for assessing the appropriateness of its selection of the *custodian* and to assess the continued appointment of that *custodian* periodically as often as is reasonable in the relevant market. In order to comply with SYSC 3.2.20R and SYSC 9 (Records), the *firm* is also expected to make and retain a record of the grounds on which it satisfies itself as to the appropriateness of its selection or, following a periodic assessment, continued appropriateness of the *custodian*.

...

2.3.2 R Before a *firm* provides safe custody services to a *client*, unless CASS 2.3.5R applies, the *firm* must notify the *client* as to the appropriate terms and conditions which apply to this service, including, where applicable, those covering:

(1) ...

...

(10) if the *firm* intends to pool a *safe custody investment* with that of one or more other *clients*, notification of its intention to the ~~*market eligible counterparty*~~ or *professional client* ~~*intermediate customer*~~ and if the *client* is a *retail client* ~~*private customer*~~, an explanation of the effects of pooling to that *retail client* ~~*private customer*~~.

- 2.3.3 G When explaining the meaning of pooling to a retail client ~~private customer~~, firms are expected to advise the retail client ~~private customer~~ that:
- (1) ...
- ...
- 2.3.4 R Unless CASS 2.3.5R or CASS 2.3.6R applies, the firm must obtain the written agreement of a retail client ~~private customer~~, or notify an market eligible counterparty or an professional client ~~intermediate customer~~, as to:
- (1) ...
- ...
- ...
- 2.3.6 R (1) A firm need not obtain the written agreement of a retail client ~~private customer~~, or give notice to an market eligible counterparty or an professional client ~~intermediate customer~~, as required by CASS 2.3.4R if:
- (a) ...
- ...
- ...
- 2.3.8 G The term "customer" does not include an market eligible counterparty.
- ...
- 2.3.10 R Before a firm registers or records legal title to a safe custody investment in the name of the firm, it must notify the client if an market eligible counterparty or an professional client ~~intermediate customer~~, and obtain his prior written consent if the client is a retail client ~~private customer~~, that:
- (1) ...
- ...
- ...
- 2.3.16 R If a firm provides a range of safe custody services for a retail client ~~private customer~~ which result in statements being generated from more than one system, it must ensure that all the statements in respect of those services are produced as at the same date and despatched within one week of each other, unless each statement makes clear that it relates to a particular service.

Content of client statements

2.3.17 R All statements produced by or on behalf of a *firm* in accordance with CASS 2.3.12R - CASS 2.3.14R and CASS 2.3.16R, must list all *custody assets* held for the *client* for which the *firm* is accountable and:

(1) ...

...

(4) for a *retail client* ~~*private customer*~~, base the statement on either trade date or settlement date information for cash balances and *safe custody investment* and notify the basis to the *retail client* ~~*private customer*~~.

...

2.5.2 R A *firm* must not use a *safe custody investment* for its own account unless the *client*:

(1) if a *retail client* ~~*private customer*~~, has given prior written consent to the *firm*; or

(2) if an *professional client* ~~*intermediate customer*~~ or ~~*market*~~ *eligible counterparty*, has been notified by the *firm*.

Use of a safe custody investment: by another client

2.5.3 R A *firm* must not use, for the account of one *client*, the *safe custody investment* of any other *customer*, unless that other *customer*:

(1) if a *retail client* ~~*private customer*~~, has given prior written consent to the *firm*; or

(2) if an *professional client* ~~*intermediate customer*~~, has been notified by the *firm*.

...

2.5.5 E (1) In the case of a *retail client* ~~*private customer*~~, the appropriate terms and conditions referred to in CASS 2.5.4R(2) include those specified in COB 4 Annex 2(18) (Content of terms of business provided to a customer: stock lending).

(2) ...

...

2.5.6 G *Firms* are reminded that the term "*customer*" does not include an ~~market~~ eligible counterparty.

...

2.5.8 R If a *safe custody investment* belonging to a retail client ~~private customer~~ is used for *stock lending activity*, the *firm* must ensure that:

(1) ...

...

...

3.1 Application and Purpose

Application

3.1.1 R This chapter section applies to a *firm* when it receives or holds assets in connection with an arrangement to secure the obligation of a *client* in the course of, or in connection with, its *designated investment business*, including *MiFID business*.

3.1.2 G *Firms* are reminded that ~~under CASS 1.3.3R~~, this chapter section does not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of this chapter section is also dependent on the location from which the activity is undertaken (see CASS 1.3.2R and CASS 1.3.3R).

3.1.3 R This chapter section does not apply to a *firm* that has only a bare security interest (without rights to hypothecate) in the *client's* asset. In such circumstances, the *firm* must comply with the *custody rules* or *client money rules* as appropriate.

3.1.4 G For the purpose of this chapter section only, a bare security interest in the *client's* asset gives a *firm* the right to realise the assets only on a *client's* default and without the right to use other than in default.

Purpose

3.1.5 G The purpose of this chapter section is to ensure that an appropriate level of protection is provided for those assets over which a *client* gives a *firm* certain rights. The arrangements covered by this chapter section are those under which the *firm* is given a right to use the asset, and the *firm* treats the asset as if legal title and associated rights to that asset had been transferred to the *firm* subject only to an obligation to return equivalent assets to the *client* upon satisfaction of the *client's* obligation to the *firm*. The rights covered in this chapter section do not include those arrangements by which the *firm* has only a bare security interest in the *client's* asset (in which case the *custody rules* or *client money rules* apply).

3.1.6 G Examples of the arrangements covered by this ~~chapter section~~ include the taking of collateral by a *firm*, under the ISDA English Law (transfer of title) and the New York Law Credit Support Annexes (assuming the right to rehypothecate has not been disapplied).

3.1.7 G This ~~chapter section~~ recognises the need to apply a differing level of regulatory protection to the assets which form the basis of the two different types of arrangement described in CASS 3.1.5G. Under the bare security interest arrangement, the asset continues to belong to the *client* until the *firm's* right to realise that asset crystallises (that is, on the *client's* default). But under a "right to use arrangement", the *client* has transferred to the *firm* the legal title and associated rights to the asset, so that when the *firm* exercises its right to treat the asset as its own, the asset ceases to belong to the *client* and in effect becomes the *firm's* asset and is no longer in need of the full range of *client* asset protection. The *firm* may exercise its right to treat the asset as its own by, for example, clearly so identifying the asset in its own books and records.

3.2 Requirements

Application

3.2.1 R ~~CASS 3.2 applies in accordance with CASS 3.1. [deleted]~~

3.2.2 R A *firm* that receives or holds a *client's* assets under an arrangement to which this ~~chapter section~~ applies and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the *client*.

...

3.2.4 G When appropriate, *firms* that enter into the arrangements covered in this ~~chapter section~~ with *retail clients* ~~private customers~~ will be expected to identify in the statement of *custody assets* sent to the *client* in accordance with CASS 2.3.12R (Production and despatch of client statements) details of the assets which form the basis of the arrangements. Where the *firm* utilises global netting arrangements, a statement of the assets held on this basis will suffice.

4 ~~Non-directive~~ client money rules ~~and mandates: designated investment business~~

4.1 Application and Purpose

Application

4.1.1 R This ~~chapter section~~ (the *client money rules*) applies to a *firm* that receives money from or holds money for ~~from~~, or on behalf of, a *client* in the course of, or in connection with:

(1) its *designated investment business* other than MiFID business; or

- (2) in the circumstances set out in CASS 4.1.1AR; (*insurance mediation activity*);

except where CASS 4.1.2R applies.

- 4.1.1A R A *firm* that receives or holds *money* to which this ~~chapter section~~ applies and *money* in respect of which ~~the insurance client money chapter CASS 5.1~~ applies, may elect to comply with the provisions of this ~~chapter section~~ ~~CASS 4~~ in respect of all such *money* and if it does so ~~CASS 4~~ this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of or in connection with its *designated investment business*.

...

- 4.1.2 R ~~The client money rules~~ This chapter does not apply with respect to:
- (1) ...
- ...
- (3) ...
- (a) ...
- (b) as a result, the *money* will not be held in accordance with the *client money rules*; or
- (4) *money* held by *depositories* which are regulated by COB 11; or
- (5) *client money* held by a *firm* which:
- (a) receives or holds *client money* in relation to *contracts of insurance*; but which
- (b) in relation to such *client money* elects to act in accordance with the insurance client money chapter CASS 5.1 to 5.6. ; or
- (6) client money held by a firm which:
- (a) receives or holds client money in relation to designated investment business other than MiFID business; but which
- (b) in relation to such client money elects to act in accordance with the MiFID client money chapter under the opt-in to that chapter (CASS 7.1.3R(1)).
- 4.1.2B G (1) A *firm* which receives and holds *client money* in respect of life assurance business in the course of its *designated investment business* may:
- (a) in accordance with CASS 4.1.1A R elect to comply with the non-directive client money chapter CASS 4 in respect of such

client money and in doing so avoid the need to comply with the insurance client money chapter CASS 5.1 to 5.6 which would otherwise apply to the *firm* in respect of *client money* received in the course of its *insurance mediation activity*; or

(b) in accordance with CASS 4.1.2 R(5), elect to comply with the insurance client money chapter CASS 5.1 to 5.6 in respect of such *client money*.

(2) These options are available to a *firm* irrespective of whether it also receives and holds *client money* in respect of other parts of its *designated investment business*. A *firm* may not however choose to comply with the insurance client money chapter CASS 5.1 to 5.6 in respect of *client money* which it receives and holds in the course of any part of its *designated investment business* which does not involve an *insurance mediation activity*.

...

4.1.2C G Firms that hold client money in the course of, or in connection with, designated investment business that is not MiFID business and also in the course of, or in connection with, MiFID business (and are therefore subject to the non-directive client money chapter and the MiFID client money chapter), should refer to CASS 7.1.3R(1) (Opt-in to the MiFID client money rules) which contains a provision enabling these firms to opt to comply solely with the MiFID client money chapter.

...

Money that is not client money: 'opt outs' for any business (~~including ISD business~~) other than *insurance mediation activity*

4.1.8 G The 'opt out' provisions provide a *firm* with the option of allowing a professional client ~~intermediate customer~~ or ~~market~~ an eligible counterparty to choose whether their *money* is subject to the *client money rules* (unless the *firm* is conducting *insurance mediation activity*).

4.1.9 R Subject to CASS 4.1.11R, *money* is not *client money* when a *firm* (other than a *sole trader*) holds that *money* on behalf of, or receives it from, a market eligible counterparty or a professional client ~~intermediate customer~~, other than in the course of *insurance mediation activity*, and the *firm* has obtained written acknowledgement from the ~~market~~ eligible counterparty or professional client ~~intermediate customer~~ that:

(1) the *money* will not be subject to the protections conferred by the *client money rules*;

(2) as a consequence, this *money* will not be segregated from the *money* of the *firm* in accordance with the *client money rules* and will be used by the *firm* in the course of its own business; and

- (3) the *market eligible counterparty* or *professional client intermediate customer* will rank only as a general creditor of the *firm*.

'Opt-outs' for ~~non-ISD~~ or non-IMD business

- 4.1.10 G For a *firm* whose business is not governed by ~~the ISD~~ or the *IMD*, it is possible to 'opt out' on a one-way basis. However, in order to maintain a comparable regime to that applying to MiFID business, in the case of certain non-*ISD* investment firms that undertake '*ISD*' type' business from a branch in the United Kingdom, article 5 of the *ISD* requires the *FSA* not to treat this business any more favourably than business of an *ISD* investment firm. Therefore all *ISD* and '*ISD*' type'-all '*MiFID*' type' business undertaken outside the scope of *MiFID*, should comply with the *client money rules* or be 'opted out' on a two-way basis.
- 4.1.11 R *Money* is not *client money* if a *firm*, in respect of *designated investment business* which is not an *investment service or activity, an ancillary service, core investment service, a non-core investment service, a listed activity or insurance mediation activity*:
- (1) holds it on behalf of or receives it from an *eligible market counterparty* who is not an *authorised person* or an *professional client intermediate customer* who is not an *authorised person*; and
- (2) has sent a separate written notice stating the matters set out in *CASS* 4.1.9R (1) to (3).
- 4.1.12 G When a *firm* undertakes a range of business for an *market eligible counterparty* or *professional client intermediate customer* and has separate agreements for each type of business undertaken, the *firm* may treat *client money* held on behalf of the *client* differently for different types of business; for example, a *firm* may, under *CASS* 4.1.9R or *CASS* 4.1.11R, elect to segregate *client money* in connection with *securities* transactions and not segregate (by complying with *CASS* 4.1.9R or *CASS* 4.1.11R) *money* in connection with *contingent liability investments* for the same *client*.
- ...
- 4.1.24 G When a *firm* realises *client collateral* to meet liabilities of that *client*, it should do so in accordance with the relevant terms and conditions (see *CASS* 2.3.2R to *CASS* 2.3.6R), and for a *retail client private customer*, in accordance with *COB* 7.8 (Realisation of a private customer's assets).
- ...
- 4.3.26 R Unless a *firm* notifies a *retail client private customer* in writing whether or not interest is to be paid on *client money* and, if so, on what terms and at what frequency, it must pay that *retail client private customer* all interest earned on that *client money*. Any interest due to a *client* will be *client money*.

4.3.27 G If no interest is payable to a *retail client* ~~private customer~~, that fact should be separately identified in an agreement or notification.

...

Transfer of client money to a third party

4.3.29 G CASS 4.3.30R sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to an *intermediate broker* for *contingent liability investments* in the form of initial or variation margin on behalf of a *client*. In these circumstances, the *firm* remains responsible for that *client's equity balance* ~~equity balance~~, as defined in ~~CASS 4.3.79R~~, held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. If a *firm* wishes to discharge itself from its fiduciary duty, it should do so in accordance with CASS 4.3.99R.

4.3.30 R A *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*, but only if:

(1) ...

(2) in the case of a *retail client* ~~private customer~~, that *customer* has been notified that the *client money* may be transferred to the other *person*.

...

4.3.40 R A *firm* (other than a *trustee firm*) may hold *client money* with a bank that is not an *approved bank* if all of the following conditions are met:

(1) ...

...

(4) the *firm* notifies each relevant ~~market eligible~~ *counterparty* and *professional client* ~~intermediate customer~~ and obtains the prior written consent of each relevant *retail client* ~~private customer~~ that:

(a) ...

...

...

4.3.79 R ~~A *client's equity balance* is the amount which the *firm* would be liable (ignoring for the purposes of this rule any non-cash collateral held) to pay to a *client* (or the *client* to the *firm*) in respect of his *margin*ed transactions if each of his open positions was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and his account closed. [deleted]~~

...

- 4.3.81 R The total margined transaction requirement is:
- (1) the sum of each of the *client's equity balance* ~~equity balance~~, as ~~defined in CASS 4.3.79R~~, which are positive;
- Less
- (2) the proportion of any individual negative *client equity balance* ~~equity balance~~ *equity balance* which is secured by *approved collateral*; and
 - (3) the net aggregate of the *firm's equity balance* (negative balances being deducted from positive balances) on transaction accounts for *clients customers* with exchanges, *clearing houses*, *intermediate brokers* and *OTC counterparties*.

...

- 4.3.84 G The terms '*client equity balance* in ~~CASS 4.3.79R~~' *client equity balance*' and '*firm's equity balance*' in CASS 4.3.80R refer to cash values and do not include non-cash *collateral* or other *designated investments* held in respect of a *margined transaction*.

- 4.3.85 R
- (1) When, in respect of a *client*, there is a positive individual *client balance* and a negative *client equity balance* ~~equity balance~~ *equity balance*, a *firm* may offset the credit against the debit and hence have a reduced individual *client balance* in CASS 4.3.72R for that *client*.
 - (2) When, in respect of a *client*, there is a negative individual *client balance* and a positive *client equity balance* ~~equity balance~~ *equity balance*, a *firm* may offset the credit against the debit and hence have a reduced *client equity balance* ~~equity balance~~ *equity balance* in CASS 4.3.81 R for that *client*.

...

- 4.3.108 R A *firm* with a *Part 30 exemption order* which also operates an LME bond arrangement for the benefit of US-resident investors, must exclude the *client's equity balance* ~~equity balance~~, as ~~defined in CASS 4.3.79R~~, for transactions undertaken on the London Metal Exchange on behalf of those US-resident investors from the calculation required by CASS 4.3.81R.

...

4.5 Mandate Rules

4.5.1 R [deleted]

4.5.2 G [deleted]

4.5.3 G [deleted]

4.5.4 G [deleted]

4.5.5 R [deleted]

...

5 Client money ~~and mandates~~: insurance mediation activity

5.1.1 R ...

(1) ...

(2) CASS 5.1 to CASS 5.6 do not, subject to (3), apply:

(a) to a *firm* to the extent that it acts in accordance with ~~CASS 4~~ the non-directive client money chapter or the MiFID client money chapter; or

...

...

5.1.8 G *Firms* which carry on *designated investment business* which may, for example, involve them handling *client money* in respect of life assurance business should refer to ~~CASS 4~~ the non-directive client money chapter which includes provisions enabling *firms* to elect to comply solely with ~~CASS 4~~ that chapter or with ~~CASS 5~~ the insurance client money chapter in respect of that business. *Firms* that also carry on *MiFID business* may elect to comply solely with the MiFID client money chapter with respect of *client money* in respect of which the non-directive client money chapter or the insurance client money chapter apply.

...

5.7 Mandates

5.7.1 R [deleted]

5.7.2 G [deleted]

5.7.3 G [deleted]

5.7.4 G [deleted]

5.7.5 R [deleted]

5.7.6 R [deleted]

...

After CASS 5, insert the following provisions. This material is all new and it is not underlined.

6.1 Custody: MiFID business

Application

- 6.1.1 R This chapter (the *custody rules*) applies to a *MiFID investment firm*:
- (1) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*; or
 - (2) that opts to comply with the *custody rules* under this chapter in accordance with CASS 6.1.17R (Opt-in to the MiFID custody rules).
- 6.1.2 G *Firms* are reminded that dividends (actual or payments in lieu), *stock lending* fees and other payments received for the benefit of a *client*, and which are due to the *clients* should be held in accordance with the *MiFID client money chapter* where appropriate.
- 6.1.3 G This chapter does not apply where a *firm* issues depositary receipts. The *custody rules* in the *non-directive custody chapter* provide a specialist regime for the issue of depositary receipts (see CASS 2.1.24R to CASS 2.1.26R).
- Business in the name of the firm
- 6.1.4 R The *custody rules* do not apply where a *firm* carries on business in its name but on behalf of the *client* where that is required by the very nature of the transaction and the *client* is in agreement.
- [Note: recital 26 to *MiFID*]
- 6.1.5 G For example, this chapter does not apply where a *firm* borrows *financial instruments* from a *client* as principal under a *stock lending* agreement.
- Title transfer collateral arrangements
- 6.1.6 R The *custody rules* do not apply where a *client* transfers full ownership of a *financial instrument* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.
- [Note: recital 27 to *MiFID*]
- 6.1.7 G A title transfer financial collateral arrangement under the *Financial Collateral Directive* is a type of transfer of instruments to cover obligations where the *financial instrument* will not be regarded as belonging to the *client*.
- 6.1.8 G *Firms* are reminded of the *client's best interests rule*, which requires them to act honestly, fairly and professionally in accordance with the best interests of their *clients* when structuring their business particularly in

respect of the effect of that structure on *firms'* obligations under this chapter.

- 6.1.9 G *Firms* are reminded that, in certain cases, the *collateral rules* apply where a *firm* receives collateral from a *client* in order to secure the obligations of the *client*.

Affiliated companies

- 6.1.10 G The fact that a *client* is an *affiliated company* does not affect the operation of the *custody rules* in relation to that *client*.

- 6.1.11 G A *firm* that holds *financial instruments* on behalf of an *affiliated company* in respect of its *non-MiFID business* and opts under CASS 6.1.17R to comply with this chapter in respect of that *non-MiFID business*, should refer to CASS 2.1.9R(1) to determine whether the assets falls within the scope of the *custody rules* in the *non-directive custody chapter* and therefore within the scope of the opt-in.

Delivery versus payment transactions

- 6.1.12 R (1) A *firm* need not treat this chapter as applying in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that the *financial instrument* is either to be:
- (a) in respect of a *client's* purchase, due to the *client* within one *business day* following the *client's* fulfilment of a payment obligation; or
 - (b) in respect of a *client's* sale, due to the *firm* within one *business day* following the fulfilment of a payment obligation;

unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *financial instrument* by the *client*.

- (2) Until such a delivery versus payment transaction through a commercial settlement system settles, a *firm* may segregate *money* (in accordance with the *MiFID client money chapter*) instead of the *client's financial instruments*.

Arranging registration and recommendations

- 6.1.13 G This chapter does not apply where a *firm* arranges registration of a *financial instrument*. In such circumstances, a *firm* must comply with the relevant *custody rules* in the *non-directive custody chapter* (see CASS 2.1.22R).

- 6.1.14 G This chapter does not apply where a *firm* recommends to a *retail client* a third party to hold the assets of that *client*. In such circumstances, a *firm* must comply with the relevant *custody rules* in the *non-directive custody chapter* (see CASS 2.2.19R).

Temporary handling of financial instruments

6.1.15 G The *custody rules* do not apply if a *firm* temporarily handles a *financial instrument* belonging to a *client*. A *firm* should temporarily handle *financial instrument* for no longer than is reasonably necessary. In most transactions this would be no longer than one *business day*, but it may be longer or shorter depending upon the transaction in question. For example, when a *firm* executes an order to sell shares which have not been registered on a dematerialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of *financial instruments* in *bearer form*, the *firm* is expected to handle them for less than one *business day*. When a *firm* temporarily handles *financial instruments*, it is still obliged to comply with *Principle 10* (Clients' assets).

6.1.16 G When a *firm* temporarily handles a *financial instrument*, in order to comply with its obligation to act in accordance with *Principle 10* (Clients' assets), the following are guides to good practice:

- (1) a *firm* should keep the *financial instrument* secure, record it as belonging to that *client*, and forward it to the *client* or in accordance with the *client's* instructions as soon as practicable after receiving it; and
- (2) a *firm* should make and retain a record of the fact that the *firm* has handled that *financial instrument* and of the details of the *client* concerned and of any action the *firm* has taken.

Opt-in to the MiFID custody rules

6.1.17 R (1) A *firm* that holds *financial instruments* to which this chapter applies and assets in respect of which the *non-directive custody chapter* applies, may elect to comply with the provisions of this chapter in respect of all assets so held and if it does so, this chapter applies as if all such assets were *financial instruments* that the *firm* receives and holds in the course of, or in connection with, its *MiFID business*.

(2) An election under this *rule* must be in respect of all the activities of the *firm* when it is *safeguarding and administering investments* belonging to a *client* with the exception of *arranging safeguarding and administration of assets* within the scope of *CASS 2.1.21R* and *CASS 2.1.22R* and depositary receipt business within the scope of *CASS 2.1.24R* to *CASS 2.1.26R*.

(3) A *firm* must make and retain a written record of the election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.

6.1.18 G A *firm* cannot rely upon this opt-in in respect of *arranging safeguarding and administration of assets* and depositary receipt business as the *custody rules*

in the *non-directive custody chapter* provide specialised regimes in respect of these types of business which are outside the scope of this chapter.

6.1.19 G If a *firm* has opted to comply with this chapter, the *non-directive custody chapter* will have no application to the activities to which the election applies.

6.1.20 G A *firm* that is only subject to the *non-directive custody chapter* may not choose to comply with this chapter.

Disposal of financial instruments

6.1.21 R The *custody rules* cease to have effect in relation to a *financial instrument* it has been disposed of in accordance with a valid *client* instruction.

General purpose

6.1.22 G *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when it is responsible for them. As part of these protections, the *custody rules* require a *firm* to take appropriate steps to protect *financial instruments* for which it is responsible.

6.1.23 G The *rules* in this chapter are designed primarily to restrict the commingling of *client* and the *firm's* assets and minimise the risk of the *client's financial instruments* being used by the *firm* without the *client's* agreement or contrary to the *client's* wishes, or being treated as the *firm's* assets in the event of its insolvency.

6.1.24 G The *custody rules* also implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *financial instruments* belonging to a *client*.

6.2 Holding of client assets

Requirement to protect clients' financial instruments

6.2.1 R A *firm* must, when holding *financial instruments* belonging to *clients*, make adequate arrangements so as to safeguard *clients'* ownership rights, especially in the event of the *firm's* insolvency, and to prevent the use of *financial instruments* belonging to a *client* on the *firm's* own account except with the *client's* express consent.

[Note: article 13(7) of *MiFID*]

Requirement to have adequate organisational arrangements

6.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients' financial instruments*, or the rights in connection with those *financial instruments*, as a result of the misuse of the *financial instruments*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]

- 6.2.3 R To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *financial instrument* in the name of:
- (1) the *client* (or, where appropriate, the *trustee firm*), unless the *client* is an *authorised person* acting on behalf of its *client*, in which case it may be registered in the name of the *client* of that *authorised person*;
 - (2) a *nominee company* which is controlled by:
 - (a) the *firm*;
 - (b) an *affiliated company*;
 - (c) a *recognised investment exchange* or a *designated investment exchange*; or
 - (d) a *third party* with whom *financial instruments* are deposited under CASS 6.3;
 - (3) any other third party if:
 - (a) the *financial instrument* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
 - (b) the *firm* has notified the *client* in writing;
 - (4) the *firm* if:
 - (a) the *financial instrument* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
 - (b) the *firm* has notified the *client* if a *professional client*, or obtained prior written consent if a *retail client*.
- 6.2.4 R A *firm* must accept the same level of responsibility to its *client* for any *nominee company* controlled by the *firm* with respect of any requirements of the *custody rules*.
- 6.2.5 R A *firm* may register or record legal title to its own *financial instrument* in the same name as that in which legal title to a *financial instrument* is registered or recorded, but only if:

- (1) the *firm's financial instruments* are separately identified in the *firm's* records from the *financial instruments*; or
 - (2) the *firm* registers or records a *financial instrument* in accordance with CASS 6.2.3R(4).
- 6.2.6 G A *firm* when complying with CASS 6.2.3R(3) or CASS 6.2.3R(4) will be expected to demonstrate that adequate investigations have been made of the market concerned by reference to local sources, which may include an appropriate legal opinion.
- 6.2.7 R A *firm* must ensure that any documents of title to *financial instruments* in *bearer form*, belonging to the *firm* and which it holds in its physical possession, are kept separately from any document of title to a *client's financial instrument* in *bearer form*.
- 6.3 Depositing assets with third parties
- 6.3.1 R
- (1) A *firm* may deposit *financial instruments* held by it on behalf of its *clients* into an account or accounts opened with a third party, but only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those *financial instruments*.
 - (2) A *firm* must take the necessary steps to ensure that any *client's financial instruments* deposited with a third party, in accordance with this *rule* are identifiable separately from the *financial instruments* belonging to the *firm* and from the *financial instruments* belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.
 - (3) When a *firm* makes the selection, appointment and conducts the periodic review referred under this *rule*, it must take into account:
 - (a) the expertise and market reputation of the third party; and
 - (b) any legal requirements or market practices related to the holding of those *financial instruments* that could adversely affect *clients' rights*.
 - (4) A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a third party as required in this *rule*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *financial instruments* belonging to *clients*.

[Note: articles 16(1)(d) and 17(1) of the *MiFID implementing Directive*]

- 6.3.2 G In discharging its obligations under this section, a *firm* should also consider, together with any other relevant matters:
- (1) once a *financial instrument* has been lodged by the *firm* with the third party, the third party's performance of its services to the *firm*;
 - (2) the arrangements that the third party has in place for holding and safeguarding the *financial instrument*;
 - (3) current industry standard reports, for example Financial Reporting and Auditing Group (FRAG) 21 report or its equivalent;
 - (4) the capital or financial resources of the third party;
 - (5) the credit rating of the third party; and
 - (6) any other activities undertaken by the third party and, if relevant, any *affiliated company*.
- 6.3.3 G A *firm* should consider carefully the terms of its agreements with third parties with which it will deposit *financial instruments* belonging to a *client*. The following terms are examples of the issues *firms* should address in this agreement:
- (1) that the title of the account indicates that any *financial instrument* credited to it does not belong to the *firm*;
 - (2) that the third party will hold or record a *financial instrument* belonging to the *firm's client* separately from any *financial instrument* belonging to the *firm* or to the third party;
 - (3) the arrangements for registration or recording of the *financial instrument* if this will not be registered in the *client's* name;
 - (4) the restrictions over the third party's right to claim a lien, right of retention or sale over any *financial instrument* standing to the credit of the account;
 - (5) the restrictions over the circumstances in which the third party may withdraw assets from the account;
 - (6) the procedures and authorities for the passing of instructions to or by the *firm*;
 - (7) the procedures regarding the claiming and receiving of dividends, interest payments and other entitlements accruing to the *client*; and
 - (8) the provisions detailing the extent of the third party's liability in the event of the loss of a *financial instrument* caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.

- 6.3.4 R (1) A *firm* must only deposit *financial instruments* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *financial instruments* for the account of another person with a third party who is subject to such regulation.
- (2) A *firm* must not deposit *financial instruments* held on behalf of a *client* with a third party in a country that is not an *EEA State* (third country) and which does not regulate the holding and safekeeping of *financial instruments* for the account of another person unless:
- (a) the nature of the *financial instruments* or of the *investment services* connected with those *financial instruments* requires them to be deposited with a third party in that third country; or
 - (b) the *financial instruments* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that third country.
- (3) In the case of activities a *firm* has opted into this chapter under CASS 6.1.17R, (1) and (2) do not apply. However, the *firm* must deposit *financial instruments* belonging to *clients* pursuant to such activities with a *custodian* and must hold any document of title to a *financial instrument* either in the physical possession of the *firm* or:
- (a) for a *retail client*, with a *custodian*;
 - (b) for a *professional client*, with one or more of the following:
 - (i) a *custodian*;
 - (ii) any *person* whom the *firm* has taken reasonable steps to determine is a *person* whose business includes the provision of appropriate *safe custody* services; or
 - (iii) in accordance with the *professional client's* specific written instructions.

[Note: article 17(2) and (3) of the *MiFID implementing Directive*]

6.4 Use of financial instruments

- 6.4.1 R (1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *financial instruments* held by it on behalf of a *client* or otherwise use such *financial instruments* for its own account or the account of another *client* of the *firm*, unless:
- (a) the *client* has given express prior consent to the use of the *financial instruments* on specified terms; and
 - (b) the use of that *client's financial instruments* is restricted to the specified terms to which the *client* consents.

- (2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of *financial instruments* held by it on behalf of a *client* in an omnibus account held by a third party, or otherwise use *financial instruments* held in such an account for its own account or for the account of another *client* unless, in addition to the conditions set out in (1):
- (a) each *client* whose *financial instruments* are held together in an omnibus account has given express prior consent in accordance with (1)(a); or
 - (b) the *firm* has in place systems and controls which ensure that only *financial instruments* belonging to *clients* who have given express prior consent in accordance with the requirements of (1)(a) are used.
- (3) For the purposes of obtaining the express prior consent of a *retail client* under this *rule* the signature of the *retail client* or an equivalent alternative mechanism is required.

[Note: article 19 of the *MiFID implementing Directive*]

- 6.4.2 G *Firms* are reminded of the *client's best interests rule*, which requires the *firm* to act honestly, fairly and professionally in accordance with the best interests of their *clients*. An example of what is generally considered to be such conduct, in the context of *stock lending activities* involving *retail clients* is that:
- (1) the *firm* ensures that *relevant collateral* is provided by the borrower in favour of the *client*;
 - (2) the current realisable value of the *financial instrument* and of the *relevant collateral* is monitored daily; and
 - (3) the *firm* provides *relevant collateral* to make up the difference where the current realisable value of the collateral falls below that of the *financial instrument*, unless otherwise agreed in writing by the *client*.
- 6.4.3 R Where a *firm* uses *financial instruments* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *financial instruments* has been effected, as well as the number of *financial instruments* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[Note: article 19(2) of the *MiFID implementing Directive*]

6.5 Records, accounts and reconciliations

Records and accounts

- 6.5.1 R A *firm* must keep such records and accounts as necessary to enable it at any

time and without delay to distinguish *financial instruments* held for one *client* from *financial instruments* held for any other *client*, and from the *firm's* own *financial instruments*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

- 6.5.2 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *financial instruments* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

Record keeping

- 6.5.3 R A *firm* must ensure that the records made under this section are retained for a period of five years after they are made.

Internal reconciliation of financial instruments held for clients

- 6.5.4 G (1) SYSC 4.1.1R requires *firms* to have robust governance arrangements, such as internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems. In addition, SYSC 6.1.1R requires *firms* to establish, implement and maintain adequate policies and procedures sufficient to ensure the *firm's* compliance with its obligations under the *regulatory system*. Carrying out internal reconciliations of the *financial instruments* held for each *client* with the *financial instruments* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under CASS 6.5.2R, SYSC 4.1.1R and SYSC 6.1.1R.

(2) A *firm* should perform such internal reconciliations:

- (a) as often as is necessary; and
- (b) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of the *firm's* records and accounts.

(3) Reconciliation methods which can be adopted for these purposes include the 'total count method', which requires that all *financial instruments* be counted and reconciled as at the same date.

(4) If a *firm* chooses to use an alternative reconciliation method (for example the 'rolling stock method') it needs to ensure that:

- (a) all of a particular *financial instrument* are counted and reconciled as at the same date; and
- (b) all *financial instruments* are counted and reconciled during a period of six months.

6.5.5 R A *firm* that uses an alternative reconciliation method must first send a written confirmation to the *FSA* from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to use the method effectively.

Reconciliations with external records

6.5.6 R A *firm* must conduct on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those *financial instruments* are held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

6.5.7 G Where a *firm* deposits *financial instruments* belonging to a *client* with a third party, in complying with the requirements of *CASS 6.5.6R*, the *firm* should seek to ensure that the third party will deliver to the *firm* a statement as at a date or dates specified by the *firm* which details the description and amounts of all the *financial instruments* credited to the account, and that this statement is delivered in adequate time to allow the *firm* to carry out the periodic reconciliations required in *CASS 6.5.6R*.

Frequency of external reconciliations

6.5.8 G A *firm* should perform the reconciliation required by *CASS 6.5.6R*:

- (1) as regularly as is necessary; and
- (2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom *financial instruments* are held.

Independence of person conducting reconciliations

6.5.9 G Whenever possible, a *firm* should ensure that reconciliations are carried out by a *person* (for example an *employee* of the *firm*) who is independent of the production or maintenance of the records to be reconciled (see *SYSC 5.1.6R*).

Reconciliation discrepancies

6.5.10 R A *firm* must promptly correct any discrepancies which are revealed in the reconciliations envisaged by this section, and make good, or provide the equivalent of, any unreconciled *shortfall* for which there are reasonable grounds for concluding that the *firm* is responsible.

6.5.11 G Items recorded or held within a suspense or error account fall within the scope of discrepancies.

6.5.12 G A *firm* may, where justified, conclude that another *person* is responsible for an irreconcilable *shortfall* despite the existence of a dispute with that other *person* about the unreconciled item. In those circumstances, the *firm* is not required to

make good the *shortfall* but is expected to take reasonable steps to resolve the position with the other *person*.

Notification requirements

- 6.5.13 R A *firm* must inform the *FSA* in writing without delay:
- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in *CASS* 6.5.1R, *CASS* 6.5.2R or *CASS* 6.5.6R; or
 - (2) if, having carried out a reconciliation, it has not complied with, or is unable, in any material respect, to comply with *CASS* 6.5.10R.

Audit of compliance with the MiFID custody rules

- 6.5.14 G *Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FSA* under *SUP* 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *rules* in this chapter.
- 6.5.15 G *Firms* that use an alternative reconciliation method are reminded that the *firm's* auditor must confirm to the *FSA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see *CASS* 6.5.5R).

After *CASS* 6, insert the following provisions. This material is all new and it is not underlined.

Client money: MiFID business

7.1 Application and Purpose

Application

- 7.1.1 R This chapter (the *client money rules*) applies to a *MiFID investment firm*:
- (1) that holds *client money*; or
 - (2) that opts to comply with this chapter in accordance with *CASS* 7.1.3R(1) (Opt-in to the MiFID client money rules);

unless otherwise specified in this section.

- 7.1.2 G *CASS* 7.2 (Definition of client money) sets out the circumstances in which *money* is considered *client money* for the purposes of this chapter.

Opt-in to the MiFID client money rules

- 7.1.3 R (1) A *firm* that receives or holds *money* in respect of which this chapter applies and *money* in respect of which the *non-directive client money chapter* or the *insurance client money chapter* applies, may elect to comply with the provisions of this chapter in respect of all such *money* and if it does so, this chapter applies as if all such *money* were *money* that the *firm* receives and holds in the course of, or in connection with, its *MiFID business*.
- (2) A *firm* must make and retain a written record of any election it makes under this *rule*, including the date from which the election is to be effective. The *firm* must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.
- 7.1.4 G The opt-in to this chapter in accordance with this section does not apply in respect of *money* that a *firm* holds outside of the scope of the *non-directive client money chapter* or the *insurance client money chapter*, such as *money* falling within the scope of the opt-out for non-IMD designated investment business (see CASS 4.1.11R).
- 7.1.5 G If a *firm* has opted to comply with this chapter, the *non-directive client money chapter* or the *insurance client money chapter* will have no application to the activities to which the election applies.
- 7.1.6 G A *firm* that is only subject to the *non-directive client money chapter* or the *insurance client money chapter* may not opt to comply with this chapter.
- 7.1.7 G If a *firm* that has agreed with an *insurance undertaking* under the *client money rules* in the *insurance client money chapter* to treat the undertaking's *money* as *client money*, opts in to this chapter in accordance with this section, the *insurance undertaking's* interest under the trust (or in Scotland agency) will be subordinated to the interests of the *firm's* other *clients*.
- Credit institutions
- 7.1.8 R The *client money rules* do not apply to a *BCD credit institution* in relation to deposits within the meaning of the *BCD* held by that *institution*.
- [Note: article 13(8) of *MiFID* and article 18(1) of the *MiFID implementing Directive*]
- 7.1.9 G If a *credit institution* that holds *money* as a deposit with itself is subject to the *requirement to disclose information before providing services*, it should, in compliance with that obligation, notify the *client* that:
- (1) *money* held for that *client* in an account with the *credit institution* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
- (2) as a result, the *money* will not be held in accordance with the *client*

money rules.

7.1.10 G Pursuant to *Principle 10 (Clients' assets)*, a *credit institution* that holds *money* as a deposit with itself should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time. Similarly, where that *money* is reflected only in a *firm's* bank account with other banks (nostro accounts), the *firm* should be able to reconcile amounts owed to that *client* within a reasonable period of time.

7.1.11 G A *credit institution* is reminded that the exemption for deposits is not an absolute exemption from the *client money rules*.

Affiliated companies

7.1.12 G A *firm* that holds *money* on behalf of, or receives *money* from, an *affiliated company* in respect of *MiFID business* must treat the *affiliated company* as any other *client* of the *firm* for the purposes of this chapter.

7.1.13 G A *firm* that holds *client money* on behalf of, or receives *money* from, an *affiliated company* in respect of its *non-MiFID business* and opts under CASS 7.1.3R(1) to comply with this chapter in with respect of that *non-MiFID business*, should refer to the *non-directive client money chapter* (see CASS 4.1.18R (Affiliated companies)) to determine whether that *money* falls within the scope of the *non-directive client money chapter* and therefore within the scope of the opt-in.

Coins

7.1.14 R The *client money rules* do not apply with respect to coins held on behalf of a *client* if the *firm* and the *client* have agreed that the *money* (or *money* of that type) is to be held by the *firm* for the intrinsic value of the metal which constitutes the coin.

Solicitors

7.1.15 R (1) An *authorised professional firm* regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland must comply with the *MiFID client money (minimum implementing) rules* and also with the following rules of its *designated professional body* and if it does so, it will be deemed to comply with the *client money rules* in this chapter.

(2) The relevant rules are:

(a) if the *firm* is regulated by the Law Society (of England and

Wales):

- (i) the Solicitors' Accounts Rules 1998; or
- (ii) where applicable, the Solicitors Overseas Practice Rules 1990;
- (b) if the *firm* is regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; and
- (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

General purpose

- 7.1.16 G (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and treatment of *client money*. The *client money rules* provide requirements for *firms* that receive or hold *client money*, in whatever form.
- (2) The *client money rules* also implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *client money*.

7.2 Definition of client money

- 7.2.1 R For the purposes of this chapter and the *MiFID custody chapter*, *client money* means any *money* that a *firm* receives from or holds for, or on behalf of, a *client* in the course of, or in connection with, its *MiFID business* unless otherwise specified in this section.

Business in the name of the firm

- 7.2.2 R *Money* is not *client money* where the *firm* carries on business in its own name on behalf of the *client* where that is required by the very nature of the transaction and the *client* is in agreement.

[Note: recital 26 to *MiFID*]

Title transfer collateral arrangements

- 7.2.3 R Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*.

[Note: recital 27 to *MiFID*]

- 7.2.4 G A title transfer financial collateral arrangement under *the Financial Collateral Directive* is an example of a type of transfer of *money* to cover

obligations where that *money* will not be regarded as *client money*.

- 7.2.5 G Where a *firm* has received full title or full ownership to *money* under a collateral arrangement, the fact that it has also taken a security interest over its obligation to repay that *money* to the *client* would not result in the *money* being *client money*. This can be compared to a situation in which a *firm* takes a charge or other security interest over *money* held in a *client bank account*, where that *money* would still be *client money* as there would be no absolute transfer of title to the *firm*. However, if that security interest includes a "right to use arrangement", under which the *client* agrees to transfer all of its rights to *money* in that account to the *firm* upon the exercise of the right to use, the *money* may cease to be *client money*, but only once the right to use is exercised and the *money* is transferred out of the account to the *firm*.
- 7.2.6 G *Firms* are reminded of the *client's best interest rule*, which requires a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* when structuring its business particularly in respect of the effect of that structure on *firms'* obligations under the *client money rules*.
- 7.2.7 G Pursuant to the *client's best interests rule*, a *firm* should ensure that where a *retail client* transfers full ownership of *money* to a *firm*:
- (1) the *client* is notified that full ownership of the *money* has been transferred to the *firm* and, as such, the *client* no longer has a proprietary claim over this *money* and the *firm* can deal with it on its own right;
 - (2) the transfer is for the purposes of securing or covering the *client's* obligations;
 - (3) an equivalent transfer is made back to the *client* if the provision of collateral by the *client* is no longer necessary; and
 - (4) there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the *client* owes, or is likely to owe, to the *firm*.

Money in connection with a "delivery versus payment" transaction

- 7.2.8 R *Money* need not be treated as *client money* in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that either:
- (1) in respect of a *client's* purchase, *money* from a *client* will be due to the *firm* within one *business day* upon the fulfilment of a delivery obligation; or
 - (2) in respect of a *client's* sale, *money* is due to the *client* within one *business day* following the *client's* fulfilment of a delivery obligation;

unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *investments* by the *client*.

Money due and payable to the firm

- 7.2.9 R (1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.
- (2) For these purposes, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum from a *client bank account* for reimbursement will become due and payable to the *firm*.
- 7.2.10 G *Money* held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase *money* from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.
- 7.2.11 G When a *client's* obligation or liability, that is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client money*. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

Commission rebate

- 7.2.12 G When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.
- 7.2.13 G When *commission* rebate becomes due and payable to the *client*, the *firm* should:
- (1) treat it as *client money*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see CASS 7.2.15R);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see CASS 7.2.3R (Title transfer collateral arrangements)).

Interest

7.2.14 R Unless a *firm* notifies a *retail client* in writing whether or not interest is to be paid on *client money* and, if so, on what terms and at what frequency, it must pay that *client* all interest earned on that *client money*. Any interest due to a *client* will be *client money*.

Discharge of fiduciary duty

7.2.15 R *Money* ceases to be *client money* if it is paid:

- (1) to the *client*, or a duly authorised representative of the *client*; or
- (2) to a third party on the instruction of the *client*, unless it is transferred to a third party in the course of effecting a transaction, in accordance with CASS 7.5.2R (Transfer of client money to a third party); or
- (3) into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
- (4) to the *firm* itself, when it is due and payable to the *firm* (see CASS 7.2.9R (Money due and payable to the firm)); or
- (5) to the *firm* itself, when it is an excess in the *client bank account* (see CASS 7.6.13R(2) (Reconciliation discrepancies)).

7.2.16 G When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in a way which it discharges its fiduciary duty to the *client* under this section.

7.2.17 R When a *firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

Allocated but unclaimed client money

7.2.18 G The purpose of the *rule* on allocated but unclaimed *client money* is to allow a *firm*, in the normal course of its business, to cease to treat as *client money* any balances, allocated to an individual *client*, when those balances remain unclaimed.

7.2.19 R A *firm* may cease to treat as *client money* any unclaimed *client money* balance if it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance.

- 7.2.20 E
- (1) Reasonable steps should include:
 - (a) entering into a written agreement, in which the *client* consents to the *firm* releasing, after the period of time specified in (b), any *client money* balances, for or on behalf of that *client*, from *client bank accounts*;
 - (b) determining that there has been no movement on the *client's* balance for a period of at least six years (notwithstanding any

payments or receipts of charges, interest or similar items);

- (c) writing to the *client* at the last known address informing the *client* of the *firm's* intention of no longer treating that balance as *client money*, giving the *client* 28 days to make a claim;
- (d) making and retaining records of all balances released from *client bank accounts*; and
- (e) undertaking to make good any valid claim against any released balances.

(2) Compliance with (1) may be relied on as tending to establish compliance with CASS 7.2.19R.

(3) Contravention of (1) may be relied on as tending to establish contravention of CASS 7.2.19R.

7.2.21 G When a *firm* gives an undertaking to make good any valid claim against released balances, it should make arrangements authorised by the *firm's* relevant *controllers* that are legally enforceable by any *person* with a valid claim to such *money*.

7.3 Organisational requirements: client money

Requirement to protect client money

7.3.1 R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *client's* rights and prevent the use of *client money* for its own account.

[Note: article 13(8) of *MiFID*]

Requirement to have adequate organisational arrangements

7.3.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]

7.4 Segregation of client money

Depositing client money

7.4.1 R A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:

- (1) a central bank;
- (2) a *BCD credit institution*;

- (3) a bank authorised in a third country;
- (4) a *qualifying money market fund*.

[Note: article 18(1) of the *MiFID implementing Directive*]

- 7.4.2 G An account with a central bank, a *BCD credit institution* or a bank authorised in a third country in which *client money* is placed is a *client bank account*.

Qualifying money market funds

- 7.4.3 G Where a *firm* deposits *client money* with a *qualifying money market fund*, the units in that fund should be held in accordance with the *MiFID custody chapter*.

[Note: recital 23 to the *MiFID implementing Directive*]

- 7.4.4 G A *firm* that places *client money* in a *qualifying money market fund* should ensure that it has the *permissions* required to invest in and hold units in that fund and must comply with the *rules* that are relevant for those activities.

- 7.4.5 R A *firm* must give a *client* the right to oppose the placement of his *money* in a *qualifying money market fund*.

[Note: article 18(3) of the *MiFID implementing Directive*]

- 7.4.6 G If a *firm* that intends to place *client money* in a *qualifying money market fund* is subject to the *requirement to disclose information before providing services*, it should, in compliance with that obligation, notify the *client* that:

- (1) *money* held for that *client* will be held in a *qualifying money market fund*; and
- (2) as a result, the *money* will not be held in accordance with the *client money rules* but in accordance with the *custody rules*.

A *firm's* selection of a credit institution, bank or money market fund

- 7.4.7 R A *firm* that does not deposit *client money* with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the *credit institution*, bank or *qualifying money market fund* where the *money* is deposited and the arrangements for the holding of this *money*.

[Note: article 18(3) of the *MiFID implementing Directive*]

- 7.4.8 R When a *firm* makes the selection, appointment and conducts the periodic review of a *credit institution*, a bank or a *qualifying money market fund*, it must take into account:

- (1) the expertise and market reputation of the third party; and

- (2) any legal requirements or market practices related to the holding of *client money* that could adversely affect *clients'* rights.

[Note: article 18(3) of the *MiFID implementing Directive*]

- 7.4.9 G In discharging its obligations when selecting, appointing and reviewing the appointment of a *credit institution*, a bank or a *qualifying money market fund*, a *firm* should also consider, together with any other relevant matters:
- (1) the need for diversification of risks;
 - (2) the capital of the *credit institution* or bank;
 - (3) the amount of *client money* placed, as a proportion of the *credit institution* or bank's capital and *deposits*, and, in the case of a *qualifying money market fund*, compared to any limit the fund may place on the volume of redemptions in any period;
 - (4) the credit rating of the *credit institution* or bank; and
 - (5) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the *credit institution* or bank and *affiliated companies*.
- 7.4.10 R A *firm* must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection of a *credit institution*, a bank or a *qualifying money market fund*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *client money*.
- Client bank accounts
- 7.4.11 R A *firm* must take the necessary steps to ensure that *client money* deposited, in accordance with CASS 7.4.1R, in a central bank, a *credit institution*, a bank authorised in a third country or a *qualifying money market fund* is held in an account or accounts identified separately from any accounts used to hold *money* belonging to the *firm*.
- [Note: article 16(1)(e) of the *MiFID implementing Directive*]
- 7.4.12 G A *firm* may open one or more *client bank accounts* in the form of a *general client bank account*, a *designated client bank account* or a *designated client fund account* (see CASS 7.9.3G).
- 7.4.13 G A *designated client fund account* may be used for a *client* only where that *client* has consented to the use of that account and all other *designated client fund accounts* which may be pooled with it. For example, a *client* who consents to the use of bank A and bank B should have his *money* held in a different *designated client fund account* at bank B from a *client* who has consented to the use of banks B and C.

Payment of client money into a client bank account

- 7.4.14 G Two approaches that a *firm* can adopt in discharging its obligations under the *MiFID client money segregation requirements* are:
- (1) the 'normal approach'; or
 - (2) the 'alternative approach'.
- 7.4.15 R A *firm* that does not adopt the normal approach must first send a written confirmation to the *FSA* from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to operate another approach effectively.
- 7.4.16 G The alternative approach would be appropriate for a *firm* that operates in a multi-product, multi-currency environment for which adopting the normal approach would be unduly burdensome and would not achieve the *client* protection objective. Under the alternative approach, *client money* is received into and paid out of a *firm's* own bank accounts; consequently the *firm* should have systems and controls that are capable of monitoring the *client money* flows so that the *firm* comply with its obligations to perform reconciliations of records and accounts (see *CASS 7.6.2R*). A *firm* that adopts the alternative approach will segregate *client money* into a *client bank account* on a daily basis, after having performed a reconciliation of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank account* and *client transaction accounts* to determine what the *client money* requirement was at the close of the previous *business day*.
- 7.4.17 G Under the normal approach, a *firm* that receives *client money* should either:
- (1) pay it promptly, and in any event no later than the next *business day* after receipt, into a *client bank account*; or
 - (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see *CASS 7.2.15R*).
- 7.4.18 G Under the alternative approach, a *firm* that receives *client money* should:
- (1)
 - (a) pay any *money* to or on behalf of *clients* out of its own account; and
 - (b) perform a reconciliation of records and accounts required under *CASS 7.6.2R* (Records and accounts), *SYSC 4.1.1R* and *SYSC 6.1.1R*, adjust the balance held in its *client bank accounts* and then segregate the *money* in the *client bank account* until the calculation is re-performed on the next *business day*; or
 - (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see *CASS 7.2.15R*).

- 7.4.19 G A *firm* that adopts the alternative approach may:
- (1) receive all *client money* into its own bank account;
 - (2) choose to operate the alternative approach for some types of business (for example, overseas equities transactions) and operate the normal approach for other types of business (for example, *contingent liability investments*) if the *firm* can demonstrate that its systems and controls are adequate (see CASS 7.4.15R); and
 - (3) use an historic average to account for uncleared cheques (see paragraph 4 of CASS 7 Annex 1).

7.4.20 G Pursuant to the *MiFID client money segregation requirements*, a *firm* should ensure that any *money* other than *client money* deposited in a *client bank account* is promptly paid out of that account unless it is a minimum sum required to open the account, or to keep it open.

7.4.21 R If it is prudent to do so to ensure that *client money* is protected, a *firm* may pay into a *client bank account* *money* of its own, and that *money* will then become *client money* for the purposes of this chapter.

Automated transfers

- 7.4.22 G Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach that receives *client money* in the form of an automated transfer should take reasonable steps to ensure that:
- (1) the *money* is received directly into a *client bank account*; and
 - (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* promptly, and in any event, no later than the next *business day* after receipt.

Mixed remittance

- 7.4.23 G Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach that receives a *mixed remittance* (that is part *client money* and part other *money*) should:
- (1) pay the full sum into a *client bank account* promptly, and in any event, no later than the next *business day* after receipt; and
 - (2) pay the *money* that is not *client money* out of the *client bank account* promptly, and in any event, no later than one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

Appointed representatives, field representatives and other agents

- 7.4.24 G (1) Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach should establish and maintain

procedures to ensure that *client money* received by its *appointed representatives, field representatives* or other agents is:

- (a) paid into a *client bank account* of the *firm* promptly, and in any event, no later than the next *business day* after receipt; or
- (b) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address promptly, and in any event, no later than the close of the third *business day*.

- (2) For the purposes of 1(b), *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* promptly, and in any event, no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* in the form of a cheque to be sent to the *firm* or the specified business address of the *firm* by first class post promptly, and in any event, no later than the next *business day* after receipt, would be in line with 1(b).

7.4.25 G The *firm* should ensure that its *appointed representatives, field representatives* or other agents keeps *client money* separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.

7.4.26 G A *firm* that operates a number of small branches, but holds or accounts for all *client money* centrally, may treat those small branches in the same way as *appointed representatives*.

Client entitlements

7.4.27 G Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach that receives outside the *United Kingdom* a *client* entitlement on behalf of a *client* should pay any part of it which is *client money*:

- (1) to, or in accordance with, the instructions of the *client* concerned; or
- (2) into a *client bank account* promptly, and in any event, no later than five *business days* after the *firm* is notified of its receipt.

7.4.28 G Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach should allocate a *client* entitlement that is *client money* to the individual *client* promptly and, in any case, no later than ten *business days* after notification of receipt.

Money due to a client from a firm

7.4.29 G Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach that is liable to pay *money* to a *client* should

promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

- (1) to, or to the order of, the *client*; or
- (2) into a *client bank account*.

Segregation in different currency

- 7.4.30 R A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted each *day* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.
- 7.4.31 G The *rule* on segregation of *client money* in a different currency (CASS 7.4.30R) does not apply where the *client* has instructed the *firm* to convert the *money* into and hold it in a different currency.

7.5 Transfer of client money to a third party

- 7.5.1 G This section sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to a *clearing house* in the form of margin for the *firm's* obligations to the *clearing house* that are referable to transactions undertaken by the *firm* for the relevant clients. They may also arise when a *firm* passes *client money* to an *intermediate broker* for *contingent liability investments* in the form of initial or variation margin on behalf of a *client*. In these circumstances, the *firm* remains responsible for that *client's equity balance* held at the *intermediate broker* until the contract is terminated and all of that *client's* positions at that *broker* closed. If a *firm* wishes to discharge itself from its fiduciary duty, it should do so in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (CASS 7.2.15R).
- 7.5.2 R A *firm* may allow another *person*, such as an exchange, a *clearing house* or an *intermediate broker*, to hold or control *client money*, but only if:
- (1) the *firm* transfers the *client money*:
 - (a) for the purpose of a transaction for a *client* through or with that *person*; or
 - (b) to meet a *client's* obligation to provide collateral for a transaction (for example, an *initial margin* requirement for a *contingent liability investment*); and
 - (2) in the case of a *retail client*, that *client* has been notified that the *client money* may be transferred to the other *person*.

7.5.3 G A *firm* should not hold excess *client money* in its *client transaction accounts* with *intermediate brokers, settlement agents* and *OTC* counterparties; it should be held in a *client bank account*.

7.6 Records, accounts and reconciliations

Records and accounts

7.6.1 R A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *client* from *client money* held for any other *client*, and from its own *money*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

7.6.2 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *client money* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

Client entitlements

7.6.3 G Pursuant to *CASS 7.6.2R, SYSC 4.1.1R* and *SYSC 6.1.1R*, a *firm* should take reasonable steps to ensure that is notified promptly of any receipt of *client money* in the form of a *client* entitlement.

Record keeping

7.6.4 R A *firm* must ensure that records made under *CASS 7.6.1R* and *CASS 7.6.2R* are retained for a period of five years after they were made.

7.6.5 G A *firm* should ensure that it makes proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*.

Internal reconciliations of client money balances

7.6.6 G (1) *SYSC 4.1.1R* requires *firms* to have robust governance arrangements, such as internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems. In addition, *SYSC 6.1.1R* requires *firms* to establish, implement and maintain adequate policies and procedures sufficient to ensure the *firm's* compliance with its obligations under the *regulatory system*. Carrying out internal reconciliations of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* should be one of the steps a *firm* takes to satisfy its obligations under *CASS 7.6.2R, SYSC 4.1.1R* and *SYSC 6.1.1R*.

- (2) A *firm* should perform such internal reconciliations:
- (a) as often as is necessary; and
 - (b) as soon as reasonably practicable after the date to which the reconciliation relates;
- to ensure the accuracy of the *firm's* records and accounts.
- (3) The *standard method of internal client money reconciliation* sets out a method of reconciliation of *client money* balances that the *FSA* believes should be one of the steps that a *firm* takes when carrying out internal reconciliations of *client money*.

Records

- 7.6.7 R (1) A *firm* must make records, sufficient to show and explain the method of internal reconciliation of *client money* balances under *CASS 7.6.2R* used, and if different from the *standard method of internal client money reconciliation*, to show and explain that:
- (a) the method of internal reconciliation of *client money* balances used affords an equivalent degree of protection to the *firm's clients* to that afforded by the *standard method of internal client money reconciliation*; and
 - (b) in the event of a *primary pooling event* or a *secondary pooling event*, the method used is adequate to enable the *firm* to comply with the *client money (MiFID business) distribution rules*.
- (2) A *firm* must make these records on the date it starts using a method of internal reconciliation of *client money* balances and must keep it made for a period of five years after ceasing to use it.
- 7.6.8 R A *firm* that does not use the *standard method of internal client money reconciliation* must first send a written confirmation to the *FSA* from the *firm's* auditor that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively.

Reconciliations with external records

- 7.6.9 R A *firm* must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom *client money* is held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

Frequency of external reconciliations

- 7.6.10 G (1) A *firm* should perform the required reconciliation of *client money*

balances with external records:

- (a) as regularly as is necessary; and
- (b) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom *client money* is held.

- (2) In determining whether the frequency is adequate, the *firm* should consider the risks which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the *client money* is held.

Method of external reconciliations

- 7.6.11 G A method of reconciliation of *client money* balances with external records that the *FSA* believes is adequate is when a *firm* compares:
- (1) the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which those accounts are held; and
 - (2) the balance, currency by currency, on each *client transaction account* as recorded by the *firm*, with the balance on that account as set out in the statement or other form of confirmation issued by the *person* with whom the account is held;
- and identifies any discrepancies between them.
- 7.6.12 R Any *approved collateral* held in accordance with the *client money rules* must be included within this reconciliation.
- #### Reconciliation discrepancies
- 7.6.13 R When any discrepancy arises as a result of a *firm's* internal reconciliations, the *firm* must identify the reason for the discrepancy and ensure that:
- (1) any *shortfall* is paid into a *client bank account* by the close of business on the day that the reconciliation is performed; or
 - (2) any excess is withdrawn within the same time period (but see *CASS 7.4.20G* and *CASS 7.4.21R*).
- 7.6.14 R When any discrepancy arises as a result of the reconciliation between a *firm's* internal records and those of third parties that hold *client money*, the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the *firm*.

- 7.6.15 R While a *firm* is unable to resolve a difference arising from a reconciliation between a *firm's* internal records and those of third parties that hold *client money*, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* or *approved collateral* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

Notification requirements

- 7.6.16 R A *firm* must inform the *FSA* in writing without delay:
- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in *CASS* 7.6.1R, *CASS* 7.6.2R or *CASS* 7.6.9R;
 - (2) if having carried out a reconciliation it has not complied with, or is unable, in any material respect, to comply with *CASS* 7.6.13R to *CASS* 7.6.15R.

Audit of compliance with the MiFID client money rules

- 7.6.17 G *Firms* are reminded that the auditor of the *firm* has to confirm in the report submitted to the *FSA* under *SUP* 3.10 (Duties of auditors: notification and report on client assets) that the *firm* has maintained systems adequate to enable it to comply with the *client money rules*.
- 7.6.18 G *Firms* that do not adopt the normal approach are reminded that the *firm's* auditor must confirm to the *FSA* in writing that the *firm* has in place systems and controls which are adequate to enable it to operate the alternative approach effectively (see *CASS* 7.4.15R).
- 7.6.19 G *Firms* that do not use the *standard method of internal client money reconciliation* are reminded that the *firm's* auditor must confirm to the *FSA* in writing that the *firm* has in place systems and controls which are adequate to enable it to use another method effectively (see *CASS* 7.6.8R).

7.7 Statutory trust

- 7.7.1 G Section 139(1) of the *Act* (Miscellaneous ancillary matters) provides that *rules* may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of *failure* of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.

Requirement

- 7.7.2 R A *firm* receives and holds *client money* as trustee (or in Scotland as agent)

on the following terms:

- (1) for the purposes of and on the terms of the *client money rules* and the *client money (MiFID business) distribution rules*;
- (2) subject to (3), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect of *client money* received in the course of *insurance mediation activity* and that was opted in to this chapter) for whom that *money* is held, according to their respective interests in it;
- (3) after all valid claims in (2) have been met, for *clients* which are *insurance undertakings* with respect of *client money* received in the course of *insurance mediation activity* according to their respective interests in it;
- (4) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
- (5) after all valid claims and costs under (2) to (4) have been met, for the *firm* itself.

7.8 Notification and acknowledgement of trust

Banks

- 7.8.1 R (1) When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:
- (a) all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
 - (b) the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.
- (2) In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the required acknowledgement within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and *deposit* it in a *client bank account* with another bank as soon as possible.

Exchange, clearing house, intermediate broker or OTC counterparty

- 7.8.2 R (1) A *firm* which undertakes any *contingent liability investment* for *clients* through an exchange, *clearing house*, *intermediate broker* or

OTC counterparty must, before the *client transaction account* is opened with the exchange, *clearing house*, *intermediate broker* or *OTC* counterparty:

- (a) notify the *person* with whom the account is to be opened that the *firm* is under an obligation to keep *client money* separate from the *firm's* own *money*, placing *client money* in a *client bank account*;
 - (b) instruct the *person* with whom the account is to be opened that any *money* paid to it in respect of that transaction is to be credited to the *firm's client transaction account*; and
 - (c) require the person with whom the account is to be opened to acknowledge in writing that the *firm's client transaction account* is not to be combined with any other account, nor is any right of set-off to be exercised by that *person* against *money* credited to the *client transaction account* in respect of any sum owed to that *person* on any other account.
- (2) If the *intermediate broker* or *OTC* counterparty does not provide the required acknowledgement within 20 *business days* of the dispatch of the notice and instruction, the *firm* must cease using the *client transaction account* with that *broker* or counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.

7.9 Client money distribution

Application

- 7.9.1 R This section (the *client money (MiFID business) distribution rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

Purpose

- 7.9.2 G The *client money (MiFID business) distribution rules* seek to facilitate the timely return of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the *firm* holds *client money*.

Failure of the authorised firm: primary pooling event

- 7.9.3 G A *firm* can hold *client money* in either a *general client bank account*, a *designated client bank account* or a *designated client fund account*. A *firm* holds all *client money* in *general client bank accounts* for its *clients* as part of a common pool of *money* so those particular *clients* do not have a claim against a specific sum in a specific account; they only have a claim to the *client money* in general. A *firm* holds *client money* in *designated client bank accounts* or *designated client fund accounts* for those *clients* that requested their *client money* be part of a specific pool of *money*, so those particular *clients* do have a claim against a specific sum in a specific account; they do

not have a claim to the *client money* in general unless a *primary pooling event* occurs. A *primary pooling event* triggers a notional pooling of all the *client money*, in every type of *client money* account, and the obligation to distribute it. If the *firm* becomes insolvent, and there is (for whatever reason) a *shortfall in money* held for a *client* compared with that *client's* entitlements, the available funds will be distributed in accordance with the *client money (MiFID business) distribution rules*.

- 7.9.4 R A *primary pooling event* occurs:
- (1) on the *failure* of the *firm*;
 - (2) on the vesting of assets in a *trustee* in accordance with an 'assets requirement' imposed under section 48(1)(b) of the *Act*;
 - (3) on the coming into force of a *requirement* for all *client money* held by the *firm*; or
 - (4) when the *firm* notifies, or is in breach of its duty to notify, the *FSA*, in accordance with CASS 7.6.16R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

- 7.9.5 R CASS 7.9.4R(4) does not apply so long as:
- (1) the *firm* is taking steps, in consultation with the *FSA*, to establish those records; and
 - (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

Pooling and distribution

- 7.9.6 R If a *primary pooling event* occurs:
- (1) *client money* held in each *client money* account of the *firm* is treated as pooled; and
 - (2) the *firm* must distribute that *client money* in accordance with CASS 7.7.2R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7.9.7R.
- 7.9.7 R
- (1) When, in respect of a *client*, there is a positive individual *client* balance and a negative *client equity balance*, the credit must be offset against the debit reducing the individual *client* balance for that *client*.
 - (2) When, in respect of a *client*, there is a negative individual *client* balance and a positive *client equity balance*, the credit must be offset against the debit reducing *client equity balance* for that *client*.
- 7.9.8 G A *client's* main claim is for the return of *client money* held in a *client bank account*. A *client* may be able to claim for any *shortfall* against money held

in a *firm's* own account. For that claim, the *client* will be an unsecured creditor of the *firm*.

Client money received after the failure of the firm

- 7.9.9 R *Client money* received by the *firm* after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:
- (1) it is *client money* relating to a transaction that has not settled at the time of the *primary pooling event*; or
 - (2) it is *client money* relating to a *client*, for whom the *client money* entitlement, calculated in accordance with CASS 7.9.7R, shows that *money* is due from the *client* to the *firm* at the time of the *primary pooling event*.
- 7.9.10 G *Client money* received after the *primary pooling event* relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:
- (1) an equity transaction with a trade date before the date of the *primary pooling event* and a settlement date after the date of the *primary pooling event*; or
 - (2) a *contingent liability investment* that is 'open' at the time of the *primary pooling event* and is due to settle after the *primary pooling event*.
- 7.9.11 R If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:
- (1) pay the full sum into the separate *client bank account* opened in accordance with CASS 7.9.9R; and
 - (2) pay the *money* that is not *client money* out of that *client bank account* into a *firm's* own bank account within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.
- 7.9.12 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.
- Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events
- 7.9.13 R If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.
- 7.9.14 R A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under CASS 7.4.1R(1) to

(3) (Depositing client money) or CASS 7.5.2R (Transfer of client money to a third party).

- 7.9.15 R CASS 7.9.19R to CASS 7.9.31R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.
- 7.9.16 G When *client money* is transferred to a third party, a *firm* continues to owe fiduciary duties to the *client*. Whether a *firm* is liable for a *shortfall* in *client money* caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee.

Failure of a bank

- 7.9.17 G When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with CASS 7.9.19R. The *firm* would be expected to reflect the *shortfall* that arises at the *failed* bank in its records of the entitlement of *clients* and of *money* held with third parties.
- 7.9.18 G The *client money (MiFID business) distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.

Failure of a bank: pooling

- 7.9.19 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:
- (1) in relation to every *general client bank account* of the *firm*, the provisions of CASS 7.9.21R, CASS 7.9.26R and CASS 7.9.27R will apply;
 - (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of CASS 7.9.23R, CASS 7.9.26R and CASS 7.9.27R will apply;
 - (3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of CASS 7.9.24R, CASS 7.9.26R and CASS 7.9.27R will apply;
 - (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts*, is not pooled with any other *client money*; and
 - (5) any *money* held in a *designated client fund account*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money*.

- 7.9.20 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* or *designated client fund accounts* are held, then:
- (1) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of CASS 7.9.23R, CASS 7.9.26R and CASS 7.9.27R will apply; and
 - (2) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of CASS 7.9.24R, CASS 7.9.26R and CASS 7.9.27R will apply.
- 7.9.21 R *Money held in each general client bank account and client transaction account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or *client transaction account* of the *firm*, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).
- 7.9.22 G The term 'which should have been held' is a reference to the *failed* bank's *failure* to hold the *client money* at the time of the pooling event.
- 7.9.23 R For each *client* with a *designated client bank account* held at the *failed* bank:
- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the

client money shortfall at the *failed* bank until the *client* is repaid; and

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

7.9.24 R *Money held in each designated client fund account with the failed bank must be treated as pooled with any other designated client fund accounts of the firm which contain part of the same designated fund and:*

- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, in accordance with (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

7.9.25 R *A client whose money was held, or which should have been held, in a designated client bank account with a bank that has failed is not entitled to claim in respect of that money against any other client bank account or client transaction account of the firm.*

Client money received after the failure of a bank

7.9.26 R *Client money received by the firm after the failure of a bank, that would otherwise have been paid into a client bank account at that bank:*

- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
- (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or

(b) returned to the *client* as soon as possible.

7.9.27 R If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

7.9.28 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

Failure of an intermediate broker, settlement agent or OTC counterparty:
Pooling

7.9.29 R If a *secondary pooling event* occurs as a result of the *failure* of an *intermediate broker*, *settlement agent* or *OTC counterparty*, then in relation to every *general client bank account* and *client transaction account* of the *firm*, the provisions of CASS 7.9.30R and CASS 7.9.31R will apply.

7.9.30 R *Money* held in each *general client bank account* and *client transaction account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction account*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or a *client transaction accounts* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed intermediate broker*, *settlement agent* or *OTC counterparty* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) (as described in CASS 7.6.6G).

Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty

- 7.9.31 R *Client money* received by the *firm* after the *failure* of an *intermediate broker, settlement agent* or *OTC* counterparty, that would otherwise have been paid into a *client transaction account* at that *intermediate broker, settlement agent* or *OTC* counterparty:
- (1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed intermediate broker, settlement agent* or *OTC* counterparty; and
 - (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or
 - (b) returned to the *client* as soon as possible.

Notification to the FSA: failure of a bank, intermediate broker, settlement agent or OTC counterparty

- 7.9.32 R On the *failure* of a third party with which *money* is held, a *firm* must notify the *FSA*:
- (1) as soon as it becomes aware of the *failure* of any bank, *intermediate broker, settlement agent, OTC* counterparty or other entity with which it has placed, or to which it has passed, *client money*; and
 - (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

CASS 7 Annex 1G

As explained in CASS 7.6.6G, in complying with its obligations under CASS 7.6.2R (Records and accounts), SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance), a *firm* should carry out internal reconciliations of records and accounts of *client money* the *firm* holds in *client bank accounts* and *client transaction accounts*. This Annex sets out a method of reconciliation that the *FSA* believes is appropriate for these purposes (the *standard method of internal client money reconciliation*).

1. Each *business day*, a *firm* that adopts the normal approach (see CASS 7.4.17G) should check whether its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on the previous *business day*, was at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on that day.
2. Each *business day*, a *firm* that adopts the alternative approach (see CASS 7.4.18R) should ensure that its *client money* resource, being the aggregate balance on the *firm's client bank accounts*, as at the close of business on that *business day* is at least equal to the *client money* requirement, as defined in paragraph 6 below, as at the close of business on the previous *business day*.

3. No excess or *shortfall* should arise when adopting the alternative approach.
4. If a *firm* is operating the alternative approach and draws a cheque on its own bank account, it will be expected to account for those cheques that have not yet cleared when performing its reconciliations of records and accounts under paragraph 2. An historic average estimate of uncleared cheques may be used to satisfy this obligation (see CASS 7.4.19G(3)).
5. For the purposes of performing its reconciliations of records and accounts under paragraphs 1 or 2, a *firm* should use the values contained in its accounting records, for example its cash book, rather than values contained in statements received from its banks and other third parties.

Client money requirement

6. The *client money* requirement is either:
 - (1) (subject to paragraph 18) the sum of, for all *clients*:
 - (a) the individual *client* balances calculated in accordance with paragraph 7, excluding:
 - (i) individual *client* balances which are negative (that is, debtors); and
 - (ii) *clients' equity balances*; and
 - (b) the total *marginied transaction* requirement calculated in accordance with paragraph 14; or
 - (2) the sum of:
 - (a) for each *client bank account*:
 - (i) the amount which the *firm's* records show as held on that account; and
 - (ii) an amount that offsets each negative net amount which the *firm's* records show attributed to that account for an individual *client*; and
 - (b) the total *marginied transaction* requirement calculated in accordance with paragraph 14.

General transactions

7. The individual *client* balance for each *client* should be calculated in accordance with this table:

Individual client balance calculation

	Free <i>money</i> (no trades) and	A
	sale proceeds due to the <i>client</i> :	
(a)	in respect of <i>principal deals</i> when the <i>client</i> has delivered the <i>designated investments</i> ; and	B
(b)	in respect of <i>agency deals</i> , when either:	
(i)	the sale proceeds have been received by the <i>firm</i> and the <i>client</i> has delivered the <i>designated investments</i> ; or	C1
(ii)	the <i>firm</i> holds the <i>designated investments</i> for the <i>client</i> ; and	C2
	the cost of purchases:	
(c)	in respect of <i>principal deals</i> , paid for by the <i>client</i> but the <i>firm</i> has not delivered the <i>designated investments</i> to the <i>client</i> ; and	D
(d)	in respect of <i>agency deal</i> , paid for by the <i>client</i> when either:	
(i)	the <i>firm</i> has not remitted the <i>money</i> to, or to the order of, the counterparty; or	E1
(ii)	the <i>designated investments</i> have been received by the <i>firm</i> but have not been delivered to the <i>client</i> ;	E2
Less		
	<i>money</i> owed by the <i>client</i> in respect of unpaid purchases by or for the <i>client</i> if delivery of those <i>designated investments</i> has been made to the <i>client</i> ; and	F
	Proceeds remitted to the <i>client</i> in respect of sales transactions by or for the <i>client</i> if the <i>client</i> has not delivered the <i>designated investments</i> .	G
Individual <i>Client</i> Balance 'X' = (A+B+C1+C2+D+E1+E2)-F-G		X

8. A *firm* should calculate the individual *client* balance using the contract value of any *client* purchases or sales.
9. A *firm* may choose to segregate *designated investments* instead of the value identified in paragraph 7 (except E1) if it ensures that the *designated investments* are held in such a manner that the *firm* cannot use them for its own purposes.

10. Segregation in the context of paragraph 9 can take many forms, including the holding of a *safe custody investment* in a nominee name and the safekeeping of certificates evidencing title in a fire resistant safe. It is not the intention that all the *custody rules* in the *MiFID custody chapter* should be applied to *designated investments* held in the course of settlement.
11. In determining the *client money* requirement under paragraph 6, a *firm* need not include *money* held in accordance with CASS 7.2.8R (Delivery versus payment transaction).
12. In determining the *client money* requirement under paragraph 6, a *firm*:
 - (1) should include dividends received and interest earned and allocated;
 - (2) may deduct outstanding *fees*, calls, rights and interest charges and other amounts owed by the *client* which are due and payable to the *firm* (see CASS 7.2.9R);
 - (3) need not include *client money* in the form of *client* entitlements which are not required to be segregated (see CASS 7.4.27G) nor include *client money* forwarded to the *firm* by its appointed representatives, field representatives and other agents, but not received (see CASS 7.4.24G);
 - (4) should take into account any *client money* arising from CASS 7.6.13R (Reconciliation discrepancies); and
 - (5) should include any unallocated *client money*.

Equity balance

13. A *firm's* equity balance, whether with an exchange, *intermediate broker* or *OTC* counterparty, is the amount which the *firm* would be liable to pay to the exchange, *intermediate broker* or *OTC* counterparty (or vice-versa) in respect of the *firm's* *marginied transactions* if each of the open positions of the *firm's* *clients* was liquidated at the closing or settlement prices published by the relevant exchange or other appropriate pricing source and the *firm's* account with the exchange, *intermediate broker* or *OTC* counterparty is closed.

Margined transaction requirement

14. The total *marginied transaction* requirement is:
 - (1) the sum of each of the *client's* *equity balances* which are positive;Less
 - (2) the proportion of any individual negative *client* *equity balance* which is secured by *approved collateral*; and

- (3) the net aggregate of the *firm's* equity balance (negative balances being deducted from positive balances) on transaction accounts for *customers* with exchanges, *clearing houses*, *intermediate brokers* and *OTC* counterparties.
15. To meet a shortfall that has arisen in respect of the requirement in paragraph 6(1)(b) or 6(2)(b), a *firm* may utilise its own *approved collateral* provided it is held on terms specifying when it is to be realised for the benefit of *clients*, it is clearly identifiable from the *firm's* own property and the relevant terms are evidenced in writing by the *firm*. In addition, the proceeds of the sale of that *collateral* should be paid into a *client bank account*.
16. If a *firm's* total *marginied transaction* requirement is negative, the *firm* should treat it as zero for the purposes of calculating its *client money* requirement.
17. The terms '*client equity balance*' and '*firm's* equity balance' in paragraph 13 refer to cash values and do not include non-cash *collateral* or other *designated investments* held in respect of a *marginied transaction*.

Reduced client money requirement option

18. (1) When, in respect of a *client*, there is a positive individual *client* balance and a negative *client equity balance*, a *firm* may offset the credit against the debit and hence have a reduced individual *client* balance in paragraph 7 for that *client*.
- (2) When, in respect of a *client*, there is a negative individual *client* balance and a positive *client equity balance*, a *firm* may offset the credit against the debit and hence have a reduced *client equity balance* in paragraph 14 for that *client*.
19. The effect of paragraph 18 is to allow a *firm* to offset, on a *client* by *client* basis, a negative amount with a positive amount arising out of the calculations in paragraphs 7 and 14, and, by so doing, reduce the amount the *firm* is required to segregate.

After CASS 7, insert the following provisions. This material is all new and it is not underlined.

Mandates

Application

- 8.1.1 R This chapter applies to a *firm* (including in its capacity as trustee under CASS 5.4) in respect of any written authority from a *client* under which the *firm* may control a *client's* assets or liabilities in the course of, or in connection with, the *firm's*:

- (1) *designated investment business* (including *MiFID business*); and
- (2) *insurance mediation activity*, except where it relates to a *reinsurance contract*.

8.1.2 G Mandates or similar authorities for the purpose of this chapter include a *firm's* authority over a *client's* safe custody account, for example for stock lending purposes, a *firm's* authority over a *client's* bank or building society account including direct debits in favour of the *firm*, and a *firm* holding a *client's* credit card details.

8.1.3 G *Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passported activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see CASS 1.4.3G).

Purpose

8.1.4 G The *mandate rules* apply to those *firms* that control, rather than hold, *clients'* assets or are able to create liabilities in the name of a *client*. These *rules* seek to ensure that *firms* establish and maintain records and *internal controls* to prevent the misuse of the authority granted by the *client*.

General

8.1.5 R A *firm* that holds authorities of the sort referred to in this chapter, must establish and maintain adequate records and *internal controls* in respect of its use of the mandates, which must include:

- (1) an up-to-date list of the authorities and any conditions placed by the *client* or the *firm's* management on the use of them;
- (2) a record of all transactions entered into using the authority and *internal controls* to ensure that they are within the scope of authority of the *person* and the *firm* entering into the transaction;
- (3) the details of the procedures and authorities for the giving and receiving of instructions under the authority; and
- (4) where the *firm* holds a passbook or similar documents belonging to the *client*, *internal controls*, for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the *client* held by the *firm*.

Schedule 1

Record keeping requirements

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

CASS Sch 1.3

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>CASS 4.5.5R</i>	<i>Adequate records and internal controls in respect of the firm's use of mandates (see CASS 4.5.5R (1) to (4))</i>	<i>Up to date list of firm's authorities, all transactions entered into, important client documents held by the firm</i>	<i>Maintain current full details</i>	
...				
<i>CASS 5.8.3R</i>	<i>Mandates</i>	<i>Records of adequate internal controls for mandates</i>	<i>Not specified</i>	<i>not specified</i>
...				
<u><i>CASS 6.1.17R</i></u>	<u><i>Record of election to comply with the MiFID custody chapter</i></u>	<u><i>Record of election to comply with the MiFID custody chapter, including the date from which the election is to be effective</i></u>	<u><i>Date of the election</i></u>	<u><i>5 years (from the date the firm ceases to use the election)</i></u>
<u><i>CASS 6.3.1R(4)</i></u>	<u><i>Appropriateness of a MiFID investment firm's selection</i></u>	<u><i>Grounds upon which a MiFID investment firm satisfies itself as to the</i></u>	<u><i>Date of the selection</i></u>	<u><i>5 years (from the date the firm ceases to use the third party to hold</i></u>

	<u>of a third party</u>	<u>appropriateness of the <i>firm's</i> selection of a third party to hold <i>financial instruments</i> belonging to <i>clients</i></u>		<u><i>financial instruments</i> belonging to <i>clients</i></u>
<u>CASS 6.4.3R</u>	<u>Details of <i>clients</i> and <i>financial instruments</i> used for the <i>firm's</i> own account or the account of another <i>client</i> of the <i>firm</i></u>	<u>Details of the <i>client</i> on whose instructions the use of the <i>financial instruments</i> has been effected and the number of <i>financial instruments</i> used belonging to each <i>client</i></u>	<u>Maintain up-to-date records</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 6.5.1R</u>	<u><i>Financial instruments</i> held for each <i>client</i> and the <i>firm's</i> own <i>financial instruments</i></u>	<u>All that is necessary to enable the <i>firm</i> to distinguish <i>financial instruments</i> held for one <i>client</i> from <i>financial instruments</i> held for any other <i>client</i>, and from the <i>firm's</i> own <i>financial instruments</i></u>	<u>Maintain up-to-date records</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 6.5.2R</u>	<u><i>Financial instruments</i> held for <i>clients</i></u>	<u>Accurate records to ensure the correspondence between the <i>financial instruments</i> held for each <i>client</i> and the <i>financial instruments</i> held by the <i>firm</i></u>	<u>Maintain up-to-date records</u>	<u>5 years (from the date the record was made)</u>

		<u>and third parties</u>		
<u>CASS 7.1.3R(2)</u>	<u>Record of election to comply with the <i>MiFID client money chapter</i></u>	<u>Record of election to comply with the <i>MiFID client money chapter</i>, including the date from which the election is to be effective</u>	<u>Date of the election</u>	<u>5 years (from the date the <i>firm</i> ceases to use the election)</u>
<u>CASS 7.4.10R</u>	<u>Appropriateness of a <i>MiFID investment firm's</i> selection of a third party</u>	<u>Grounds upon which a <i>MiFID investment firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>client money</i></u>	<u>Date of the selection</u>	<u>5 years (from the <i>firm</i> ceases to use the third party to hold <i>client money</i>)</u>
<u>CASS 7.6.1R</u>	<u><i>Client money</i> held for each <i>client</i> and the <i>firm's</i> own <i>money</i></u>	<u>All that is necessary to enable the <i>firm</i> to distinguish <i>client money</i> held for one <i>client</i> from <i>client money</i> held for any other <i>client</i>, and from the <i>firm's</i> own <i>money</i></u>	<u>Maintain up-to-date records</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 7.6.2R</u>	<u><i>Client money</i> held for each <i>client</i></u>	<u>Accurate records to ensure the correspondence between the records and accounts of the entitlement of each <i>client</i> for whom the <i>firm</i> holds <i>client money</i> with the records and</u>	<u>Maintain up-to-date records</u>	<u>5 years (from the date the record was made)</u>

		<u>accounts of the client money the firm holds in client bank accounts and client transaction accounts</u>		
<u>CASS 7.6.7R</u>	<u>Internal reconciliation of client money balances</u>	<u>Explanation of method of internal reconciliation of client money balances used by the firm, and if different from the standard method of internal client money reconciliation, an explanation as to how the method used affords equivalent degree of protection to clients, and how it enables the firm to comply with the client money (MiFID business) distribution rules</u>	<u>Date the firm starts using the method</u>	<u>5 years (from the date the firm ceases to use the method)</u>
<u>CASS 7.9.21R(3)</u>	<u>Client money shortfall</u>	<u>Each client's entitlement to client money shortfall at the failed bank</u>	<u>Maintain up to date records</u>	<u>Until client is repaid</u>
<u>CASS 7.9.23R(3)</u>	<u>Client money shortfall</u>	<u>Each client's entitlement to client money shortfall at the failed bank</u>	<u>Maintain up to date records</u>	<u>Until client is repaid</u>

<u>CASS 7.9.24R(3)</u>	<u>Client money shortfall</u>	<u>Each client's entitlement to client money shortfall at the failed bank</u>	<u>Maintain up to date records</u>	<u>Until client is repaid</u>
<u>CASS 7.9.30R(3)</u>	<u>Client money shortfall</u>	<u>Each client's entitlement to client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty</u>	<u>Maintain up to date records</u>	<u>Until client is repaid</u>
<u>CASS 8.1.5R</u>	<u>Adequate records and internal controls in respect of the firm's use of mandates (see CASS 8.1.5R (1) to (4))</u>	<u>Up to date list of firm's authorities and any conditions regarding the use of authorities, all transactions entered into, details of procedures and authorities for giving and receiving of instructions under authorities, and important client documents held by the firm</u>	<u>Maintain current full details</u>	<u>Not specified</u>

Schedule 2

Notification requirements

CASS Sch 2.1 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				

<u>CASS 6.5.13R(1)</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.1R (Records and accounts), CASS 6.5.2R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external records)</u>	<u>The fact that the firm has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements</u>	<u>Without delay</u>
<u>CASS 6.5.13R(2)</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.10R (Reconciliation discrepancies)</u>	<u>The fact that the firm has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements</u>	<u>Without delay</u>
<u>CASS 7.6.16R(1)</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)</u>	<u>The fact that the firm has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements</u>	<u>Without delay</u>
<u>CASS 7.6.16R(2)</u>	<u>Non-compliance or inability, in any material respect, to comply with the requirements in</u>	<u>The fact that the firm has not complied or is unable, in any material</u>	<u>Non-compliance or inability, in any material respect, to</u>	<u>Without delay</u>

	<u>CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)</u>	<u>respect, to comply with the requirements and the reasons for that</u>	<u>comply with the requirements</u>	
<u>CASS 7.9.32R(1)</u>	<u>Failure of a third party with which money is held – i.e.: bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money</u>	<u>Full details</u>	<u>Firm becomes aware of the failure of the entity</u>	<u>As soon as the firm becomes aware</u>
<u>CASS 7.9.32R(2)</u>	<u>Failure of a third party with which money is held – i.e.: bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money</u>	<u>Intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved</u>	<u>Failure of third party with which client money is held</u>	<u>As soon as reasonably practical</u>

...

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls (SYSC)

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

...

- 1.1.8 G An example of the type of *rule* referred to in SYSC 1.1.7R with a different territorial scope is the custody rules in the non-directive custody chapter ~~in CASS 2 (Custody)~~. ~~CASS 2~~ These rules apply, for certain *UK firms*, to activities carried on from *branches* in other *EEA States* as well as *UK establishments* (CASS 1.3.3R (General application where?)). Therefore SYSC 2 and SYSC 3 apply to the *custody* activities described in ~~CASS 2~~ the non-directive custody chapter carried on from such a *branch* by such a *UK firm*. The *UK firm* must, for example, take reasonable care to establish systems and controls under SYSC 3.1.1R as are appropriate to those activities carried on from its *EEA branches* as well as from its *UK establishments*.

...

Annex C

Amendments to the Supervision manual (SUP)

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

...

Applicable sections (see SUP 3.1.1 R)

3.1.2	R	(1) Category of firm	(2) Section applicable to firm	(3) Section applicable to its auditor
		(1) ...		
		(2) <i>Authorised professional firm not within (1) to which either or both of CASS 2 (Client assets) and CASS 4 (Client money and mandates: designated investment business) the non-directive custody chapter, non-directive client money chapter, MiFID custody chapter or MiFID client money chapter applies; unless the firm is regulated by The Law Society (England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland (Note 2)</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
		...		
		(7) <i>Investment management firm, personal investment firm (other than a small personal investment firm) or securities and futures firm (Note 3) which, in each case, has an auditor appointed as a result of a statutory provision other than the Act (<u>Notes 3 and</u></i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8 - SUP 3.10</i>

	<u>3A)</u>		
(7A)	<i>Investment management firm, personal investment firm (other than a small personal investment firm), or securities and futures firm not within (7) to which either or both of CASS 2 (Client assets) and CASS 4 (Client money and mandates: designated investment business) the <u>non-directive custody chapter, non-directive client money chapter, MiFID custody chapter or MiFID client money chapter</u> applies</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
...			
(7D)	<i><u>Sole trader or partnership that is a MiFID investment firm (Note 3B)</u></i>	<i><u>SUP 3.1 – SUP 3.7</u></i>	<i><u>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</u></i>
...			
(10)	<i>Insurance intermediary (other than an exempt insurance intermediary) to which the <u>insurance client money chapter CASS 5 (Client money and mandates)</u> (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
...			
Note 1 = ...			
Note 2 = In row (2):			
(a)	CASS 2 (Client assets) <i>The <u>non-directive custody chapter</u> is treated as applying only if (i) the <u>firm safeguardings and administerings investments</u> in connection with <u>managing investments</u> (other than when acting as trustee), or (ii) it <u>safeguardings and administerings investments</u> in relation to <u>bonded investments</u> (and, in either case, it</i>		

	<u>has not opted to conduct all business that would fall within the <i>non-directive custody chapter</i> under the <i>MiFID custody chapter</i>).</u>
(b)	CASS 4 (Client money and mandates: designated investment business) <u>The <i>non-directive client money chapter</i> is treated as applying only if the <i>firm</i> receives or holds <i>client money</i> other than under an arrangement where commission is rebated to the <i>client</i> (and assuming that it has not opted to conduct all business that would fall within the <i>non-directive client money chapter</i> under the <i>MiFID client money chapter</i>);</u>
	but, if <u>the <i>custody rules</i> or the <i>client money rules</i> above CASS 2 or CASS 4 is are treated as applying then <i>SUP 3.10</i> (Duties of auditors: notification and report on client assets) applies to the whole of the business within the scope of <u>the <i>custody rules</i> or the <i>client money rules</i> above CASS 2 or CASS 4.</u></u>
	...
	Note 3 = ...
	<u>Note 3A = If the <i>firm</i> has elected to comply with the <i>MiFID custody chapter</i> or the <i>MiFID client money chapter</i> also in respect of its <i>non-MiFID business</i> then <i>SUP 3.10</i> will apply to the whole of the business within the scope of the <i>MiFID custody chapter</i> or the <i>MiFID client money chapter</i>.</u>
	...
	<u>Note 3B = A <i>sole trader</i> or a <i>partnership</i> that is a <i>MiFID investment firm</i> must have its annual accounts audited.</u>
	...

...

Incoming firms

3.1.3 R This chapter ~~does not apply~~ applies to an *incoming EEA firm* (and the auditor of such a *firm*) only if it has a without a top-up permission or an auditor of such a *firm*.

...

3.1.8 G This chapter applies to an *authorised professional firm* as set out in rows (1) to (3) of *SUP 3.1.2R*:

- (1) a *firm* in row (1) is treated in the same way as its equivalent in row (7);
- (2) large parts of this chapter apply to a *firm* in row (2) and its auditor; the report on client assets under *SUP 3.10* (Duties of auditors: notification and report on client assets) must cover compliance for the whole of the business within the scope of whichever of ~~CASS 2~~

~~and CASS 4~~ the custody rules and the client money rules ~~is are~~ treated as applying; but there is no requirement for the auditor to prepare a report to the FSA on the ~~firm's~~ firm's financial statements;

- (3) this chapter has limited application to a *firm* in row (3) and its auditor.

...

3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the client money rules in the non-directive client money chapter (~~CASS 4~~), if that ~~firm~~ firm is regulated by:

- (1) the Law Society (England and Wales);
- (2) the Law Society of Scotland;
- (3) the Law Society of Northern Ireland.

...

Client assets report

3.10.5	R	Whether in the auditor's opinion	
	(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the rules in <u>custody rules, the collateral rules and the client money rules (except CASS 5.2)</u> CASS 2 to CASS 4 and CASS 5.1 to CASS 5.8 (except CASS 5.2) throughout the period since the last date as at which a report was made;	
	(2)	the <i>firm</i> was in compliance with the rules in <u>custody rules, the collateral rules and the client money rules (except CASS 5.2)</u> CASS 2 to CASS 4 and CASS 5.1 to CASS 5.8 (except CASS 5.2) at the date as at which the report has been made;	
	(3)	...	
	(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <u>rules in CASS 4.4, and CASS 5.6 and CASS 7.9</u> (Client money distribution) in relation to that pooling event.	

...

Client assets report: timing of submission

3.10.7 R An auditor must deliver a report under SUP 3.10.4R to the FSA ~~so as to be received~~ within a reasonable time from the four months of the end of each period covered, unless it is the auditor of a *firm* falling within category (10) of SUP 3.1.2R.

[Note: article 20 of the *MiFID implementing Directive*]

3.10.7A G A period of four months, in ordinary circumstances, would be considered by the FSA as a reasonable time for the auditor to deliver the client assets report to the FSA.

3.10.8 R If an auditor is unable to report to the FSA within ~~the timetable set out in SUP 3.10.7R~~ a reasonable time, the auditor must notify the FSA and advise the FSA of the reasons why it has been unable to meet the requirements of SUP 3.10.7R.

...

6.4.22 G In deciding whether to cancel a *firm's part IV permission*, the FSA will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

- (1) there are unresolved, unsatisfied or undischarged complaints against the *firm* from any of its *customers*;
- (2) the *firm* has complied with CASS 4.3.99R, ~~and~~ CASS 5.5.80R and CASS 7.2.15R (Client money: discharge of fiduciary duty) and CASS 4.3.104R and CASS 7.2.19R (Client money: allocated but unclaimed client money) if it has ceased to hold *client money*; these *rules* apply to both repayment and transfer to a third party;
- (3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R and COBS 7.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money));
- (4) ...

...

SUP 6 Annex 4G

SUP 6 Annex 4.2 Additional guidance for a firm winding down (running off) its business

1. ...
2. A *firm* must comply with CASS 4.3.99R, ~~and~~ CASS 5.5.80R and CASS 7.2.15R (Client money: discharge of fiduciary duty) and CASS 4.3.104R and CASS 7.2.19R (Client money: ~~a~~ Allocated but unclaimed client money) if it is ceasing to hold *client money*. A *firm* must also cease to hold or control *custody assets* in accordance with instructions received from *clients* (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R and COBS 7.1.7R (Information concerning safeguarding

of designated investments belonging to clients and client money). These *rules* apply to both repayment and transfer to a third party.

...

Schedule 2 Notification requirements

SUP Sch
2.2

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 3.10	Auditor: <i>client assets</i>	Either: (1)	Report period must end no more than 53 weeks after previous report.	Four months <u>A reasonable time</u>
...				

...

Annex D

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

Chapter 5: Interim Prudential Requirements for Former IMRO Firms

...

- 5.3.1(5) G The requirement to maintain adequate records of movements and holdings of *client money* and any interest paid on *client money* balances, are set out in CASS 4.1 to 4.3 (with respect of *designated investment business* that is not *MiFID business*) and in CASS 7.1 to 7.8 (with respect of *MiFID business*).

...

**SUPERVISION MANUAL (RETAIL MEDIATION ACTIVITIES RETURN)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 January 2007.

Amendments to the Supervision Manual

- D. The commencement of the Supervision Manual (Retail Mediation Activities Return) Instrument 2006 (FSA 2006/14) was suspended by the Supervision Manual (Retail Mediation Activities Return) (Suspension) Instrument 2006 (FSA 2006/30), pending a further instrument from the Financial Services Authority. This instrument rescinds the suspension, and provides that FSA 2006/14 will come into force on the commencement date given above.

Citation

- E. This instrument may be cited as the Supervision Manual (Retail Mediation Activities Return) Instrument 2007.

By order of the Board
25 January 2007

**APPROVED PERSONS REGIME (SIMPLIFICATION AND MIFID) INSTRUMENT
2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval of particular arrangements);
 - (2) section 64 (Conduct: statements and codes);
 - (3) section 138 (General rule-making power);
 - (4) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (6) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) the provisions relating to the deletion of the sole trader function in MIPRU 2.2.3G(3), SUP 10.4.5R, SUP 10.6.1AG and SUP 10.6.30R to SUP 10.6.32G, SUP 12.2.14G(2) and SUPTP 8D in Annex G and the deletion of sole trader function from the Glossary in Annex A come into force on 1 February 2007;
 - (2) the remainder of the instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA’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	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Statements of Principle and Code of Conduct for Approved Persons (APER)	Annex C
The Fit and Proper test for Approved Persons sourcebook (FIT)	Annex D
Prudential sourcebook for Insurers (INSPRU)	Annex E
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex F
Supervision manual (SUP)	Annex G
Credit Unions sourcebook (CRED)	Annex H

Citation

- E. This instrument may be cited as the Approved Persons Regime (Simplification and MiFID) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Glossary

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

<i>finance function</i>	controlled function CF13 in the table of controlled functions, described more fully in SUP 10.8.1R.
<i>governing function</i>	any of the <i>controlled functions</i> 1 to <u>76</u> in the <i>table of controlled functions</i> .
<i>internal audit function</i>	controlled function CF15 in the table of controlled functions, described more fully in SUP 10.8.6R.
<u><i>Lloyd's actuary function</i></u>	<u><i>controlled function CF12B in the table of controlled functions, described more fully in SUP 10.7.22R.</i></u>
<i>risk assessment function</i>	controlled function CF14 in the table of controlled functions, described more fully in SUP 10.8.3R.
<i>significant influence function</i>	any of the <i>controlled functions</i> 1 to 20 <u>12B</u> , and <u>28 and 29</u> in the <i>table of controlled functions</i> .
<i>significant management (designated investment business) function</i>	controlled function CF16 in the table of controlled functions, described more fully in SUP 10.9.10R.
<i>significant management (financial resources) function</i>	controlled function CF19 in the table of controlled functions, described more fully in SUP 10.9.16R.
<i>significant management (insurance underwriting) function</i>	controlled function CF18 in the table of controlled functions, described more fully in SUP 10.9.14R.
<i>significant management (other business)</i>	controlled function CF17 in the table of controlled functions, described more fully in SUP 10.9.12R.

*operations)
function*

*significant
management
(settlements)
function*

controlled function CF20 in the table of controlled functions, described more fully in SUP 10.9.18R.

*significant
management
function*

any of the controlled functions ~~16 to 20~~ CF29 in the table of controlled functions, described more fully in SUP 10.9.10R.

*sole trader
function*

controlled function CF7 in the table of controlled functions, described more fully in SUP 10.6.30R.

*systems and
controls
function*

any of controlled functions ~~13 to 15~~ CF28 in the table of controlled functions, described more fully in SUP 10.8.1R.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

- 3.2.10 G (1) ...
- (3) The term 'risk assessment function' refers to the generally understood concept of risk assessment within a *firm*, that is, the function of setting and controlling risk exposure. The risk assessment function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- ...
- 3.2.15 G Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the *regulatory system*, oversee the functioning of the internal audit function (if applicable – see SYSC 3.2.16G) and provide an interface between management and the external auditors ...
- 3.2.16 G (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an ~~*internal audit function*~~ internal audit function. An ~~*internal audit function*~~ internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate *senior manager*, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the *firm* and have appropriate access to a *firm's* records.
- (2) The term 'internal audit function' refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- ...

- 6.2.2 G The term 'internal audit function' in SYSC 6.2.1R (and SYSC 4.1.11G) refers to the generally understood concept of internal audit within a *common platform firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- ...
- 7.1.8 G (1) ...
- (2) The term 'risk management function' in SYSC 7.1.6R and SYSC 7.1.7R refers to the generally understood concept of risk assessment within a *common platform firm*, that is, the function of setting and controlling risk exposure. The risk management function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- ...
- 14.1.33 G Where a *firm* outsources a *controlled function*, such as ~~*internal audit*~~ internal audit it should ...
- ...
- 14.1.39 G (1) In accordance with SYSC 3.2.10G a *firm* should consider whether it needs to set up a separate ~~*risk assessment function*~~ risk assessment function (or functions) that is responsible for assessing the risks that the *firm* faces and advising its *governing body* and *senior managers* on them.
- (2) The term 'risk assessment function' refers to the generally understood concept of risk assessment within a *firm*, that is, the function of setting and controlling risk exposure. The risk assessment function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- 14.1.40 G Where a *firm* does decide that it needs a separate ~~*risk assessment function*~~ risk assessment function, the *employees* or contractors that carry out this function should not normally be involved in risk taking activities such as business line management (see SYSC 14.1.30G to SYSC 14.1.33G on the segregation of duties).
- 14.1.41 G A summary of the results of the analysis undertaken by a *firm's* ~~*risk assessment function*~~ risk assessment function in accordance with SYSC 14.4.39G (including, where necessary, an explanation of any assumptions that were adopted) should normally be reported to relevant *senior managers* as well as to the *firm's governing body*.
- ...

- 14.1.43 G (1) In accordance with SYSC 3.2.15G and SYSC 3.2.16G, a *firm* should consider whether it needs to set up a dedicated ~~*internal audit function*~~ internal audit function.
- (2) The term 'internal audit function' refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- 14.1.44 G Where a *firm* decides to set up an ~~*internal audit function*~~ internal audit function, this function should provide independent assurance to its *governing body*, audit committee or an appropriate *senior manager* of the integrity and effectiveness of its systems and controls.
- 14.1.45 G In forming its judgements, the *person* performing the ~~*internal audit function*~~ internal audit function should test the practical operation of a *firm's* systems and controls as well as its accounting and risk policies. This should include examining the adequacy of supporting records.
- ...
- 14.1.48 G A *firm* should consider what information needs to be made available to its *governing body* and *senior managers*. Some possible examples include:
- (1) ...
- (3) reports from a *firm's* ~~*internal audit and risk assessment functions*~~ internal audit and risk assessment functions (see SYSC 14.1.43G and SYSC 14.1.39G), if applicable, including exception reports, where risk limits and policies have been breached or systems circumvented;
- (4) ...

...

Annex C

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

1.1 Application

Who?

1.1.1 G *APER applies to approved persons.*

1.1.2 G The *Statements of Principle* apply only to the extent that a *person* is performing a *controlled function* for which approval has been sought and granted.

1.1.3 G Section 64(11) of the *Act* states that the power to issue *Statements of Principle* and codes of practice includes power to make different provisions in relation to *persons*, cases or circumstances of different descriptions. *Statements of Principle 1, 2, 3 and 4* apply to all *approved persons*, and *Statements of Principle 5, 6 and 7* apply to those approved to perform *significant influence functions*.

1.1.4 G The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER 2.1.1AP* and *FIT 1.2.4AG*. See also *COBS App1 Part 3, 1.1R* (EEA territorial scope rule: compatibility with European law)).

Where?

1.1.5 G The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP 10.1* (see *SUP 10.1.13R* and *10.1.14R*).

1.2	Purpose	
1.2.1	...	
1.2.4	G	[deleted]
...		

2.1	The <u>Statements of Principle</u>	
2.1.1	G	...
<u>2.1.1A</u>	P	<u>An approved person will not be subject to a <i>Statement of Principle</i> to the extent that it would be contrary to the <i>UK's</i> obligations under a <i>Single</i></u>

		<u>Market Directive.</u>
...		

Annex D

Amendments to The Fit and Proper test for Approved Persons sourcebook (FIT)

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

1.2	Introduction	
...		
1.2.4A	G	<u>Under Article 5(1)(d) of the <i>MiFID Implementing Directive</i> and Article 31 and 32 of <i>MiFID</i>, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the <i>firm's Home State</i>. Therefore, in assessing the fitness and propriety of a <i>person</i> to perform a <i>controlled function</i> solely in relation to the <i>MiFID business</i> of an <i>incoming EEA firm</i>, the <i>FSA</i> will not have regard to that <i>person's</i> competence and capability.</u>

Annex E

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 4.1.60 G In addition to the regular review and evaluation described in *INSPRU* 4.1.59G, a *firm's* internal audit function (see SYSC 3.2.16G or, as the case may be, SYSC 6.2.1R) should periodically review the liquidity risk management process in order to identify any weaknesses or problems. Any weaknesses should be addressed by management in a timely and effective manner.

...

Annex F

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

...

- 2.2.2 R The *firm* may allocate the responsibility for its *insurance mediation activity* under *MIPRU 2.2.1R* to an *approved person* (or *persons*) performing:
- (1) a *governing function* (other than the *non-executive director function*);
or
 - (2) the *apportionment and oversight function*; or
 - (3) the *significant management* (~~*other business operations*~~) *function* in so far as it relates to *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order* (Absence of holding out etc)(or *agreeing* to do so) or an activity which is not *designated investment business*.
- 2.2.3 G ...
- (3) In the case of a *sole trader*, the *sole trader* will be responsible for the *firm's insurance mediation activity*, ~~whether or not he is himself a person approved to perform the *sole trader function*.~~

Annex G

Amended text to be inserted in the Supervision manual (SUP)

In this annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of the text is being deleted, the place where the change will be made is indicated and the text is not struck through.

...

- 4.6.1 G The *Society* must:
- (1) appoint an *actuary* to perform the *Lloyd's actuary* ~~function~~ function;

...

...

- 4.6.8 R An *actuary* who has been appointed to perform the *Lloyd's actuary* ~~function~~ function must:

...

- 10.1.3 G The *rules* in this chapter specify the descriptions of *controlled functions* ~~functions~~ under section 59 of the *Act* (Approval for particular arrangements). ~~The effect of these *rules*, and the provisions of Part V of the *Act* (Performance of Regulated Activities), is that every *firm*, except an *overseas firm* to which SUP 10.1.6R applies, must apply for the approval of one or more *persons* to perform a *controlled function* on its behalf.~~

...

- 10.1.5 G [deleted]

...

- 10.1.7 R Only the following *controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:
- (1) ...
- (3) the *significant management* ~~(*designated investment business*)~~ function; in so far as the function relates to:
- (a) *designated investment business* other than *dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
- (b) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters in so far as this relates

to designated investment business; and

(4) [deleted]

(5) The *customer functions*.

10.1.8 G [deleted]

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

...

10.1.13 R Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:

(1) the *EEA investment business oversight function*;

(2) the *compliance oversight function*;

(3) the *money laundering reporting function*;

(4) the *significant management* (~~*designated investment business*~~) *function in so far as the function relates to:*

(a) *designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or*

(b) *processing confirmations, payments, settlements, insurance claims, client money and similar matters in so far as this relates to designated investment business; and*

(5) [deleted]

(6) the *customer functions* other than the *adviser on syndicate participation at Lloyd's function*.

10.1.13A R If the only regulated activities carried on by an incoming EEA firm in the United Kingdom are MiFID business, only SUP 10.1.13R(3), (4) and (6) apply to that firm.

10.1.13B G If an incoming EEA firm carries on designated investment business which consists of both MiFID business and other regulated activities, SUP 10.1.13R(1) and (2) will apply to that firm, but only in relation to that part of the business that is not MiFID business.

Incoming EEA firms etc with top-up permission activities from a UK branch

10.1.14 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *controlled functions* apply:

- (1) the *required functions*, other than the *apportionment and oversight function*;
- (2) the *significant management* (~~*designated investment business*~~) *function*; in so far as it relates to:
 - (a) *designated investment business other than dealing in investments as principal*, disregarding article 15 of the *Regulated Activities Order*; or
 - (b) *processing confirmations, payments, settlements, insurance claims, client money and similar matters* in so far as this relates to *designated investment business*; and
- (3) [deleted]
- (4) the *customer functions*.

10.1.15 G [deleted]

Appointed representatives

10.1.16 R The descriptions of the following *controlled functions* ~~functions~~ apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to a *firm*:

- (1) the *governing functions*, subject to SUP 10.1.16A R; and
- (2) the *customer functions* other than the *investment management function*.

...

10.1.17 G [deleted]

Members of a profession

10.1.18 R ...

10.1.19 G [deleted]

10.1.20 G [deleted]

10.1.21 R The descriptions of *significant influence functions*, other than the *required functions*, and if the *firm* is a *MiFID investment firm*, the *governing functions*, do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

....

Committees of the Society of Lloyd's

10.1.24 G [deleted]

10.1.25 G [deleted]

...

10.2 Purpose

10.2.1 G The immediate purpose of *SUP* 10.3 to *SUP* 10.10 is to specify, under section 59 of the *Act*, descriptions of the ~~27~~ 22 *controlled functions* which are listed in *SUP* 10.4.5 R. The underlying purpose is to establish, and mark the boundaries of, the "approved persons regime". ~~An approved person is a person, generally an individual, who is approved to perform a controlled function.~~

10.2.2 G [deleted]

10.2.3 G [deleted]

10.2.4 G [deleted]

10.4 Specification of functions

10.4.1 R ...

10.4.2 G [deleted]

...

10.4.4 G [deleted]

10.4.5 R Controlled functions

Type	CF	Description of controlled function
<i>Governing functions*</i>	1	<i>Director function</i>
	2	<i>Non-executive director function</i>
	3	<i>Chief executive function</i>
	4	<i>Partner function</i>
	5	<i>Director of unincorporated association function</i>
	6	<i>Small friendly society function</i>

	7	Sole trader function [deleted]
Required functions*	8	Apportionment and oversight function
	9	EEA investment business oversight function
	10	Compliance oversight function
	11	Money laundering reporting function
	12	Actuarial function
	12A	With-profits actuary function
	12B	Lloyd's actuary function
Systems and controls functions*	13 28	Finance function <u>Systems and controls function</u>
	14	Risk assessment function [deleted]
	15	Internal audit function [deleted]
Significant management functions*	16 29	Significant management (designated investment business) function
	17	Significant management (other business operations) function [deleted]
	18	Significant management (insurance underwriting) function [deleted]
	19	Significant management (financial resources) function [deleted]
	20	Significant management (settlements) function [deleted]
Customer functions	21	Investment adviser function
	22	Investment adviser (trainee) function
	23	Corporate finance adviser function
	24	Pension transfer specialist function

	25	<i>Adviser on syndicate participation at Lloyd's function</i>
	26	<i>Customer trading function</i>
	27	<i>Investment management function</i>
<i>*significant influence functions</i>		

10.5 Significant influence functions

10.5.1 G The *significant influence functions*, which are specified in SUP 10.4.1R, comprise the *governing functions* (see SUP 10.6), the *required functions* (see SUP 10.7), the *systems and controls functions* (see SUP 10.8) and the *significant management functions* (see SUP 10.9). SUP 10.5 applies to each of the *significant influence functions*.

...

10.5.4 G Whether a ~~function~~ *controlled function* is likely to result in the *person* responsible for its performance exercising significant influence on the conduct of the *firm's* affairs is a question of fact in each case. The FSA has identified the *significant influence functions* as satisfying this condition. ~~What amounts to exercising significant influence in any particular case will depend on the circumstances. The person performing one of these functions is likely to play a part in ensuring that effective governance structures, systems and controls are developed and operated. In relation to a firm as a whole, this is expected to include setting the business strategy, regulatory climate and ethical standards of the firm. In relation to a branch, this will include ensuring that the firm's strategy (as it affects the branch) is appropriate in the context of the UK regulatory system, and setting the regulatory climate and ethical standards of the branch in the United Kingdom.~~

...

10.6 Governing functions

Introduction

...

10.6.1A G *A sole trader does not fall within the description of the governing functions.*

What the governing functions include

10.6.2 R Each of the *governing functions* (other than the *non-executive director*

function) includes where apportioned under SYSC 2.1.1R:

- (1) the systems and controls functions; and
- (2) the significant management functions.

10.6.3 G The effect of SUP 10.6.2R is that a *person* who is *approved* to perform a *governing function* (other than the *non-executive function*) will not have to be specifically approved to perform ~~any of the systems and controls functions or the significant management functions~~. ~~However, a firm may apply for the systems and control functions or significant management functions to be explicitly added for such persons, if it wishes.~~ A *person* who is *approved* to perform a *governing function* will have to be additionally approved before he can perform any of the *required functions* or *customer functions*.

10.6.3A G ~~PRU 9.1.3R~~ MIPRU 2.2.1R provides that an *insurance intermediary*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity*. ~~PRU 9.1.4R(1)~~ MIPRU 2.2.2R (1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing a *governing function* (other than the *non-executive director function*).

10.6.3B G Where a *person* (including a *person* performing a *governing function*) is responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after the relevant *controlled function* (see ~~PRU 9.1.7G~~ MIPRU 2.2.5G).

Director function (CF1)

...

10.6.5 G [deleted]

10.6.6 G [deleted]

...

Non-executive director function (CF2)

...

10.6.9 G [deleted]

10.6.10 G [deleted]

Chief executive function (CF3)

...

10.6.12 G [deleted]

...

10.6.14 G For a *branch* in the *United Kingdom* of an *overseas firm*, the *FSA* would not normally expect the overseas *chief executive* of the *firm* as a whole to be approved for this function where there is a *senior manager* under him with specific responsibility for those activities of the *branch* which are subject to the *UK regulatory system*. In some circumstances, the *person* within the *firm* responsible for *UK operations* may, if the function is likely to enable him to exercise significant influence over the *branch*, also perform the *chief executive function* (see *SUP 10.7.4G*). ~~The *senior manager* may be called a *Managing Director*, *UK Regional Head*, *Branch Manager*, *UK Country Head*; or, in the case of a non-*EEA insurer* with a *branch* in the *United Kingdom*, *UK chief executive*.~~

...

Partner function (CF4)

...

10.6.18 G [deleted]

...

10.6.22 G [deleted]

...

Director of unincorporated association function (CF5)

...

10.6.25 G [deleted]

Small friendly society function (CF6)

...

10.6.27 G [deleted]

...

~~Sole trader function (CF7)~~

10.6.30 R [deleted]

10.6.31 G [deleted]

10.6.32 G [deleted]

- 10.7 Required functions
- Apportionment and oversight function (CF8)
- ...
- 10.7.2 G [deleted]
- ...
- 10.7.4 G Generally, in relation to a *UK* establishment of an *overseas firm* or a *firm* which is part of an *overseas group*, where an overseas manager's responsibilities in relation to the *United Kingdom* are strategic only, he will not need to be an *approved person*. However, where, in accordance with *SYSC 3* or *SYSC 4* to *SYSC10*, he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing a *controlled function*, such as, for example, the *chief executive function*. This is subject to *SUP 10.1.13AR*, which applies where the *firm* is a *MiFID investment firm* and the only *regulated activities* carried out by it in the *United Kingdom* are *MiFID business*.
- 10.7.4A G ~~*PRU 9.1.3R*~~ *MIPRU 2.2.1R* provides that an *insurance intermediary*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity*. ~~*PRU 9.1.4R (2)*~~ *MIPRU 2.2.2R (2)* provides that the *firm* may allocate this responsibility to the *person* performing the *apportionment and oversight function*.
- 10.7.4B G Where the *person* performing the *apportionment and oversight function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after this *controlled function* (see ~~*PRU 9.1.7G*~~ *MIPRU 2.2.5G*).
- 10.7.5 G [deleted]
- ...
- Compliance oversight function (CF10)
- 10.7.8 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function set out in *SYSC 3.2.8 R* or *SYSC 6.1.4R (2)*.
- 10.7.9 G [deleted]
- 10.7.10 G [deleted]
- 10.7.11 G [deleted]
- 10.7.12 G [deleted]

Money laundering reporting function (CF11)

...

10.7.13B G A firm's obligations in respect of its money laundering reporting officer are set out in SYSC 3.2.61R and SYSC 6.

Actuarial function (CF 12) and *with-profits actuary function* (CF12A)

...

10.7.18 G [deleted]

10.7.19 G [deleted]

10.7.20 G [deleted]

10.7.21 G [deleted]

Lloyd's actuary function (CF12B)

10.7.22 R ~~The Lloyd's actuary function~~ function is the function of acting in the capacity of the *actuary* appointed under SUP 4.6.1R to perform the duties set out in SUP 4.6.7R.

10.7.23 G [deleted]

10.8 Systems and control functions

~~Finance~~ Systems and controls function (CF13 28)

10.8.1 R ~~The finance function is the function of acting in the capacity of a senior manager with responsibility for reporting to the governing body of a firm in relation to its financial affairs.~~ The systems and controls function is the function of acting in the capacity of an employee of the firm with responsibility for reporting to the governing body of a firm, or the audit committee (or its equivalent) in relation to:

(1) its financial affairs;

(2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R);

(3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2).

10.8.2 G [deleted]

10.8.2A G Where an *employee* performs the *systems and controls function* the *FSA* would expect the *firm* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively. A *director* or *senior manager* would meet this expectation.

~~Risk assessment function (CF14)~~

10.8.3 R ~~[deleted]~~

10.8.4 G ~~[deleted]~~

10.8.5 G ~~[deleted]~~

~~Internal audit function (CF15)~~

10.8.6 R ~~[deleted]~~

10.8.7 G ~~[deleted]~~

10.8.8 G ~~[deleted]~~

10.9 Significant management functions

Application

10.9.1 R *SUP* 10.9 applies only to a *firm* which, under *SYSC* 2.1.1R, apportions a significant responsibility, within the description of a the significant management function, to a *senior manager* of a significant business unit.

10.9.2 G The *FSA* anticipates that there will be only a few *firms* needing to seek approval for an individual to perform a ~~the significant management function~~. In most *firms*, those approved for the *governing functions*, *required functions* and, where appropriate, the *systems and controls functions*, are likely to exercise all the significant influence at senior management level.

10.9.3 G However, the scale, nature and complexity of the *firm's* business may be such that a *firm* apportions under *SYSC* 2.1.1R a significant responsibility to an individual who is not approved to perform the *governing functions*, *required functions* or, where appropriate, the *systems and controls functions*. If so, the *firm* should consider whether the functions of that individual fall within a the significant management function. For the purposes of the description of the *significant management function*, the following additional factors about the *firm* should be considered:

...

10.9.5 G The question may arise whether a manager who is based overseas will be performing a ~~controlled function (such as the significant management (designated investment business) function)~~ and should therefore be an *approved person*. This is especially true where the *firm* operates matrix

management. The fact there is a *person* performing the *apportionment and oversight function*, and who has responsibility for activities subject to regulation by the *FSA*, may have a bearing on this. It is a factor to take into account when assessing the likely influence of the overseas manager.

...

...

10.9.7 G See also *SUP* 10.7.3G to *SUP* 10.7.4B 5G in relation to matrix management.

...

Significant management (~~designated investment business~~) function (CF46 29)

10.9.10 R (1) ~~The significant management (designated investment business) function is the function of acting as a senior manager with significant responsibility for a significant business unit which carries on designated investment business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order (Absence of holding out etc), (and agreeing to do so). The significant management function is the function of acting as a senior manager with significant responsibility for a significant business unit that:~~

(a) carries on designated investment business or other activities not falling within (b) – (d);

(b) effects contracts of insurance (other than contractually based investments);

(c) makes material decisions on the commitment of a firm's financial resources, its financial commitments, its assets acquisitions, its liability management and its overall cash and capital planning;

(d) processes confirmations, payments, settlements, insurance claims, client money and similar matters.

(2) This ~~function~~ controlled function does not include any of the activities described in any other *controlled function*.

10.9.10A G A senior manager with significant responsibility for a significant business unit that carries on activities other than designated investment business for the purposes of SUP 10.9.10R (1)(a) could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate lending, salvage or loan recovery, or proprietary trading; or a member of a committee (that is, a person who, together with others, has authority to commit the firm) making decisions in these functions. The senior manager could also be a proprietary trader whose trading limits are such that he may put, or potentially put, his firm at significant risk. This function would not

extend to every proprietary trader.

10.9.11 G [deleted]

~~Significant management (other business operations) function (CF17)~~

10.9.12 R [deleted]

10.9.13 G [deleted]

10.9.13A G ~~*PRU 9.1.3R MIPRU 2.2.1R*~~ provides that an *insurance intermediary*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity*. ~~*PRU 9.1.4R(3) MIPRU 2.2.2R (3)*~~ provides that the *firm* may allocate this responsibility to the *person* performing the *significant management (other business operations) function*.

10.9.13B G Where the *person* performing the *significant management (other business operations) function* is also responsible for the *firm's insurance mediation activity*, the words "(insurance mediation)" will be inserted after this *controlled function* (see ~~*PRU 9.1.7G MIPRU 2.2.5 G*~~).

~~Significant management (insurance underwriting) function (CF18)~~

10.9.14 R [deleted]

10.9.15 G [deleted]

~~Significant management (financial resources) function (CF19)~~

10.9.16 R [deleted]

10.9.17 G [deleted]

~~Significant management (settlements) function (CF20)~~

10.9.18 R [deleted]

10.9.19 G [deleted]

10.9.20 G [deleted]

	Frequently asked questions		
	G		
10 Ann 1 10 Ann 1G:		Question	Answer
		Requirements of the regime	
	1	...	
	2	What are the procedures for 'emergency situations'?	Individuals may perform <u>the significant influence functions</u> for up to 12 weeks ...
		...	
	11	What checks must <u>should</u> a <i>firm</i> make on a <i>candidate</i> before submitting an application for approval from the <i>FSA</i> ?	The <i>FSA</i> expects <i>firms</i> to perform due and diligent enquiries about their <i>candidates</i> <u>before they submit an application to us for approval. Our approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. It is for the <i>firm</i> to determine what checks are appropriate but in making its decision, a <i>firm</i> should have regard to the <i>controlled function</i> to which the application relates. Note also the provisions of <i>ENF</i> 8.12.2 G (Publication) and <i>TC</i> 2.2.1R (Recruitment).</u>
	11A	Should these checks include a check of criminal records?	It is for senior management to decide what checks should be made. <u>In deciding if it is necessary to carry out a check of criminal records, the <i>firm</i> should consider that the <i>FSA</i> does not routinely carry out these checks during the approval process. ...</u>

12.2.14 G (1) ...

- (2) If a *firm* appoints an *appointed representative* who is an individual in (1), that *appointed representative* will also be a *representative*. The individual may need to be approved to perform the *investment adviser function* or the *customer trading function* or both ~~and possibly also the *sole-trader function*~~, (see *SUP* 12.6.8 G and *SUP* 12.6.9 G). In these circumstances, in addition to complying with the requirements of *SUP* 12 and other regulatory requirements, the *firm* should ensure that the *rules* for *representatives* in *COB* 5 (Advising and selling) are

complied with.

...

Part 1:

Transitional provisions applying to the Supervision manual only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
8A	<u>SUP 10.4.1R</u>	<u>R</u>	<p><u>(1) An application made under section 60 of the Act received before 31 October 2007 will be taken to relate to the <i>controlled function</i> existing at the date of determination.</u></p> <p><u>(2) The <i>controlled functions</i> CF 13 (<i>finance function</i>), CF 14 (<i>risk assessment function</i>) and CF 15 (<i>internal audit function</i>) are subsumed in the new <i>controlled function</i> CF 28 (<i>systems and controls function</i>) to the extent that they fall within the description of the <i>systems and controls function</i>.</u></p> <p><u>(3) The <i>controlled functions</i> CF 16 (<i>significant management (designated investment business) function</i>), CF 17 (<i>significant management (other business operations)</i>)</u></p>	<p><u>From 1 November 2007</u></p> <p><u>On 1 November 2007</u></p> <p><u>On 1 November 2007</u></p>	<p><u>From 1 November 2007</u></p> <p><u>On 1 November 2007</u></p> <p><u>On 1 November 2007</u></p>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
			<p><i>function</i>), CF 18 (<i>significant management (insurance underwriting) function</i>), CF 19 (<i>significant management (financial resources) function</i>) and CF 20 (<i>significant management (settlements) function</i>) are subsumed in the new <i>controlled function</i> CF 29 (<i>significant management function</i>) to the extent that they fall within the description of the <i>significant management function</i>.</p>		
8B		G	<p>(1) The effect of TP 8AR is that if immediately prior to 1 November 2007 a <i>person</i> was an <i>approved person</i> in relation to any of the <i>controlled functions</i> to be subsumed into the <i>systems and controls function</i> the original grant of approval by the FSA will remain valid in relation to the <i>systems and controls function</i> and no new approval to perform that <i>controlled function</i> will be required.</p> <p>(2) The effect of TP 8AR is that if immediately prior to 1</p>		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
			<p><u>November 2007 a person was an approved person in relation to any of the controlled functions to be subsumed into the significant management function the original grant of approval by the FSA will remain valid in relation to the significant management function and no new approval to perform that controlled function will be required.</u></p>		
8C		G	<p><u>Firms are reminded of their obligation under SUP 10.13.16R to notify the FSA if the firm becomes aware of information which would be reasonably material to the continuing assessment of an approved person's fitness and propriety and in particular their competence to perform a function.</u></p>		
8D	<p><u>SUP 10.13.6R (Ceasing to perform a controlled function) and SUP 10.13.3D (Moving within a firm)</u></p>	R	<p><u>The obligation to submit Form C or Form E does not apply in relation to a person who:</u></p> <p><u>(a) ceases to perform a controlled function because that controlled function ceases to exist on 1 February 2007; or</u></p> <p><u>(b) performs a function</u></p>	<p><u>From 1 February 2007 in relation to the sole trader function and 1 November 2007 in all other cases.</u></p>	<p><u>From 1 February 2007 in relation to the sole trader function and 1 November 2007 in all other cases.</u></p>

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
			<u>which falls within the description of a different controlled function after 1 November 2007 as a result of TP 8AR.</u>		

Annex H

Amendments to the Credit Unions sourcebook (CRED)

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

2.4.4 G ...For example, *CRED* 4.3.11E indicates that a failure of a *credit union* to have an ~~*internal audit function*~~ internal audit function would “tend to establish contravention” of the *rule* (described earlier in *CRED* 4.3.1G) that all *firms* should take reasonable care to establish and maintain such systems and controls as are appropriate to their business.

...

4.3.11 E (1) A *credit union* should have an ~~*internal audit function*~~ internal audit function (this may be either in house or outsourced to a third party).

...

4.3.12 G The term 'internal audit function' in *CRED* 4.3.11E refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28). Guidance on internal audit is given in *CRED* 4.3.50G - *CRED* 4.3.60G.

...

4.3.50 G *CRED* 4.3.11E states that ~~an *internal audit function* should oversee the internal audit process~~ a *credit union* should have an internal audit function (see also *CRED* 4.3.12G).

...

4.3.54 G The ~~*internal audit function*~~ internal audit function (see *CRED* 4.3.12G) should develop an audit plan, covering all aspects of the *credit union's* business....

...

4.3.56 G The key elements of a satisfactory system of internal audit include the following:

- (1) Terms of reference. These should be specified with precision and include, amongst other things, scope and objectives of the audit committee and the ~~internal audit function~~ internal audit function (see CRED 4.3.12G), access to records, powers to obtain information and explanations for *officers*, and reporting requirements. These should be approved by the committee of management.

...

4.3.57 G The ~~internal audit function~~ internal audit function (see CRED 4.3.12G) should be independent of all of the functions it inspects.

...

4.3.59 G The qualifications, experience and training of individuals performing the ~~internal audit function~~ internal audit function (see CRED 4.3.12G) should be adequate in relation to its objectives.

4.3.60 G The committee of management should be satisfied that the ~~internal audit function~~ internal audit function (see CRED 4.3.12G) is being properly carried out. In order to review the overall effectiveness of the ~~internal audit function~~ internal audit function it should consider the following:

...

- (5) a review of the overall effectiveness of the ~~internal audit function~~ internal audit function.

...

SUP 10.8: the systems and controls function

6.3.9 G ~~SUP 10.8: the systems and controls functions: The function of acting as an employee with responsibility for reporting to the committee of management in relation to:~~

- (1) ~~SUP 10.8.1R the finance function~~

~~The function of acting in the capacity of a senior manager with responsibility for reporting to the committee of management in relation to its financial affairs. its financial affairs;~~

- (2) ~~SUP 10.8.3R: the risk assessment function~~

~~The function of acting in the capacity of a senior manager with responsibility for reporting to the committee of management on the setting and controlling of its risk exposure. setting and controlling its risk exposure; or~~

(3) ~~SUP 10.8.6R: the internal audit function~~

~~The function of acting in the capacity of a senior manager with responsibility for reporting to the committee of management in relation to its adherence to internal systems and controls, procedures and policies.~~ adherence to internal systems and controls, procedures and policies.

6.3.9A G Where an employee performs the systems and controls function FSA would expect the credit union to ensure that the employee had sufficient expertise and authority to perform that function effectively, for example be a director or senior manager.

6.3.10 G ~~SUP 10.9: the significant management functions:These~~
This controlled functions will only apply to the credit union if the functions are is not being performed by a member of the committee of management and the credit union has followed the guidance in SUP 10.9.3G.

**INTEGRATED REGULATORY REPORTING (ELECTRONIC REPORTING)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 March 2007.

Amendments to the Supervision manual

- D. The Supervision manual is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Electronic Reporting) Instrument 2007.

By order of the Board
25 January 2007

Annex

Amendments to the Supervision manual (SUP)

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

The following rules in the Supervision manual are amended:

- SUP 16.7.8.R;
- SUP 16.7.10.R;
- SUP 16.7.12.R;
- SUP 16.7.17.R;
- SUP 16.7.25.R;
- SUP 16.7.27.R;
- SUP 16.7.29.R;
- SUP 16.7.36.R;
- SUP 16.7.58.R;
- SUP 16.7.63.R;
- SUP 16.7.66.R; and
- SUP 16.7.75.R.

In each rule the table is amended as follows:

RMAR (excluding sections A, B, C, D, E, and F)

PASSPORTING (MIFID) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary power); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Annex B of this instrument comes into force on 14 February 2007;
 (2) Annex E of this instrument comes into force on 1 November 2007;
 (3) otherwise this instrument comes into force on 6 February 2007.

Amendments to the Handbook

- D. The modules of the FSA'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) below.

(1)	(2)
Glossary	Annex A
Glossary	Annex B
Supervision manual (SUP) (changes of a general nature)	Annex C
Professional Firms sourcebook (PROF)	Annex D
Supervision manual (SUP) (MiFID-related changes)	Annex E

Citation

- E. This instrument may be cited as the Passporting (MiFID) Instrument 2007.

By order of the Board
 25 January 2007

Annex A

Amendments to the Glossary

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

<i>consent notice</i>	a notice given by the <i>FSA</i> to a <i>Host State regulator</i> under: <u>(a) paragraph 19(4) (Establishment) of Part III of Schedule 3 to the Act (Exercise of Passport Rights by UK firms); or</u> <u>(b) paragraph 20(3A) (Services) of Part III of Schedule 3 to the Act (Exercise of Passport Rights by UK firms).</u>
<i>notice of intention</i>	a notice of intention <u>(as described in SUP 13.5) given by a UK firm</u> to: <u>(a) establish a branch in an EEA State given by a UK firm under paragraph 19(2) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms); or</u> <u>(b) provide services in an EEA State under paragraph 20(1) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms).</u>
<u><i>relevant EEA details</i></u>	<u>the details listed in regulation 14 of the EEA Passport Rights Regulations and set out in SUP 13 Ann 1R (Requisite details or relevant details: branches).</u>
<u><i>relevant UK details</i></u>	<u>the details required in regulation 15 of the EEA Passport Rights Regulations and set out in SUP 13 Ann 2R (Relevant UK details: branches of insurance undertakings).</u>
<i>requisite details</i>	the details required in <u>regulation 1 of the EEA Passport Rights Regulations</u> and set out in SUP 13 Ann 1R (Requisite details: branches and SUP 13 Ann 1R (Requisite details: cross border services)).

Annex B

Amendments to the Glossary

In this Annex, underlining indicates new text.

EEA State [delete existing definition and replace with the following]
(in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time -

(a) a state which at that time is a member State; or
(b) any other state which is at that time a party to the EEA agreement.

[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. Where the context requires, references to an *EEA State* include references to Gibraltar as appropriate].

Annex C

Amendments to the Supervision Manual (SUP) (changes of a general nature)

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

Where entire sections of the text are being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

...

13.3.2 G A *UK firm* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

(1) the *UK firm* has given the *FSA*, in accordance with the *FSA rules* (see *SUP* 13.5.1R), notice of its intention to establish a *branch* (known as a ~~notice of intention~~ notice of intention) which;

...

(3) (a) if the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, one month has elapsed beginning on the date on which the *UK firm* received notice that the *FSA* had given a ~~consent notice~~ consent notice as described in *SUP* 13.3.6G (1) (see *SUP* 13.3.2AG);

...

13.3.2A G ... Accordingly, the *UK firm* may establish the *branch* to which its ~~notice of intention~~ notice of intention relates as soon as the conditions referred to in *SUP* 13.3.2G-(1) are satisfied. The list of *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA's* website at www.fsa.gov.uk.

13.3.2B G An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive*. In this case, the ~~notice of intention~~ notice of intention in *SUP* 13.3.2G(1) should be given to the *FSA* by the *firm* on behalf of the *appointed representative*.

...

~~How long will the process take?~~

13.3.4 G [deleted]

13.3.4A G [deleted]

...

Issue of a consent notice to the Host State regulator

- 13.3.5 G (1) ~~If a UK firm has given the FSA a notice of intention in the required form, then:~~
- (a) ~~If the UK firm's EEA right derives from the Banking Consolidation Directive, the Investment Services Directive, or the UCITS Directive, the FSA will give the Host State regulator a consent notice within three ~~months~~ months unless it has reason to doubt the adequacy of a UK firm's resources or its administrative structure;~~
- (2) ~~(a)~~ (a) If the UK firm's EEA right derives from the Insurance Directives, the FSA will give the Host State regulator a consent notice within three ~~months~~ months unless it has reason to:
- (i) doubt the adequacy of the UK firm's resources or its administrative structure; or
- (ii) question the reputation, qualifications or experience of the *directors* or managers of the UK firm or its proposed authorised agent;
- in relation to the business the UK firm intends to conduct through the proposed *branch*; The Host State regulator then has a further two months to notify the applicable provisions (if any) and prepare for the supervision, as appropriate, of the UK firm.
- (b) In assessing the matters in (2)(a), the FSA may, in particular, seek further information from the firm or require a report from a skilled person (see SUP 5 (skilled persons)).
- (c) If the FSA has required a financial recovery plan of a UK firm of the kind mentioned in paragraph 1 of article 38 of the Consolidated Life Directive or paragraph 1 of article 20a of the First Non-Life Directive, the FSA will not give a consent notice for so long as it considers that policyholders are threatened within the meaning of those provisions.

- (d) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive* and *SUP 13.3.2G(2)* applies, the *FSA* will give the *Host State regulator* a *consent notice* within one *month* of the date on which it received the ~~*UK firm's UK firm's notice of intention*~~ *notice of intention*. In cases where *SUP 13.3.2 G-(2)* does not apply (see *SUP 13.3.2AG*), the *UK firm* may establish a *branch* as soon as it satisfies the conditions referred to in *SUP 13.3.2G*.
- (2) in assessing the matters in *SUP 13.3.5 G (1)(b)* the *FSA* may, in particular, seek further information from the *firm* or require a report from a *skilled person* (see *SUP 5 (Skilled Persons)*).
- (3) If the *FSA* has required a financial recovery plan of a *UK firm* of the kind mentioned in paragraph 1 of article 38 of the *Life Directive (2002/83/EC)* or paragraph 1 of article 20a of the *First Non Life Directive*, the *FSA* will not give a *consent notice* for so long as it considers that *policyholders'* are threatened within the meaning of paragraph 1.
- 13.3.6 G (1) ...
- (2) The *consent notice* will contain, among other matters, the *requisite details* (see ~~*SUP 13 Annex 1*~~) or, (if the *firm* is passporting under the *Insurance Directives*), the ~~*EEA relevant details*~~ *relevant EEA details* (see *SUP 13 Annex 21*) provided by the *UK firm* in its ~~*notice of intention*~~ *notice of intention* (see *SUP 13.5 (Notices of intention)*).
- 13.3.7 G (1) ...
- (2) If the *FSA* decides to refuse to give a *consent notice*, then paragraph 19(12) of Part III of Schedule 3 to the *Act* requires the *FSA* to give the *UK firm* a *decision notice* within three ~~months~~ *months* of the date on which it received the *UK firm's* ~~*notice of intention*~~ *notice of intention* (two ~~months~~ *months* in the case of a *UK firm* which is a *UCITS management company*)...
- ...
- 13.4.2 G A *UK firm* cannot start providing *cross border services* into another *EEA State* under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and, if it derives its *EEA right* from the *Insurance Directives*, paragraph 20(4B) of Part III of Schedule 3 to the *Act*. It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*).The conditions are that:

- (1) the *UK firm* has given the *FSA*, in the way specified by *FSA rules* (see *SUP 13.5.2R*), notice of its intention to provide cross border services (known as a ~~notice of intention~~ notice of intention) which:

...

- 13.4.2A G An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may provide *cross border services* in another *EEA State* under the *Insurance Mediation Directive*. In this case the ~~notice of intention~~ notice of intention in *SUP 13.4.2G(1)* should be given to the *FSA* by the *firm* on behalf of the *appointed representative*.

Issuing a consent notice or notifying the Host State regulator

- 13.4.4 G ~~If a *UK firm* has given the *FSA* a notice of intention in the required form, then:~~

- (1) ~~if~~ the *UK firm's EEA right* derives from the *Investment Services Directive*, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the *Act* requires the *FSA* to send a copy of the ~~notice of intention~~ notice of intention to the *Host State regulator* within one ~~month~~ month of receipt; ~~or.~~

- (2) (a) ~~if~~ the *UK firm's EEA right* derives from the *Insurance Directives*, paragraph 20(3A) of Part III of Schedule 3 to the *Act* requires the *FSA*, within one ~~month~~ month of receiving the ~~notice of intention~~ notice of intention, to:

...

- (b) ~~...~~ ...

- (c) If the *FSA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the *Consolidated Life Directive* or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not give a consent notice for so long as it considers that *policyholders' rights* are threatened within the meaning of those provisions.

- (2A) (a) ~~if~~ the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, paragraph 20(3B)(a) of Part III of Schedule 3 to the *Act* requires the *FSA* to send a copy of the ~~notice of intention~~ notice of intention to the *Host State regulator* within one month of receipt; ~~or~~. Otherwise, the *UK firm* may start providing *cross border services* as soon as it satisfies the relevant conditions (see *SUP 13.4.2G*).
- (b) The list of the *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA's* website at www.fsa.gov.uk.
- (3) ~~If the *FSA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the *Life Directive* (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not give a *consent notice* for so long as it considers that *policyholders' rights* are threatened within the meaning of paragraph 1.~~

...

13.4.5 G When the *FSA* sends a copy of a ~~notice of intention~~ notice of intention, or if it gives a *consent notice* to the *Host State regulator*, it must inform the *UK firm* in writing that it has done so (paragraphs 20 (3B)(b) and (4) of Schedule 3 to the *Act*).

13.4.6 G (1) If the *UK firm* is passporting under the *Investment Services Directive* ~~or~~ *UCITS Directive*, then when the *Host State regulator* receives the ~~notice of intention~~ notice of intention, it should inform the *UK firm* of any *applicable provisions*.

...

...

13.5.1 R A *UK firm* wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right* must include in its ~~notice of intention~~ notice of intention given to the *FSA*:

...

- 13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* must include, in its ~~notice of intention~~ notice of intention given to the *FSA*:
- ...
- ...
- Specified manner: form and delivery
- 13.5.3 R (1) The ~~notice of intention~~ notice of intention under *SUP* 13.5.1-R and *SUP* 13.5.2-R must be:
- ...
- (2) The ~~notice of intention~~ notice of intention may be delivered by:
- ...
- (c) hand delivery to a member of the Authorisation ~~Authorisation and Approvals (Authorisation teams)~~ department (if submitted with an application for *Part IV permission*) or to the Passport Notification Unit; or
- (d) electronic mail to the address in (4) if not submitted with an application for *Part IV Ppermission* and obtaining an electronic confirmation of receipt; or
- (e) fax to the Passport Notifications Unit on 020 7066 ~~xxxx~~ 9798 (if not submitted with an application for *Part IV Ppermission*) provided that the *FSA* receives a copy by one of the methods (a) to (d) above within five *business days* after the date of the faxed notification; or
- (f) online submission via the *FSA's* website at www.fsa.gov.uk (when available).
- ...
- 13.5.4 G A standard form of ~~notice of intention~~ notice of intention that a *UK firm* may wish to use is available from the Passport Notifications Unit (see *SUP* 13.12 (Sources of further information)).
- Unregulated activities
- 13.5.5 G A ~~notice of intention~~ notice of intention may include activities within the scope of the relevant *Single Market Directive* which are not *regulated activities* (paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the *Act*).
- ...

...

13.5.7 G If a *UK firm* wishes to establish *branches* in, or provide *cross border services* into, more than one *EEA State*, a single notification may be provided but the ~~requisite details~~ or relevant ~~details~~ information for each *EEA State* should be clearly identifiable.

...

13.6.2 G *UK firms* should note that if a *branch* in another *EEA State* ceases to provide services, this may represent a change in *requisite details* or, if the firm is passporting under the Insurance Directives, the relevant EEA details or relevant UK details ~~relevant details~~.

...

13.6.5 G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 11(2) are that:

...

- (3) either the *Host State regulator* has informed the *UK firm* that it may make the change, or the period of one ~~month~~ month beginning with the day on which the *UK firm* gave the *Host State regulator* the notice in (1) has elapsed.

13.6.6 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 13(1) states that the *UK firm* must not make a change in the ~~relevant EEA details~~ relevant EEA details (see ~~SUP 13 Ann 1R~~), unless it has satisfied the requirements of regulation 13(2), or, where the change arises from circumstances beyond the *UK firm's* control, regulation 13(3) (see SUP 13.6.10G).

13.6.7 G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 13(2) are that:

...

- (3) the period of at least one ~~month~~ month beginning on the day on which the *UK firm* gave the *FSA* the notice in (1) has elapsed; and
- (4) either:
 - (a) a further period of one ~~month~~ month has elapsed; or

...

- 13.6.8 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 15(1) states that the *UK firm* cannot make a change in any of the ~~UK relevant details~~ relevant UK details (see ~~SUP 13 Ann 21R~~) unless the *UK firm* has given a notice to the *FSA* stating the details of the proposed change at least one ~~month~~ month before the change is effected.
- 13.6.9 G Where a *UK firm* with *Part IV permission* to carry on both *long-term* and *general insurance business*, is passporting under the *Insurance Directives* and wishes to extend its *general insurance business* to include *long term insurance business* (or vice versa), it should complete a new ~~notice of intention~~ notice of intention (see ~~SUP 13.5 (Notices of intention)~~) and not a change in ~~requisite details notification~~ to details notice.
- 13.6.9A G A *UK firm* exercising its *EEA right* under the *Insurance Mediation Directive* to establish a *branch* in another *EEA State* is not required to supply a change to the details of ~~branches notice~~ requisite details or relevant details. Therefore there are no ~~requisite details or relevant details~~ for changes to a *branch* established in another *EEA State* under the *Insurance Mediation Directive*.
- 13.6.10 G (1) If the change arises from circumstances beyond the *UK firm's* control, the *UK firm*;
- (a) ...
- (b) may, if it is passporting under the *Insurance Directives*, make a change to its ~~UK relevant details~~ relevant UK details under regulation 15(1) if it has, as soon as practicable (whether before or after the change), given notice to the *FSA* stating the details of the change.
- (2) The *FSA* believes that for a change to arise from circumstances beyond the control of a *UK firm*, the circumstances should be outside the control of the ~~firm~~ firm as a whole and not just the ~~branch~~ branch in the *EEA State*.
- 13.6.11 G When the *FSA* receives a notice from a *UK firm* (see *SUP 13.6.5G*(-1) and *SUP 13.6.7G*(-1)) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one ~~month~~ month from the day on which it received the notice.
- ...
- 13.7.4 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and is providing *cross border services* into another *EEA State*, regulation 16(1) states that the *UK firm* must not make a change in the relevant details (as defined in regulation 17 – see also *SUP 13 Ann 3R*) unless the relevant requirements in regulation 16(3) or, where the change arises from circumstances beyond the *UK firm's* control, regulation 16(4), have been complied with.

...

13.7.6A G UK firms may wish to use the standard form available from the Passport Notifications Unit (see SUP 13.12 (Sources of further information)) to give the notices to the FSA as described in SUP 13.7.5G(1) and SUP 13.7.6G.

13.7.7 G When the FSA receives a notice from a UK firm (see SUP 13.7.3G(1), and SUP 13.7.5G(1) and SUP 13.7.6G), it is required by regulations 16(5) to either refuse or consent to the change within one ~~month~~ month of receipt.

...

13.7.10 G Where a UK firm with Part IV permission to carry on both long-term and general insurance business is passporting under the Insurance Directives - and wishes to extend its general insurance business to include long-term insurance business (or vice versa), it should complete a new ~~notice of intention~~ notice of intention (see SUP 13.5 (Notices of intention)) and not a change in ~~requisite details notification~~ details notice.

13.7.11 G A UK firm providing cross border services under the Banking Consolidation Directive or Insurance Mediation Directive is not required to supply a change to the details of cross border services notice ~~requisite details or relevant details~~. Therefore, there are no ~~requisite details or relevant details for changes to cross border services provided under the Banking Consolidation Directive or Insurance Mediation Directive~~.

...

13.8.1 R (1) A notice of a change to a branch referred to in ~~under~~ SUP 13.6.5G(1), SUP 13.6.7G(1), SUP 13.6.8G and SUP 13.6.10G(1) and a notice of a change to cross border services referred to in ~~under~~ SUP 13.7.3G(1), ~~SUP~~ SUP-13.7.5G(1) and SUP 13.7.6G must be:

...

(2) The notice ~~of intention~~ may be delivered by:

...

(c) hand delivery to a member of the ~~Corporate Authorisation department (if submitted with an application for Part IV permission)~~ or the Passport Notifications Unit; or

(d) electronic mail to the address in (4) ~~if not submitted with an application for Part IV permission~~ and obtaining an electronic confirmation of receipt; or

- (e) fax to the Passport Notifications Unit on 020 7066 ~~xxxx~~ 9798 (if not submitted with an application for *Part IV permission* provided that the *FSA* receives a copy by one of the methods (a) to (d) above within five *business days* after the date of the faxed notification-; or
 - (f) online submission via the *FSA's* website at www.fsa.gov.uk (when available).
- (3) The address for notices ~~of intention~~ is: The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
- ...
- 13.8.2 G *UK firms* passporting under the *Banking Consolidation Directive* or the *Insurance Directives* may be required to submit the ~~changes to the requisite details or relevant details~~ change to details notice in the language of the *Host State* as well as in English. ~~See *SUP 13.5.6G*.~~
- ...
- 13.11.1 R (1) A *UK firm* which is exercising an *EEA right* must make and retain a record of:
- (a) ...
 - (b) the ~~requisite details or relevant~~ details relating to those services or activities (if applicable) (as set out in *SUP 13.6* and *SUP 13.7*).
- ...
- 13.11.2 G The record in *SUP 13.11.1R* need not relate to the level of business carried on. A *UK firm* may comply with *SUP 13.11.1R* by, for example, keeping copies of all notices of intention and ~~notices of changes of requisite details or relevant details~~ change to details notices.
- 13.11.3 G A *UK firm* should monitor the business carried on under an *EEA right* to ensure that any changes to ~~requisite details or relevant~~ details are notified as required by *SUP 13.6 (Changes to branches)* and *SUP 13.7 (Changes to cross border services)*.
- ...
- 13.12.1 G ...

- (2) An applicant for *Part IV permission* which is submitting a ~~notice of intention~~ notice of intention with its application for such *permission* (see *AUTH 3.20* (Specific obligations: applicants seeking to establish a branch in, or provide services, into another EEA State)) should contact the ~~Corporate~~ Authorisation department in the first instance (see *AUTH 1.9* (Next Steps)).

13.12.2 G To contact the Passport Notifications Unit, from which a standard form of ~~notice of intention~~ notice of intention can be obtained:

- (1) telephone on 020 7066 1000; fax on 020 7066 ~~xxxx~~9798; or

...

14.1.4 G This chapter gives *guidance* on the *Act* and the *EEA Passport Rights Regulations* made under the *Act*, for an *incoming EEA firm* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* and wishes to change the details of the *branch* or *cross border services*. ~~These are known as requisite details, or for firms' passporting under the Insurance Directives relevant details.~~

...

Annex D

Amendments to the Professional Firms sourcebook (PROF)

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

- 7.2.3 G ...*SUP* 13.3.2G to *SUP* 13.3.5G detail the procedure to be followed once such a ~~notice of intention~~ notice of intention has been received by the *FSA*...

Annex E

Amendments to the Supervision manual (SUP) (MiFID-related changes)

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

Where entire sections of the text are being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

13.3.1 G What constitutes a branch

Guidance on what constitutes a *branch* is given in SUP App 3. Note that if a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State*, the rules in SUP 13 will apply as if that *firm* were seeking to establish a *branch* in that *EEA State* unless the *firm* has already established a *branch* in that *EEA State* (paragraph 20A of Schedule 3 to the Act).

13.3.2 G A *UK firm* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:

...

(3) (a) ...

(b) in any other case:

(i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *FSA*) of the applicable provisions or, in the case of a *UK firm* passporting under *MiFID*, that the *branch* may be established; or

...

...

13.3.2D G A *tiered agent* appointed by a *MiFID investment firm* to carry on *investment services and activities* (and *ancillary services* where relevant) does not have its own passporting right to establish a *branch* in another *EEA State*. However, a *MiFID investment firm* remains free to appoint a *tiered agent* to do business in another *EEA State* and where it does so, the *tiered agent* will

benefit from its passport.

Issue of a consent notice to the Host State regulator

- 13.3.5 G (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive*, ~~the *MiFID Investment Services Directive*~~, or the *UCITS Directive*, the *FSA* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure; The *Host State regulator* then has a further two *months* to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*, or in the case of a *MiFID investment firm*, to inform the *UK firm* that a *branch* can be established.

...

...

- 13.4.2C G A *tiered agent* appointed by a *MiFID investment firm* to carry on *investment services and activities* (and *ancillary services* where relevant) does not have its own *passporting right* to provide *cross border services* in another *EEA State*. However, a *MiFID investment firm* remains free to appoint a *tiered agent* to do business in another *EEA State* and where it does so, the *tiered agent* will benefit from its passport.

- 13.4.2D G A *MiFID investment firm* that wishes to obtain a passport for the activity of *operating an MTF* should follow the procedures described in this chapter. A *UK market operator* that operates a *recognised investment exchange* or an *MTF* and wishes to provide *cross border services* into another *EEA State* should follow the procedure described in *REC 4.2BG*.

...

...

~~How long will the process take?~~

- 13.4.3 G [deleted]

- 13.4.3A G [deleted]

Issuing a consent notice or notifying the Host State regulator

13.4.4 G (1) ~~if~~ the UK firm's EEA right derives from the ~~MiFID Investment Services Directive~~, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the Act requires the FSA to send a copy of the *notice of intention* to the *Host State regulator* within one month of receipt; ~~or~~. However, a UK firm passporting under the *Banking Consolidation Directive* or *MiFID Investment Services Directive* may start providing cross border services as soon as it satisfies the relevant conditions (see SUP 13.4.2G).

(2) (a) ~~if~~ the UK firm's EEA right derives from the *Insurance Directives*, paragraph 20(3A) of Part III of Schedule 3 to the Act requires the FSA, within one month of receiving the *notice of intention*, to:

...

13.4.6 G (1) If the UK firm is passporting under the ~~Investment Services Directive~~ ~~or~~ *UCITS Directive*, then when the *Host State regulator* receives the *notice of intention*, it should inform the UK firm of any applicable provisions.

...

...

13.5.2 R A UK firm wishing to provide *cross border services* into a particular EEA State for the first time under an EEA right must include in its *notice of intention* given to the FSA:

(1) if the UK firm is passporting under the ~~Investment Services Directive~~ MiFID or the *Insurance Directives*, the information specified in SUP 13 Ann 3;

...

...

Unregulated activities

13.5.5 G A *notice of intention* may include activities within the scope of the relevant *Single Market Directive* which are not *regulated activities* (paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the Act), although in the case of a *MiFID investment firm* a notice of intention may only include *ancillary services which are to be carried on with one or more investment services and activities* (paragraphs 19(5B) and 20(2A) of Part III of Schedule 3 to the Act). Regulation 19 ...

...

Firms passporting under ~~the Investment Services Directive~~, the Banking Consolidation Directive and the UCITS Directive

- 13.6.4 G If a *UK firm* has exercised an *EEA right*, under ~~the Investment Services Directive~~, the *Banking Consolidation Directive* or the *UCITS Directive*, and established a *branch* in another *EEA State*, regulation 11(1) ...

...

Firms passporting under MiFID

- 13.6.5A G If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see *SUP 13 Annex 1*), use, for the first time, a *tied agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tied agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see *SUP 13.6.5BG*).

- 13.6.5B G The requirements of regulation 11A(2) are that:

- (1) the *UK firm* has given a notice to the *FSA* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice has elapsed.

...

- 13.6.10 G (1) ...
- (3) Neither this *guidance* nor that set out at *SUP 13.6.4G* or *SUP 13.6.5G* is applicable to *MiFID investment firms*.

- 13.6.11 G When the *FSA* receives a notice from a *UK firm* other than a *MiFID investment firm* (see *SUP 13.6.5G*(-1) and *SUP 13.6.7G*(-1)) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

...

- 13.6.13 G If a *UK firm* is passporting under the ~~*Investment Service Directive*~~ or *Banking Consolidation Directive*, then ...

...

- 13.6.16 G *UK firms* may wish to use the standard form available from the Passport Notifications Unit (see *SUP 13.12* (Sources of further information)) to give the notices to the *FSA* described in *SUP 13.6.5G*(1), *SUP 13.6.5BG*, *SUP 13.6.7G*(1), *SUP 13.6.8G* and *SUP 13.6.10G*(1).

The process: MiFID investment firms

- 13.6.17 G When the FSA receives a notice from a UK MiFID investment firm (see SUP 13.6.5BG(1)), it is required by regulation 11A(3) to inform the relevant Host State regulator of the proposed change as soon as reasonably practicable. The firm in question may make the change once the period of one month beginning with the day on which it gave notice has elapsed.

Changes to cross border services

- 13.7.1 G Where a UK firm is exercising an EEA right under the UCITS Directive, Investment Services Directive MiFID or the Insurance Directives and is providing *cross border services* into another EEA State, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A UK firm which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence. If it a defence, however, for the UK firm to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

...

Firms passporting under ~~the Investment Services Directive~~ and the UCITS Directive

- 13.7.3 G If a UK firm is passporting under ~~the Investment Services Directive~~ or the *UCITS Directive*, regulation 12(1) states that ...

...

- (2) if the change arises as a result of circumstances beyond the UK firm's control, the UK firm has as soon as practicable (whether before or after the change) given a notice to the FSA and to the *Host State regulator*, stating the details of the change.

UK firms may wish to use the standard form available from the Passport Notifications Unit (see SUP 13.12 (Sources of further information)) to give the notices to the FSA required by SUP 13.7.3G(1) and SUP 13.7.3AG.

Firms passporting under MiFID

- 13.7.3A G If a UK firm is providing cross border services in a particular EEA State in exercise of an EEA right deriving from MiFID, the UK firm must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:

- (1) changing the activities to be carried on in exercise that EEA right;

- (2) using, for the first time, any *tied agent* to provide services in the territory of that *EEA State*; or
- (3) ceasing to use any *tied agent* to provide services in the territory of that *EEA State*.

13.7.3B G The requirements of regulation 12A(2) are that:

- (1) the *UK firm* has given notice to the *FSA* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice mentioned in (1) has elapsed.

...

13.7.6A G *UK firms* may wish to use the standard form available from the Passport Notifications Unit (see *SUP* 13.12 (Sources of further information)) to give the notices to the *FSA* required by *SUP* 13.7.3(1)G, *SUP* 13.7.3AG, *SUP* 13.7.3BG, *SUP* 13.7.5G(1) and *SUP* 13.7.6G.

13.7.7 G When the *FSA* receives a notice from a *UK firm* (see ~~*SUP* 13.7.3G(1)~~, *SUP* 13.7.5G(1) and *SUP* 13.7.6G), it is required by regulations 16(5) to either refuse or consent to the change within one *month* of receipt.

...

13.8.1 R (1) A notice of a change to a *branch* referred to in *SUP* 13.6.5G(1), *SUP* 13.6.5BG(1), *SUP* 13.6.7G(1), *SUP* 13.6.8G and *SUP* 13.6.10G(1) and a notice of a change to *cross border services* as described in *SUP* 13.7.3G(1), *SUP* 13.7.3AG(1), ~~or *SUP* 13.7.5G(1) and *SUP* 13.7.6G~~ must be:

...

...

13.11.1 R (1) ...

(2) The record in (1) must be kept for five years (for *firms* passporting under *MiFID*) or three years (for other *firms*)...

[Note: article 13(6) of *MiFID* and article 51(1) of the *MiFID* implementing Directive]

...

...

SUP 13 Annex 1R

	Type of firm	Requisite details (see notes 1 & 2)
--	--------------	-------------------------------------

1.	Credit institution Credit Institution or Investment Firm	(a)	particulars of the programme of operations carried on, or to be carried on, from the <i>branch</i> , including a description of the particular <i>EEA</i> activities to be carried on, and of the structural organisation of the <i>branch</i> ;
		(b)	the address in the <i>EEA State</i> in which the <i>branch</i> is, or is to be, established from which information about the business may be obtained; and
		(c)	the names of the managers of the branch <i>branch</i> .
1A.	<u>MiFID investment firm</u>	(a)	The <i>EEA States</i> within the territory of which the <i>UK firm</i> plans to establish a <i>branch</i> ;
	[Note: Article 32(2)]	(b)	the programme of operations to be carried on from the <i>branch</i> , including a description of the <i>investment services and activities</i> and <i>ancillary activities</i> to be carried on and of the structural organisation of the <i>branch</i> ;
		(c)	the address in the <i>EEA State</i> in which the <i>branch</i> is to be established from which information about the business may be obtained;
		(d)	the names of the managers of the <i>branch</i> ; and
		(e)	whether the <i>branch</i> intends to use <i>tied agents</i> .

...

"Note 1: The ~~requisite details~~ ~~requisite details~~ or relevant details specified in this annex are those in the *EEA Passport Rights Regulations*; that is, those in regulation 1 for *credit institutions* and *MiFID investment firms*, and those in regulation 14 for *insurance undertakings*."

...

SUP 13 Annex 3R

	Type of Firm		Specified Information
1.	<i>Investment firm</i>	1	Details of the programme of operations, stating in particular the service or services the <i>UK firm</i> intends to provide.

	Type of Firm		Specified Information
1.	<u>MiFID investment firm</u>	(a)	The <i>EEA State</i> in which the <i>UK firm</i> intends to operate.
		(b)	Details of the programme of operations, stating in particular the <i>investment services and activities</i> and the <i>ancillary services</i> which it intends to perform.
		(c)	Whether the <i>UK firm</i> intends to use <i>tied agents</i> in the territory of the <i>EEA State</i> in which the <i>UK firm</i> intends to operate.

...

4.	<u>MiFID investment firm wishing to operate an MTF</u>	(a)	The <i>EEA State</i> in which arrangements are to be made.
		(b)	A description of the arrangements the

			<u>firm wishes to make.</u>
--	--	--	-----------------------------

[Note: Article 31(2) and 31(6)]

...

13A.1.2 G This chapter does not apply to:

...

		(3)	a <i>Treaty firm</i> that wishes to provide <i>electronic commerce activities</i> into the <i>United Kingdom</i> ; or
		(4)	<u>a market operator that operates a regulated market or an MTF in an EEA State other than the UK and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the UK. See SUP App 3.6.25G for guidance.</u>

....

13A.3 Qualifications for authorisation under the Act

13A.3.1 G If an EEA MiFID investment firm seeks to use a tied agent established in the UK, the EEA MiFID investment firm will be treated as if it were seeking to establish a branch and must satisfy the establishment conditions (see SUP 13A.4.1-G).

....

13A.4.4 G The notification procedure

(1) When the *FSA* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:

- (a) the *EEA firm*; and
- (b) in the case of an *EEA firm* passporting under the *Insurance Directives*, the *Home State regulator*;

within two *months* of the notice date.

(1A) The notice date is:

- (a) for a MiFID investment firm, the date on which the Home State gave the consent notice; and
- (b) in any other case, the date on which the FSA received the consent notice.

...

- 13A.6.4 G Under the *EEA Passport Rights Regulations*, references in section 60 of the *Act* (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include:
- (1) an EEA MiFID investment firm whose Home State regulator has given a consent notice under paragraph 13 of Schedule 3 to the Act (see SUP 13A.4.1G-(1) and SUP 13A.4.2-G) or a regulator's notice under paragraph 14 of that Schedule (see SUP 13A.5.3G-(1)), and which will be the authorised person concerned if the EEA firm qualifies for authorisation under that Schedule; and
 - (2) any other EEA firm with respect to which the FSA has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see SUP 13A.4.1G-(1) and SUP 13A.4.2-G) or a regulator's notice under paragraph 14 of that Schedule (see SUP 13A.5.3G(1)), and which will be the *authorised person* concerned if the EEA firm qualifies for *authorisation* under that Schedule.

....

- 13A.7.3 G ~~Top up permission will be required, for example, for designated investment business activities carried on in relation to commodity derivatives. [deleted]~~

...

- 14.2.2 G Firms passporting under the ~~Investment Services Directive~~ and Banking Consolidation Directive and the UCITS Directive
- (1) Where an *incoming EEA firm* passporting under the ~~Investment Services Directive~~, ~~Banking Consolidation Directive~~ or the *UCITS Directive* has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the *branch* unless it has complied with the relevant requirements.
 - (2) The relevant requirements are set out in regulation 4(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, in regulation 4(5) (see SUP 14.2.8-G).

...

Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the Banking Consolidation Directive, UCITS Directive or Insurance Directive

- 14.2.8 G If the change arises from circumstances beyond the *incoming EEA firm's* control, the *firm* is required by regulation 4(5) (see SUP 14.2.2-G) or

regulation 6(5) (see SUP 14.2.5-G-(2)) to give a notice to the FSA (see SUP 14.4.1-G) and to its *Home State regulator* stating the details of the change as soon as reasonably practicable.

Firms passporting under MiFID

14.2.10 G Where an EEA MiFID investment firm has established a branch in the UK, regulation 4A states that it must not make a change in the requisite details of the branch unless it has complied with the relevant requirements.

14.2.11 G The relevant requirements in regulation 4A(3) are that:

(1) the EEA MiFID investment firm has given notice to its Home State regulator stating the details of the proposed change; and

(2) the period of one month beginning with the date on which the EEA MiFID investment firm gave the notice mentioned in (1) has elapsed.

14.2.12 G Changes to the requisite details may lead to changes to the applicable provisions to which the EEA MiFID investment firm is subject. The FSA will, as soon as practicable after receiving a notice in SUP 14.2.11-G inform the EEA MiFID investment firm of any consequential changes in the applicable provisions.

14.3 Changes to cross border services

14.3.1 G Where an *incoming EEA firm* passporting under the ~~Investment Services Directive~~ MiFID, *UCITS Directive* or *Insurance Directives* is exercising an *EEA right* and is providing cross border services into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly.

Firms passporting under the ~~Investment Services Directive~~ and *UCITS Directive*

14.3.2 G Where an *incoming EEA firm* passporting under the ~~Investment Services Directive~~ or *UCITS Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1A) unless it has complied with the relevant requirements in regulation 5(3).

...

Firms passporting under MiFID

- 14.3.3B G The requirement in regulation 5(3A) is that the *incoming EEA firm* has.
- 14.3.4 G Under regulation 5(4), the *FSA* is required, as soon as practicable after receiving the notice in *SUP* 14.3.3G to inform the *incoming EEA firm* of any consequential changes in the *applicable provisions*.
- 14.3.4A G Where an *incoming EEA firm* passporting under *MiFID* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1) unless it has given at least one *month's* notice to its *Home State regulator* stating the details of the proposed change.

...

App 3.3 Background

...

- App 3.3.6 G (1) The European Commission has not produced an interpretative communication on *MiFID* ~~the *Investment Services Directive*~~. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because Chapter II of Title II ~~article 11 of the *Investment Services Directive*~~ *MiFID* (containing provisions relating to ~~conduct of business rules~~ operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*.

- (2) ...

...

- App 3.3.13 G Notification of establishing a branch or of providing cross border services
- The *Single Market Directives* require *credit institutions, insurance undertakings, MiFID investment firms, UCITS management companies* and *insurance intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services*.

...

...

- App 3.6.3 G Under the *Single Market Directives*, however, *EEA rights* for the provision of services are concerned only with services provided in one of the ways referred to in *SUP* App 3.6.2G-(1) and (2) (How services may be provided).

...

- App G The *FSA* is of the opinion that *UK firms* that are *credit institutions* and ~~*ISD*~~

3.6.8 *MiFID investment firms* should apply the 'characteristic performance' test (as referred to in SUP App 3.6.7-G, ~~SUP App 3.6.7 G,~~) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.

...

App
3.6.10

- G Where, however, a *credit institution* or ~~ISD~~ *MiFID investment firm*:
- (1) intends to send a member of staff or a temporarily authorised intermediary to the territory of another *EEA State* on a temporary basis to provide financial services; or
 - (2) provides advice, of the type that requires notification under either ~~the Investment Services Directive~~ *MiFID* or the *Banking Consolidation Directive* ~~Banking Coordination Directive~~, to *customers* in another *EEA State* ;

the *firm* should make a prior notification under the freedom to provide services.

...

App
3.6.25

- G Membership of regulated markets
- (1) The *FSA* is of the opinion that where a *UK firm* becomes a member of:
 - (a) a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*; or
 - (b) an MTF operated by a MiFID investment firm or a market operator in another EEA State.

the same principles as in the 'characteristic performance' test should apply. Under this test, the fact that a *UK firm* has a screen displaying the *regulated market's* or the MTF's prices in its *UK* office does not mean that it is *dealing* within the territory of the *Home State* of the *regulated market* or of the MTF.

- (2) In such a case, we would consider that:
 - (a) the market operator operating the regulated market or the MTF is providing a cross-border service into the UK and so, provided it has given notice to its Home State regulator in accordance with articles 42(6) or 31(5) MiFID, it will be exempt from the general prohibition in respect of any regulated activity carried on as part of the business of the

regulated market or of operating an MTF (see section 312A of the Act);

- (b) the MiFID investment firm operating the MTF is providing a cross-border service into the UK and so needs to comply with SUP 13A.

App 3.6.26 G Firms are reminded of their rights, under article 15(1)~~33~~ of ~~the Investment Services Directive~~ MiFID, to become members of, or have access to, the *regulated markets* in other Member States.

...

App 3.9	Mapping of <u>MiFID</u> , the Investment Services Directive , Banking Consolidation Directive, UCITS Directive and Insurance Mediation Directive, to the Regulated Activities Order	
App 3.9.1	G	The following Tables 1, 2, 2A and 2B, provide an outline of the <i>regulated activities</i> and <i>specified investments</i> that may be of relevance to <i>firms</i> considering undertaking <i>passport activities</i> under the <i>Banking Consolidation Directive</i> , the Investment Services Directive <u>MiFID</u> , the <i>UCITS Directive</i> and the <i>Insurance Mediation Directive</i> . The tables may be of assistance to <i>UK firms</i> that are thinking of offering financial services in another <i>EEA State</i> and to <i>EEA firms</i> that may offer those services in the <i>United Kingdom</i> .
App 3.9.2	G	The tables provide a general indication of the <i>investments</i> and activities specified in the <i>Regulated Activities Order</i> that may correspond to categories provided for in, the <i>Banking Consolidation Directive</i> , the Investment Services Directive <u>MiFID</u> , the <i>UCITS Directive</i> or the <i>Insurance Mediation Directive</i> . The tables do not provide definitive <i>guidance</i> as to whether a <i>firm</i> is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a <i>firm</i> is carrying on a <i>passport activity</i> will depend on the particular circumstances of the <i>firm</i> . If a <i>firm's</i> activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.
...		
App 3.9.4	G	... <u>Note 2: The services and activities provided for in Sections A and B of Annex I of MiFID when referring to the financial instruments provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the BCD from 1 November 2007. Please refer to the table at SUP App 3.9.5 below for mapping of MiFID investment services and activities.</u>

App
3.9.5

G Services set out in Annex to the ~~ISD I~~ ISD I to MiFID

Delete the existing table and substitute it with the one below (which, although composed entirely of new text, is not underlined)

Table 2: <i>MiFID investment services and activities</i>		Part II RAO Activities	Part III RAO Investments
	<i>A MiFID investment services and activities</i>		
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25 (see Note 1)	Article 76-81, 83-85, 89
2.	Execution of orders on behalf of clients	Article 14, 21	A Article 76-81, 83-85, 89
3.	Dealing on own account	Article 14	Article 76-81, 83-85, 89
4.	Portfolio management	Article 37	Article 76-81, 83-85, 89
5.	Investment advice	Article 53	Article 76-81, 83-85, 89
6.	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21	Article 76-81, 83-85, 89
7.	Placing of financial instruments without a firm commitment basis	Article 21, 25	Article 76-81, 83-85, 89
8.	Operation of Multilateral Trading Facilities	Article 25B (see Note 2)	Article 76-81, 83-85, 89
	Ancillary services	Part II RAO Activities	Part III RAO Investments
1.	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as	Article 40, 45, 64	Article 76-81, 83-85, 89

	cash/collateral management		
2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53, 64	Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article 53, 64	Article 76-81, 83-85, 89
6.	Services related to underwriting	Article 25, 53, 64	Article 76-81, 83-85, 89
7.	Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	Article 14, 21, 25, 25B, 37, 53, 64	Article 83 and 84

Note 1. The *MiFID* service of receiving and transmitting orders does not extend to the *regulated activity* of *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order* unless the arrangements bring about or would bring about particular transactions. This is the case, whether or not the bringing about arises or would arise as a result of the *person* who makes the arrangements receiving and transmitting orders in relation to particular transactions or in any other way.

Note 2. A *firm* operating an *MTF* under article 25B does not need to have a *permission* covering other *regulated activities*, unless it performs other *regulated activities* in addition to *operating an MTF*.

...

App G Activities set out in Article 5(2) and (3) of the UCITS Directive
3.9.6

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	The management of UCITS in the form of unit trusts / common funds or of investment companies; this includes the function mentioned in Annex II of the <i>UCITS Directive</i> (see Note 2).	Articles 14, 21, 25, 37, 51, 53, 64	Articles 76-81, 83-85, 89
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section <u>BC</u> of the Annex I to <i>MiFID</i> the ISD .	Articles 14, 21, 25, 37, 53, 64	Articles 76-81, 83-85, 89
3.	Investment advice concerning one or more of the instruments listed in Section <u>BC</u> of the Annex I to <i>MiFID</i> the ISD .	Articles 53, 64	Articles 76-81, 83-85, 89
4.	Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76-81, 83-85, 89
<p>Note 1. A <i>UCITS management company</i> can only exercise passport rights under the <i>UCITS Directive</i> (article 2(21)(h) of <i>MiFID</i> the ISD). A <i>UCITS management company</i> can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also authorised to carry on the activity set out in row (2) of the table.</p>			
<p>Note 2. The functions set out in Annex 2 to the <i>UCITS Directive</i> are:</p>			
1.	Investment management.		
2.	Administration:		
	a.	legal and fund management accounting services;	
	b.	customer inquiries;	
	c.	valuation and pricing (including tax returns);	
	d.	regulatory compliance monitoring;	

	e.	maintenance of unit-holder register;
	f.	distribution of income;
	g.	unit issues and redemptions;
	h.	contract settlements (including certificate dispatch);
	i.	record keeping.
3.	Marketing.	

...

SUP Schedule 1 Record keeping requirements

SUP Sch .1.2 G

Handbook Reference	Subject of record	Contents of record	When record must be made	Retention period
...				
SUP 13.11.1R	Exercise of passport rights by <i>UK firms</i>	(1) Services or activities carried on from a <i>branch</i> in, or <u>provided</u> cross-border into, another <i>EEA State</i> under an <i>EEA right</i> . (2) The requisite details or relevant details (if applicable). the <u>requisite details or relevant details relating to those services</u>	Not specified	<u>Five years (for <i>firms</i> passporting under <i>MiFID</i>) or three Three years (for other <i>firms</i>)</u> from earlier of: (1) record being superseded; (2) <i>firm</i> ceasing to have any <i>EEA branches</i> or <i>cross border services</i> .

		or activities (as set out in <i>SUP</i> 13.6 and <i>SUP</i> 13.7).		
...				

SUP Sch .2.2 G

Handbook Reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 13.6.5G(1)	Changes to <i>branches</i> (<i>Firms</i> passporting under the <i>Investment Services Directive</i> , the <i>UCITS Directive</i> and <i>Banking Consolidation Directive</i>)	Details of proposed change	Change in circumstances within control of <i>UK firm</i>	Before making change
<u><i>SUP</i> 13.6.5BG</u>	Changes to <u><i>branches</i></u> (<u><i>Firms</i></u> passporting under <u><i>MiFID</i></u>)	<u>Details of proposed change</u>	<u>Change in circumstances, including using for the first time or ceasing to use a <i>tiered agent</i> established in the <i>EEA State</i> in which the <i>branch</i> is established</u>	<u>Before making change</u>
...				
<i>SUP</i> 13.6.10G	Changes to <i>branches</i> <u>(not <i>firms</i> passporting)</u>	Details of change	Changes to <i>branch</i> arising from circumstances	As soon as reasonably practicable

	<u>under MiFID)</u>		beyond control of a <i>UK firm</i>	
<i>SUP 13.7.3G</i>	<i>Firms</i> passporting under <u>the UCITS Directive Investment Services Directive</u> : Change in program of operations, or activities to be carried on under its <i>EEA right</i>	Details of proposed change	Change in programme of operations, or activities to be carried on under its <i>EEA right</i>	(a) change arises from circumstances within control of <i>firm</i> : before making change. (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as practicable (whether before or after change)
<u><i>SUP 13.7.3BG</i></u>	<u><i>Firms</i> passporting under <i>MiFID</i> (cross-border services): Change in program of operations, or activities to be carried on under its <i>EEA right</i></u>	<u>Details of proposed change</u>	<u>Change in activities to be carried on, using for the first time or ceasing to use a <i>tier agent</i></u>	<u>Before making change.</u>
...				
<i>SUP 14.2.3 G</i>	Change to <i>branch</i> details in circumstances within control of the <i>firm</i> (<i>firms</i> passporting under <u>the Investment Services</u>)	Details of proposed change	Change to <i>branch</i> details	Before making the change

	<i>Directive, the UCITS Directive and Banking Consolidation Directive)</i>			
...				
<u>SUP 14.2.11 G</u>	<u>Changes to UK branch details for EEA MiFID investment firms</u>	<u>Details of proposed change</u>	<u>Changes to branch details</u>	<u>Before making the change</u>
<u>SUP 14.3.3 G</u>	Changes to <i>cross border services (firms</i> passporting under the <i>Investment Services UCITS Directive)</i>	Details of proposed change	Changes to <i>cross border services</i>	(a) change arises from circumstances within control of <i>firm</i> : before making change (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as reasonably practicable
<u>SUP 14.3.3BG</u>	<u>Incoming EEA firm passporting under MiFID</u>	<u>Details of the proposed change to cross-border services</u>	<u>Change in details</u>	<u>Before the change</u>

SUP Sch 6.1 G

e)	the following <i>rules</i> in SUP 13 (Exercise of passport rights by UK <i>firms</i>): SUP 13.5.1-R, SUP 13.5.2-R, <u>SUP 13.11.1R</u> , SUP 13 Annex 1, SUP 13 Annex 2 and SUP 13 Annex 3.
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MIFID (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 157(1) (Guidance);
 - (3) section 158A (Guidance on outsourcing by investment firms);
 - (4) section 210(3) (Statement of policy);
 - (5) section 213 (The compensation scheme); and
 - (6) section 395(5) (The Authority's procedures).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA'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)
Principles for Businesses sourcebook (PRIN)	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
General Provisions (GEN)	Annex D
Prudential sourcebook for Banks, Building Societies and Investment Businesses (BIPRU)	Annex E
Training and Competence sourcebook (TC)	Annex F
Supervision manual (SUP)	Annex G
Compensation sourcebook (COMP)	Annex H

Citation

- E. This instrument may be cited as the MiFID (Miscellaneous amendments) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Principles for Businesses sourcebook (PRIN)

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

Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

1.1.1 G The *Principles* (see *PRIN 2*) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms conducting MiFID business, incoming EEA firms, incoming Treaty firms and UCITS qualifiers*. *PRIN 3* (Rules about application) specifies to whom, to what and where the *Principles* apply.

Purpose

1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. This includes provisions which implement the *Single Market Directives*. They derive their authority from the *FSA's* rule-making powers as set out in the *Act* and reflect the *regulatory objectives*.

...

1.1.6A G *PRIN 4* (Principles : MiFID Business) provides *guidance* on the application of the *Principles to MiFID business*.

...

1.2.2 G Approach to client classification

Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not ~~market counterparties-eligible counterparties~~). The approach that a firm needs to take regarding classification of clients into customers and ~~market counterparties-eligible counterparties~~ will depend on whether the firm is carrying on designated investment business or other activities, as described in PRIN 1.2.3G and PRIN 1.2.4G.

1.2.3 G Classification: designated investment business

(1) ...

- (2) The *person* to whom a *firm* provides basic advice on a stakeholder product will be a retail client~~private customer~~ for all purposes including the purposes of *Principles* 6, 7, 8 and 9.

...

- 1.2.5 G A *firm* is therefore not required to classify its *clients* (because *COB* 4.1.4R does not apply) and may choose to comply with *Principles* 6, 7, 8 and 9 as if all its *clients* were *customers*. Alternatively, it may choose to distinguish between ~~market eligible counterparties~~ and *customers* in complying with those *Principles*. But, in that case, the *firm* would need to classify any *client* treated as an eligible counterparty~~market counterparty~~. In doing this, the requirements in *SYSC* will apply, including the requirement to establish appropriate systems and controls (*SYSC* 3.1.1R) and the requirement to make and retain adequate records (*SYSC* 3.2.20R). In classifying its ~~market counterparties~~eligible counterparties, it would be open to such a *firm*, although not obligatory, to permit professional clients~~intermediate customers~~ to change opt up to market counterparty~~eligible counterparty~~ status in accordance with *COB* 4.1.12 R. It would also have to treat an ~~market counterparty~~eligible counterparty as a *customer* if the *firm* had chosen to treat the ~~private customer~~ retail client in the circumstances set out in *COB* 4.1.14R.

...

- 3.1.6 R A *firm* will not be subject to a *Principle* to the extent that it would be contrary to the UK's obligations under a *Single Market Directive*.
- 3.1.7 G *PRIN* 4 provides specific guidance on the application of the *Principles* for *MiFID* business.

...

3.4 General

3.4.1 R Clients and the Principles

Although *Principle* 7 refers to *clients*, the requirement of *Principle* 7 relating to ~~market counterparties~~eligible counterparties is that a *firm* must communicate information to ~~market counterparties~~eligible counterparties in a way that is not misleading.

...

3.4.3 G

- (1) ...

- (2) The *person* to whom a *firm* provides basic advice on a stakeholder product will be a retail client~~private customer~~ for all purposes including the purposes of *Principles* 6, 7, 8 and 9.

...

After PRIN 3.4 insert the following:

4 Principles : MiFID business

4.1 Principles : MiFID business

- 4.1.1 G *PRIN* 3.1.6R ensures that the *Principles* do not impose obligations upon *firms* which are inconsistent with a *Single Market Directive*. If a *Principle* does purport to impose such an obligation *PRIN* 3.1.6R disapplies that *Principle* but only to the extent necessary to ensure compliance with European law. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN* 3.3.1R, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable *rule* which is relevant to an activity has a wider territorial scope. Under *PRIN* 3.1.1R, the territorial application of a number of *Principles* to an *EEA MiFID investment firm*, is narrowed to the extent that responsibility for the matter in question is reserved to the *firm's Home State regulator*. These modifications are relevant to *Principles* 1, 2, 3, 6, 7, 8, 9 and 10.

- 4.1.3 G *Principles* 4, 5 and 11 will have the same scope of territorial application for *MiFID business* as for other business.

What?

- 4.1.4 G (1) Certain requirements under *MiFID* are disapplied for;
- (a) *eligible counterparty business*;
 - (b) transactions concluded under the rules governing a *multilateral trading facility* between its members or participants or between the *multilateral trading facility* and its members or participants in relation to the use of the *multilateral trading facility*;
 - (c) transactions concluded on a *regulated market* between its members or participants.
- (2) Under *PRIN* 3.1.6R, these disapplications may affect *Principles* 1, 2, 6 and 9. *PRIN* 3.1.6R applies only to the extent that the application of a *Principle* would be contrary to the *UK's* obligations under a *Single*

Market Directive in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a *regulated market* only apply in relation to a *firm's* conduct of business obligations to its *clients* under *MiFID*. They do not limit the application of those *Principles* in relation to other matters, such as *client* asset protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in Part 2 of *COBS* App 1.

(3) *Principles* 3, 4, 5, 7, 8, 10 and 11 are not limited in this way.

4.1.5 G Although *Principle* 8 does not apply to *eligible counterparty business*, a *firm* will owe obligations in respect of conflicts of interest set out in *SYSC* 10 which are wider than those contained in *Principle* 8 in that they apply to *eligible counterparty business*.

Annex B

Amendments to the Senior Management, Systems and Controls sourcebook (SYSC)

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

Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined

1.3 Application of the common platform requirements

Who?

1.3.1B G Whilst the *common platform requirements* do not generally apply to *incoming EEA firms, EEA MiFID investment firms* must comply with the *common platform record-keeping requirements in relation to a branch in the United Kingdom.*

...

1.3.2 R The *common platform organisational requirements* apply with respect to the carrying on of the following (unless provided otherwise within a specific rule):

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc.); ~~and~~
- (3) *ancillary activities*; and
- (4) in relation to *MiFID business, ancillary services.*

Where?

1.3.9 R The *common platform requirements*, except the *common platform record-keeping requirements*, apply to a *common platform firm* in relation to activities carried on by it from an establishment in the *United Kingdom*.

1.3.10 R The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to a *common platform firm* in relation to *passport activities* carried on by it from a *branch* in another *EEA State*.

1.3.10A R The *common platform record-keeping requirements* apply to activities carried on by:

- (1) a common platform firm; or
- (2) an EEA MiFID investment firm;

from an establishment maintained in the United Kingdom, unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case the common platform record-keeping requirements apply with that wider scope in relation to the activity described in that rule.

[Note: article 13(9) of *MiFID*]

...

6.1 Compliance

- 6.1.1 R A *common platform firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tiered agents*) with its obligations under the *regulatory system*.

[Note: article 13(2) of *MiFID*]

...

After SYSC 8.1 insert the following:

- 8.2 Outsourcing of portfolio management for retail clients to a non-EEA State.
- 8.2.1 R (1) In addition to the requirements set out in the *MiFID outsourcing rules*, when a *MiFID investment firm* outsources the *investment service of portfolio management to retail clients* to a service provider located in a *non-EEA state*, it must ensure that the following conditions are satisfied:
 - (a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;
 - (b) there must be an appropriate cooperation agreement between the *FSA* and the supervisor in the *non-EEA State*.(in this chapter the "conditions").

[Note: article 15(1) of the *MiFID implementing Directive*]

- (2) In addition to complying with the *common platform outsourcing rules*, if one or both of the conditions are not satisfied, a *MiFID investment firm* may enter into such an *outsourcing* only if it gives prior notification in writing to the *FSA* containing adequate details of the proposed *outsourcing* and the *FSA* does not object to that arrangement within a reasonable time following receipt of that notification.

[Note: article 15(2) and (4) of the *MiFID implementing Directive*]

- (3) For the purposes of this *rule* a "reasonable time" is within one month of receipt of a notification. However, the *FSA* may seek further information from the *MiFID investment firm* in relation to the *outsourcing* proposal if this is necessary to enable the *FSA* to make a decision. Any effect this may have on the *FSA's* response time will be notified to the *MiFID investment firm* and that revised response time will constitute a reasonable time for the purposes of this *rule*.

8.2.2 [intentionally blank]

8.2.3 G The conditions do not apply if the *outsourcing* only concerns ancillary activities connected with *portfolio management*, for example IT processes or execution only activities.

8.2.4 G If a *firm* has received no notice of objection or no request for further information from the *FSA* within one month of the *FSA* receiving the notification, it may *outsource* the *portfolio management* on the basis set out in the notification.

8.2.5 G The *FSA* would use its powers under section 45 of the *Act* to vary a *firm's permission* if it objected to such a notification.

Notification requirements: timing of notification

8.2.6 G A *firm* should only make an *outsourcing* proposal notification to the *FSA* after it has carried out due diligence on the service provider and has had regard to the *guidance* set out in *SYSC* 8.3. The *FSA* will expect a *firm* to only submit an *outsourcing* proposal notification in respect of a service provider that the *firm* has determined is suitable to carry on the *outsourcing* activity.

Notification requirements: content

- 8.2.7 G The *guidance* set out in SYSC 8.3 includes information on what the *FSA* will expect a *firm* to check before the submission of a notification.
- 8.2.8 G A notification under this section should include:
- (1) details on which of the conditions is not met;
 - (2) if applicable, details and evidence of the service provider's authorisation or regulation including the regulator's contact details;
 - (3) the *firm's* proposals for meeting its obligations under this chapter on an ongoing basis;
 - (4) why the *firm* wishes to *outsource* to the service provider;
 - (5) a draft of the *outsourcing* agreement between the service provider and the *firm*;
 - (6) the proposed start date of the *outsourcing*; and
 - (7) confirmation that the *firm* has had regard to the *guidance* in SYSC 8.3, or if it has not, why not.

Notification requirements – additional guidance

- 8.2.9 G Where the *FSA* has not objected to the *outsourcing* agreement, the *firm* should have regard to its obligations under SUP 15 which include making the *FSA* aware of any matters which could affect the *firm's* ability to provide adequate services to its *customers* or could result in serious detriment to its *customers* or where there has been material change in the information previously provided to the *FSA* in relation to the *outsourcing*.
- 8.3 Guidance on outsourcing portfolio management for retail clients to a non-EEA State
- 8.3.1 G This *guidance* is relevant regardless of whether a *firm outsources portfolio management* directly or indirectly via a third party. However, *firms* should note that they may notify a secondary or indirect outsourcing in the same notification as the direct outsourcing.
- 8.3.2 G This *guidance* sets out examples of the type of actions that a *firm* proposing to *outsource* should have undertaken when assessing the suitability of the service provider and its ability to carry on the *outsourced* activity.
- [Note: article 15(3) of the *MiFID implementing Directive*]
- 8.3.3 G If a *firm* can demonstrate that it has taken the following *guidance* into account and has satisfactorily concluded that it would be able to continue to satisfy the *common platform outsourcing rules* and provide adequate

protection for consumers despite not satisfying the conditions, the *FSA* would not be likely to object to that *outsourcing*.

- 8.3.4 G If the *outsourcing* allows the service provider to sub-contract any of the services to be provided under the *outsourcing*, any such sub-contracting shall not affect the service provider's responsibilities under the *outsourcing* agreement.
- 8.3.5 G The *outsourcing* agreement should entitle the *firm* to terminate the *outsourcing* if the service provider undergoes a change of control or becomes insolvent, goes into liquidation or receivership (or equivalent in its home state) or is in persistent material default under the agreement.
- 8.3.6 G The following should be taken into account where the service provider is not authorised or registered in its home country and/or not subject to prudential supervision.
- (1) The *firm* should examine, and be able to demonstrate, to what extent the service provider may be subject to any form of voluntary regulation, including self-regulation in its home state.
 - (2) The *firm* should be able to satisfy the *FSA* that the service provider is committed for the term of the *outsourcing* agreement to devoting sufficient, competent resources to providing the service.
 - (3) In addition to the requirement to ensure that a service provider discloses any developments that may have a material impact on its ability carry out the *outsourcing* (*SYSC* 8.1.8(6)), where the conditions are not met the developments to be disclosed should include, but are not limited to:
 - (a) any adverse effect that any laws or regulations introduced in the service provider's home country may have on its carrying on the *outsourced* activity; and
 - (b) any changes to its capital reserve levels or its prudential risks.
 - (4) The *firm* should satisfy itself that the service provider is able to meet its liabilities as they fall due and that it has positive net assets.
 - (5) The *firm* should require that the service provider prepares annual reports and accounts which:
 - (a) are in accordance with the service provider's national law which, in all material respects, is the same as or equivalent to the *international accounting standards*;
 - (b) have been independently audited and reported on in accordance with the service provider's national law which is the same as or equivalent to international auditing standards.

- (6) The *firm* should receive copies of each set of the audited annual report and accounts of the service provider. If the service provider expects or knows its auditor will qualify his report on the audited report and accounts, or add an explanatory paragraph, the service provider should be required to notify the *firm* without delay.
- (7) The *firm* should satisfy itself, and be able to demonstrate, that it has in place appropriate procedures to ensure that it is fully aware of the service provider's controls for protecting confidential information.
- (8) In addition to the requirement at SYSC 8.1.8R (10) that the service provider must protect any confidential information relating to the *firm* or its *clients*, the *outsourcing* agreement should require the service provider to notify the *firm* immediately if there is a breach of confidentiality.
- (9) The *outsourcing* agreement should be governed by the law and subject to the jurisdiction of an *EEA state*.

8.3.7 G The following should be taken into account by a *firm* where there is no cooperation agreement between the FSA and the supervisory authority of the service provider or there is no supervisory authority of the service provider.

- (1) The *outsourcing* agreement should ensure the *firm* can provide the *FSA* with any information relating to the *outsourced* activity the *FSA* may require in order to carry out effective supervision. The *firm* should therefore assess the extent to which the service provider's regulator and/or local laws and regulations may restrict access to information about the *outsourced* activity. Any such restriction should be described in the notification to be sent to the *FSA*.
- (2) The *outsourcing* agreement should require the service provider to provide the *firm's* offices in the UK with all requested information required to meet the *firm's* regulatory obligations. The *FSA* should be given an enforceable right under the agreement to obtain such information from the *firm* and to require the service provider to provide the information directly.

After SYSC 8 insert the following:

9 Record-keeping

9.1 General rules on record-keeping

9.1.-1 R This chapter applies to the *MiFID business* of a *firm*.

9.1.-2 R This chapter applies only to the extent necessary to implement *MiFID* and the *MiFID implementing directive*.

9.1.1 R A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FSA* or any other relevant *competent authority* under *MiFID* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[Note: article 13(6) of *MiFID* and article 5(1)(f) of the *MiFID implementing Directive*]

9.1.2 R A *firm* must retain all records kept by it under this chapter in relation to its *MiFID business* for a period of at least five years.

[Note: article 51 (1) of the *MiFID implementing Directive*]

9.1.3 R In relation to its *MiFID business*, a *common platform firm* must retain records in a medium that allows the storage of information in a way accessible for future reference by the *FSA* or any other relevant *competent authority* under *MiFID*, and so that the following conditions are met:

- (1) the *FSA* or any other relevant *competent authority* under *MiFID* must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
- (2) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;
- (3) it must not be possible for the records otherwise to be manipulated or altered.

[Note: article 51(2) of the *MiFID implementing Directive*]

Guidance on record-keeping

9.1.4 [intentionally blank]

9.1.5 [intentionally blank]

9.1.6 [intentionally blank]

...

Application

- 10.1.1 R This section applies to a *common platform firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities*- or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).

...

Identifying conflicts

- 10.1.3 R A *common platform firm* must take all reasonable steps to identify conflicts of interest between:

- (1) the *firm*, including its managers, employees, *appointed representatives* (or where applicable, *tiered agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or
- (2) one *client* of the *firm* and another *client*;

that arise, or may arise, in the course of the *firm* providing any service referred to in SYSC 10.1.1R.

[Note: article 18(1) of MiFID]

...

Control of information

- 10.2.2 R (1) When a *common platform firm* establishes and maintains a *Chinese wall* (that is, an arrangement that requires information held by a *person* in the course of carrying on one part of the business to be withheld from, or not to be used for, *persons* with or for whom it acts in the course of carrying on another part of its business) it may:

- (a) withhold or not use the information held; and
- (b) for that purpose, permit *persons* employed in the first part of its business to withhold the information held from those employed in that other part of the business;

but only to the extent that the business of one of those parts involves the carrying on of *regulated activities*, ~~or *ancillary activities*~~- or, in the

case of *MiFID business*, the provision of *ancillary services*.

...

Annex C

Amendments to Threshold Conditions (COND)

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

Threshold condition 2: Location of Offices

Paragraph 2, Schedule 6 to the Act

- 2.2.1 D (1) Subject to sub-paragraph ~~1(A)~~ and (3), if the person concerned is a body corporate constituted under the law of any part of the United Kingdom -
- (a) its head office, and
 - (b) if it has a registered office, that office, must be in the United Kingdom.

~~(1A) If -~~

- ~~(a) the regulated activity concerned is any of the investment services and activities, and~~
- ~~(b) the person concerned is a body corporate with no registered office,~~

sub-paragraph (1B) applies in place of sub-paragraph (1).

(1B) If the person concerned has its head office in the United Kingdom, it must carry on business in the United Kingdom.

...

[Note: article 5(4) of MiFID]

- 2.2.2 G *Threshold condition 2(1) and (2) (Location of offices), implement the requirements of article 6 of the *Post BCCI Directive* and article 5(4) of *MiFID* and *threshold condition 2(3) and (4) implements article 2.9 of the *Insurance Mediation Directive*, although the *Act* extends *threshold condition 2* to *firms* which are outside the scope of the *Single Market Directives* and the *UCITS Directive*.**
- 2.2.3 G Neither the *Post BCCI Directive*, *MiFID*, the *Insurance Mediation Directive* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FSA* will judge each application

on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

- (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and
- (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).

Annex D

Amendments to the General Provisions sourcebook (GEN)

- 1.2.2 R (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a *client*, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the *FSA* or another competent authority.

[Note: article 27(8) of the *MiFID implementing Directive*]

- (2) ...

...

4.1 Application and purpose

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:

- (1) ...

- (3) for an *incoming firm* not falling under (1) or (2), this chapter does not apply to the extent that the *firm* is subject to equivalent rules imposed by its *Home State*; ~~and~~

- (4) for a *UCITS qualifier*, this chapter does not apply; and

- (5) this chapter does not apply in relation to *MiFID business* or the *equivalent business of a third country investment firm*.

Annex E

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

...

Purpose

- 1.1.4 G *BIPRU* 1.1 implements in part Articles 3(1)(b), 5, 9, 10 and 20 of the *Capital Adequacy Directive*. ~~However it amends those definitions so as to base the classification of *investment firms* on the *ISD* rather than the *MiFID*. *BIPRU* 1.1 will be amended so as to base that classification on the *MiFID* when the *MiFID* is applied to *firms* by the *FSA*.~~
- 1.1.5 G *Guidance* on the categorisation of *investment firms* for the purposes of *BIPRU* and *GENPRU* ~~from 1 November 2007 will be~~ is included in *PERG* 13 (*Guidance on the scope of the Markets in Financial Instruments Directive* and the recast *Capital Adequacy Directive*).

...

Types of investment firm: Limited activity firms

- 1.1.11 R A *limited activity firm* means (as specified by Article 20(3) of the *Capital Adequacy Directive* (Exemptions from operational risk)) a *CAD investment firm* that satisfies the following conditions:

- (1) ...
- (a) ...
- (b) it satisfies the following conditions:
- (i) ...
- (ii) the only ~~core~~ *investment service* it undertakes is *dealing on own account*;

...

...

Type of investment firm: Limited licence firms

- 1.1.12 R *A limited licence firm* means (as specified by Article 20(2) of the *Capital Adequacy Directive* (Exemptions from operational risk)) a *CAD investment firm* that is not authorised to:
- (1) ...
 - (2) provide the investment services of underwriting or placing *financial instruments* (as referred to in point 46 of Section A of Annex I of ~~the~~ *ISDMiFID*) on a firm commitment basis.
- ...
- 1.1.14 R (1) ...
- (2) *A person* whose head office is in an *EEA State* is a *CAD investment firm* if it is an *investment firm* that is subject to the requirements imposed by ~~the~~ *ISDMiFID* but excludes the following:
 - (a) ...
 - ...
 - (3) An *investment firm* whose head office is not in an *EEA State* is a *CAD investment firm* if it would have fallen into (2) if:
 - (a) ...
 - (b) it had carried on all its business in the *EEA* and had obtained whatever authorisations for doing so are required under ~~the~~ *ISDMiFID*.
- 1.1.15 G ~~An investment firm with the benefit of an exemption pursuant to Article 2(2) of the ISD is~~ The following are excluded from the definition of a *CAD investment firm* and hence from the definition of *BIPRU investment firm*:
- (1) an investment firm to which *MiFID* does not apply under Article 2(1); and
 - (2) an investment firm with the benefit of an exemption pursuant to Article 3 of *MiFID*.
- 1.1.16 G In accordance with Article 3(1)(b)(iii) of the *Capital Adequacy Directive* (Definitions), an *exempt CAD firm* means an *investment firm* that satisfies the following conditions:
- (1) ...
 - (2) the only ~~core~~ *investment service* for which it is authorised is receiving and transmitting orders from investors (as referred to in Section A of Annex I of ~~the~~ *ISDMiFID*) without holding money or securities belonging to its clients in relation to *investment services* it provides and for that reason it may not at any time place itself in debt

with those clients.

...

- 1.1.19 R A *BIPRU 125K firm* means a *BIPRU investment firm* that satisfies the following conditions:
- (1) it does not:
 - (a) ...
 - (b) underwrite issues of *financial instruments* (as referred in Section A of Annex I of ~~the ISDMiFID~~) on a firm commitment basis;
 - (2) ...
 - (3) it offers one or more of the following services (all as referred to in Section A of Annex I of ~~the ISDMiFID~~):
 - (a) ...
 - (b) ...
 - (c) the management of individual portfolios of investments in *financial instruments*; ~~and~~
 - (4) it is not a *UCITS investment firm*; ~~and~~
 - (5) it does not operate a multilateral trading facility.

Types of investment firm: BIPRU 50K firm

- 1.1.20 R A *BIPRU 50K firm* means a *BIPRU investment firm* that satisfies the following conditions:
- (1) ...
 - (2) it does not hold clients' money or securities in relation to *investment services* it provides and it is not authorised to do so; ~~and~~
 - (3) it is not a *UCITS investment firm*; ~~and~~
 - (4) it does not operate a multilateral trading facility.

...

Types of investment firm: 730K firm

- 1.1.22 R A *BIPRU investment firm* that is not a *UCITS investment firm*, a *BIPRU 50K firm* or a *BIPRU 125K firm* is a *BIPRU 730K firm*. A *BIPRU investment firm* that operates a multilateral trading facility is a *BIPRU 730K firm*.

Meaning of dealing on own account

- 1.1.23 R (1) *Dealing on own account* means (for the purpose of *GENPRU* and *BIPRU*) the service of dealing in any *financial instruments* for own account as referred to in point 2-3 of Section A of ~~the Annex I to the~~ *ISD MiFID*, subject to (2) and (3).

Annex F

Amendments to Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted this is indicated and no text is struck through.

- 2.1.1B G The rules and guidance in this sourcebook support the obligations on common platform firms set out in SYSC 5 and SYSC 6.1 and the FSA's supervisory function in relation to these firms.
- 2.1.2 R (1) In relation to *designated investment business*:
- (a) unless (~~aa-3~~) applies, this chapter applies to a *UK domestic firm* in respect of its *employees* who engage in or oversee activities (~~to the extent indicated in TC 2.1.4R~~):
 - (i) ...
 - (ii) ...
 - (aa) [deleted]
 - (b) unless (bb) applies, this chapter applies to an *overseas firm* in respect of its *employees* who engage in or oversee activities (~~to the extent indicated in TC 2.1.4R~~) from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*.
 - (bb) if the *designated investment business* constitutes *insurance mediation activity* or *MiFID business*, this chapter does not apply to an ~~overseas firm~~ which is an *incoming EEA firm*.
- ...
- (3) In relation to *insurance mediation activities* ~~in respect of non-investment insurance contracts carried on with or for a customer~~, or *MiFID business*, this chapter applies to any such activity carried on, ~~by~~ or overseen, by a *UK domestic firm*:
- (a) ...

...

Activities to which TC 2 applies

2.1.4 R

	Activity	Extent of Application
<p>1. <i>Employees</i> engaging in:</p>	<p>Advising and dealing ...</p>	<p>1. In relation to <i>designated investment business</i>: (a) if the activity is carried on with or for a private customer <u>retail client</u>, whole of TC 2 applies <u>as if each reference to private customer were a reference to retail client</u>; (b) if the activity is carried on with or for an intermediate customer <u>professional client</u> or an market counterparty <u>eligible counterparty</u>; ... 3. In relation to <i>advising on investments</i> which are <i>non-investment insurance contracts</i> if the activity is carried on with or for a <i>retail customer</i> (see <i>ICOB</i>) the whole of <u>this chapter TC 2</u> applies, except for <u>the rules and guidance relating to appropriate examinations (TC 2.5)</u>, as if in <u>TC 2.2, TC 2.3, TC 2.4 and TC 2.7</u> each reference to private customer were a reference to <u>retail customer</u>.</p>
<p>2. <i>Employees</i> overseeing on a day-to-day basis</p>	<p>(a) operating, or acting as a <i>trustee</i> or <i>depository</i> of, a <i>collective investment scheme</i>; ... (e) taking private customers <u>retail clients</u> through ...</p>	<p>Whole of TC 2 <u>this chapter</u> applies except <u>TC 2.7</u> (Supervising) <u>the rules and guidance relating to supervising and monitoring (TC 2.7)</u>.</p>

- 2.4.2 R (1) ...
 ...
 (b) the *firm* has satisfied itself that the *employee* has an adequate level of knowledge and skills to act ~~with or for private customers~~ while under supervision.
- 2.4.3 G ...
 (1) ...
 (2) appropriate skills in analysing ~~private~~ *customers'* needs and circumstances when applying relevant knowledge.
- 2.5.1 R [deleted]
- 2.5.1A R [deleted]
- 2.5.2 G [deleted]
- ...
- 2.8.1 R (1) ...
 (2) The records in (1) must be retained by the *firm* for the following periods for at least three years after an *employee* ceases to engage in or oversee an activity; ~~except for the records of pension transfer specialists, which must be retained indefinitely.~~
 (a) at least five years where the activity was *MiFID business*;
 (b) indefinitely for the records of *pension transfer specialists*; and
 (c) three years for the records of all other activities.

Schedule 1 to be amended as follows:

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>TC 2.4.9 G</i>	Attaining Competence	Data on competence	On a continuing basis	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
<i>TC 2.5.1 R</i>	Appropriate examinations	Examination time limits	When employee begins in the activity	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p>
<i>TC 2.5.2 G</i>	Appropriate examinations	Examination passes and dates and other relevant data such as periods of absence	Duration of time limits for that activity	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p>
<i>TC 2.5.6G (1)</i>	Appropriate	Criteria for	At the time of	For 3 years only

	examinations - regulatory module only	application of TC 2.5.5 R to the <i>employee</i>	the application of the <i>rule</i>	<p>after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an <i>employee</i> ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.5.6G (2)	Appropriate examinations	Criteria for application of TC 2.5.5A R to the <i>employee</i>	At the time of the application of the <i>rule</i>	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an <i>employee</i> ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.6.4 G	Maintaining Competence	Criteria for and application of assessment	On a continuing basis after competence	<p>For 3 years only after an employee ceases to engage in or</p>

				<p>oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.7.6 G	Supervising and monitoring	Criteria in deciding level of supervision and how it is carried out	When the <i>employee</i> begins in the activity and on an ongoing basis	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.8.1 R (1)	Compliance with sourcebook	Data on competence, relevant to compliance with the sourcebook	When the <i>employee</i> begins in the activity and on a continuing basis	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for</p>

				<p>PTS indefinite.</p> <p><u>For the following periods after an <i>employee</i> ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
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Annex G

Amendments to the Supervision manual (SUP)

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

- 6.3.42 G (1) *Firms* should be aware that the *FSA* may exercise its *own-initiative power* to vary or cancel their *Part IV permission* if they do not:
- (a) commence a *regulated activity* for which they have *Part IV permission* within a period of at least 12 months from the date of being given; or
 - (b) carry on a *regulated activity* for which they have *Part IV permission* for a period of at least 12 months (irrespective of the date of grant).

(1A) The *FSA* may exercise its *own-initiative power* to cancel an *investment firm's Part IV permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 54(1) of the *Act* is given (see *ENF 5.3.2G*).

[Note: article 8(a) of *MiFID*]

...

- 10.7.13 G A ~~A firm's obligations in respect of its money laundering reporting officer are set out in SYSC 3.2.61R and SYSC 6.3.9R and the scope of application of these provisions is set out in SYSC 1.1.~~ A firm's obligations in respect of its money laundering reporting officer are set out elsewhere in the Handbook (see SYSC 3.2.61R and SYSC 6.3.9R and for their scope, see the application provisions in SYSC 1.1 and SYSC 1.3).

...

12.1 ...

...

12.1.1 R ...

(1A) This chapter applies to a *UK MiFID investment firm* which is considering appointing, has decided to appoint or has appointed an *EEA tied agent*.

...

- (3) This chapter does not apply in relation to a *tiered agent* acting on behalf of an *EEA MiFID investment firm* unless that *tiered agent* is established in the *UK*.

...

- 12.1.5 G This chapter also sets out *guidance* about section 39A of the *Act*, which is relevant to a *UK MiFID investment firm* that is considering appointing an *FSA registered tiered agent*. It also sets out the *FSA's rules*, and *guidance* on those *rules*, in relation to the appointment of an *EEA tiered agent* by a *UK MiFID investment firm*.

- 12.2.1 G (1) ...

- (2) ...

- (3) If an *appointed representative* is also a *tiered agent* he must also satisfy the condition in section 39(1A) of the *Act* in order to be an *exempt person*. See *SUP 12.4.12G* for *guidance* on that condition and *SUP 12.2.16G* for more general *guidance* about *tiered agents*.

...

Business for which an appointed representative is exempt

12.2.7

...

- (2) ~~If the *appointed representative* is an investment firm (see (3)), the business in (1) does not include the reception and transmission of orders on behalf of investors in relation to instruments covered by the *ISD* unless that activity is solely on behalf of another investment firm.~~ If the *appointed representative* is a *tiered agent* of an *EEA firm*, the business for which the *appointed representative* may be exempt includes the following additional activities:

(a) placing *financial instruments*;

(b) providing advice to *clients* or potential *clients* in relation to the placing of *financial instruments*.

- (3) [deleted]

...

What is a tied agent?

- 12.2.16 G (1) A tied agent is a person who acts for and under the responsibility of a MiFID investment firm (or a third country investment firm) in respect of MiFID business (or the equivalent business of the third country investment firm). Most tied agents appointed by firms are also appointed representatives.
- (2) Unless otherwise provided, this chapter applies to a firm that appoints a tied agent that is an appointed representative in the same way as it applies to the appointment of any other appointed representative.
- (3) This chapter sets out the provisions which apply to tied agents:
- (a) established in the UK; or
- (b) established in another EEA State and appointed by a UK MiFID investment firm.
- (4) A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm's passport. MiFID investment firms may also appoint tied agents established in different EEA States.
- (5) A tied agent will not be an appointed representative if it does not and is not likely to conduct any business as a tied agent in the UK. If such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent. EEA tied agents are either FSA registered tied agents or EEA registered tied agents.
- (6) This chapter only applies to a firm that appoints a tied agent that is not an appointed representative where it expressly refers to tied agents.
- (7) Under MiFID, an EEA State may prohibit the appointment of tied agents by MiFID investment firms for which it is the Home State. If a UK MiFID investment firm appoints a tied agent established in such an EEA State, the tied agent must be registered with the FSA. Such an EEA tied agent is referred to in the Handbook as an FSA registered tied agent.
- (8) If a UK MiFID investment firm appoints a tied agent established in an EEA State that allows MiFID investment firms for which it is the home State to appoint tied agents, the tied agent must be registered with the competent authority of the EEA State in which it is

established. Such an *EEA tied agent* is referred to in the *Handbook* as an *EEA registered tied agent*.

...

12.3 What responsibility does a firm have for its appointed representative or EEA tied agent?

Responsibility for appointed representatives

...

12.3.4 G *SYSC 6.1.1R* requires a *MiFID investment firm* to ensure the compliance of its *appointed representative* with obligations under the *regulatory system*. The concept of a *relevant person* in *SYSC* includes an officer or employee of a *tied agent*.

Responsibility for EEA tied agents

12.3.5 R A *UK MiFID investment firm* must not appoint an *EEA registered tied agent* or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its *EEA registered tied agent*.

[Note: paragraph 1 of article 23(2) of *MiFID*]

12.3.6 G The effect of section 39A(6)(b) of the *Act* is to prohibit a *UK MiFID investment firm* from appointing an *FSA registered tied agent* unless it has accepted responsibility in writing for the agent's activities in acting as a *tied agent*.

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

12.4.2A R A *firm* must ensure that a *tied agent* that is an *appointed representative* is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the *client* or potential *client*. This does not limit a *firm's* obligations under *SUP 12.4.2 R*.

[Note: paragraphs 3 and 4 of article 23(3) of *MiFID*]

...

Appointment of an FSA registered tied agent

- 12.4.11 R If a UK MiFID investment firm appoints an FSA registered tied agent, SUP 12.4.2R and SUP 12.4.2AR apply to that firm as though the FSA registered tied agent were an appointed representative.

[Note: paragraphs 3 and 4 of article 23(3) of MiFID]

Tied agents

- 12.4.12 G (1) A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FSA is the applicable register for these purposes. If the tied agent is established in another EEA State, it should consult section 39(1B) of the Act to determine the applicable register.
- (2) A UK MiFID investment firm that appoints an FSA registered tied agent who is not registered with the FSA will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the Act (see section 39A(6)(c) and (d) of the Act).
- (3) A UK MiFID investment firm that appoints an EEA registered tied agent will be required to register that agent with the competent authority of the EEA State in which it is established. This requirement will be imposed by the rules of that EEA State.
- (4) If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established (or in certain cases, of the Home State of the firm).
- (5) If an appointed representative's scope of appointment is to include acting as a tied agent, the principal must notify the FSA of the appointment before the appointed representative starts acting as such (see SUP 12.7.7 R (1A)).
- (6) A tied agent can only act as such for one MiFID investment firm or third country investment firm (see SUP 12.5.6AR(1A)).

...

- 12.5.2 G (1) Regulations 3(1) ~~to~~ and (2) ~~(3)~~ of the Appointed Representatives Regulations makes it a requirement that the contract between the firm and the appointed representative (unless it prohibits the appointed representative from representing other counterparties)

contains a provision enabling the *firm* to:

...

(1A) The requirement described in paragraph (1) does not apply if the *firm* is an *EEA MiFID investment firm*.

...

12.5.2A G If a *UK MiFID investment firm* or a *third country investment firm* appoints an *appointed representative* that is a *tier agent*, regulation 3(6) of the *Appointed Representative Regulations* requires the contract between the *firm* and the *appointed representative* to contain a provision that the *representative* is only permitted to provide the services and carry on the activities referred to in Article 4(1)(25) of *MiFID* while he is entered on the applicable register.

...

12.5.6A R Prohibition of multiple principals for certain activities

...

(1A) If the *appointed representative* is a *tier agent*, the prohibition must prevent the *appointed representative* acting as a *tier agent* for any other *MiFID investment firm* or *third country investment firm*.

...

To be inserted after SUP 12.5.6A

[Note: articles 4(1)(25) and 23(1) of *MiFID*]

12.5.6B G ...

(1A) The effect of SUP 12.5.6A R(1A) is that *tier agents* are restricted to one *principal* when acting as such. A *tier agent* who has a *MiFID investment firm* or a *third country investment firm* as a *principal* may have other *principals* who are not *MiFID investment firms* or *third country investment firms*.

...

Required contract terms for EEA tier agents

12.5.8 R If a *UK MiFID investment firm* appoints an *EEA tier agent*, SUP 12.5.6AR(1A) applies to that *firm* as though the *EEA tier agent* were an *appointed representative*.

[Note: articles 4(1)(25) and 23(1) of *MiFID*]

Required contract terms for FSA registered tied agents

12.5.9 G Under section 39A(6)(a) of the Act a UK MiFID investment firm must ensure that the contract it uses to appoint an FSA registered tied agent complies with the requirements that would apply under the Appointed Representative Regulations if it were appointing an appointed representative.

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

12.6.1A R A firm that is a principal of a tied agent that is an appointed representative must monitor the activities of that tied agent so as to ensure the firm complies with obligations imposed under MiFID (or equivalent obligations relating to the equivalent business of a third country investment firm) when acting through that tied agent.

[Note: paragraph 3 of Article 23(2) of MiFID]

...

Appointed representatives not to hold client money

12.6.5 R ...

(2) The firm must take reasonable steps to ensure that if client money is received by the appointed representative, it is paid into a client bank account of the firm, or forwarded to the firm, in accordance with:

(a) CASS 4.3.15 R to CASS 4.3.17 R; or

(b) CASS 5.5.18 R to CASS 5.5.21 R unless acting in accordance with CASS 5.5.23 R (Periodic segregation and reconciliation);
or;

(c) the MiFID client money segregation requirements.

12.6.5A G When complying with the MiFID client money segregation requirements, firms' attention is drawn to the guidance in CASS 7.4.24 G to CASS 7.4.27 G.

...

12.6.7 G Senior management responsibility for appointed representatives

The senior management of a firm should be aware that the activities of appointed representatives are an integral part of the business that they

manage. The responsibility for the control and monitoring of the activities of *appointed representatives* rests with the senior management of the *firm*. ~~Guidance is set out in SYSC 3 on delegation (for example, SYSC 3.2.3 G and SYSC 3.2.4 G) and in the Statements of Principle and Code of Practice for Approved Persons in APER (for example, APER 4.5 and APER 4.6).~~

...

Continuing obligations of firms with tied agents

12.6.13 R A firm must ensure that its tied agent discloses the capacity in which he is acting and the firm he is representing when contacting a client or potential client or before dealing with a client or potential client.

[Note: paragraph 1 of article 23(2) of MiFID]

12.6.14 R A firm must take adequate measures in order to avoid any negative impact of the activities of its tied agent not covered by the scope of MiFID (or relating to the equivalent business of a third country investment firm) could have on the activities carried out by the tied agent on behalf of the firm.

[Note: paragraph 1 of article 23(4) of MiFID]

Continuing obligations of firms with EEA tied agents

12.6.15 R If a UK MiFID investment firm appoints an EEA tied agent, SUP 12.6.1R, SUP 12.6.1AR, SUP 12.6.5R and SUP 12.6.11AR apply to that firm as though the EEA tied agent were an appointed representative.

...

12.7.1 R (1) ...
(a) ...
(aa) if the firm appoints a tied agent and the tied agent is not included in the Register (see SUP 12.4.11 G), before; or
(b) ...

...

...

12.7.5 **RG** To contact the Authorisation and Approvals Department (Authorisation teams):

- (1) telephone on 020 7066 1000; fax on 020 7066 1099; or
- (2) write to: Authorisation and Approvals Department (Authorisation teams), The Financial Services Authority, 25 The North Colonnade,

Canary Wharf, London E14 5HS; or

(3) email [appreps@ fsa.gov.uk](mailto:appreps@fsa.gov.uk).

12.7.6 G [deleted]

Notification of changes in information given to the *FSA*

12.7.7 R ...

(1A) If:

(a) (i) the scope of appointment changes such that the appointed representative acts as a tied agent for the first time; and

(ii) the appointed representative is not included on the Register; or

(b) the appointed representative ceases to act as a tied agent;

the appointed representative's principal must give written notice to the FSA of that change before the appointed representative begins to act as a tied agent (see SUP 12.4) or as soon as the appointed representative ceases to act as a tied agent.

(2) Where there is a change in any of the information provided to the *FSA* under SUP 12.7.1 R or SUP 12.7.7R(1A), a *firm* must complete and submit to the *FSA* the form in SUP 12 Annex 4 (Appointed representative notification form) in accordance with the instructions on the form and within ten *business days* of that change being made or, if later, as soon as the *firm* becomes aware of the change. The Appointed representative notification form must state that the information has changed.

(3) A *firm's* notification under (1) and (2) must be given to a member of or addressed for the attention of the Monitoring and Notifications Department at the address given in SUP 12.7.5G.

...

Notifications relating to EEA tied agents

12.7.9 R If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

12.8 Termination of a relationship with an appointed representative or EEA tied agent

...

Termination of a UK MiFID investment firm's relationship with an EEA tied agent

12.8.6 R If a UK MiFID investment firm has appointed an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

...

12.9.2 R A firm must retain these records for at least three years from the date of termination or the amendment of the contract with the *appointed representative*; other than in respect of tied agents when the records must be retained for a period of five years.

...

Record keeping in relation to EEA tied agents

12.9.5 R If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

Schedule 1 Record Keeping Requirements

	Handbook reference	Subject of Record	Contents of record	When record must be made	Retention Period
	...				
	SUP 12.9.1 R, SUP 12.9.2 R ₂	<i>Appointed Representatives</i>	(1) <i>Appointed Representative's</i> name ...	On appointment, amendment of contract or termination of contract	3 years from termination or amendment of the contract, <u>other than in respect of tied agents when period is five years.</u>
	<u>SUP 12.9.5R</u>	<u><i>EEA tied agents</i></u>	<u>If a UK MiFID investment firm appoints an EEA tied agent the record keeping requirements in SUP 12.9 applies</u>		

			to that <i>firm</i> as though the <i>EEA tied agent</i> were an <u>appointed representative</u> .		
--	--	--	---	--	--

...

Schedule 2 Notification requirements

	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	...				
	SUP 12.7.1 R	<i>Appointed Representatives</i>			⁷ (1) (if the appointment covers <i>insurance mediation activities</i> and the <i>appointed representative</i> is not included on the <i>Register</i> as carrying on such activities in another capacity) before; or ⁷ (2) if the <i>firm</i> appoints a <i>tied agent</i> and the <i>tied agent</i> is not included in the <i>Register</i> (see SUP 12.4.11 G), before; or (23) (otherwise) ten <i>business days</i> after; ⁷ the <i>appointed representative</i> begins to carry on <i>regulated activities</i> under the contract
	...				
	<u>SUP 12.7.7 R (1A)</u>	<i>Appointed Representatives</i>	<u>That fact.</u>	<u>Change of scope of</u>	<u>Notification must be made prior to</u>

		<i>atives_– commenci ng as tied agent.</i>		<i>tied agent's appointme nt</i>	<i>tied agent acting.</i>
	...				
	<u>SUP 12.7.9R</u>	<u><i>EEA tied agents</i></u>	<u><i>If a UK MiFID investment firm appoints an EEA tied agent the notification requirements in SUP 12.7 apply to that firm as though the EEA tied agent were an appointed representative.</i></u>		
	<u>SUP 12.8.6R</u>	<u><i>EEA tied agents</i></u>	<u><i>If a UK MiFID investment firm appoints an EEA tied agent the notification requirements in SUP 12.8 apply to that firm as though the EEA tied agent were an appointed representative.</i></u>		

Annex H

Amendments to the Compensation sourcebook (COMP)

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

5.5 Protected investment business

...

5.5.2 R *COMP 5.5.1R* only applies if the *protected investment business* was carried on from:

(1) an establishment of the *relevant person* in the *United Kingdom*; or

(2) a *branch* of a *UK firm* which is:

(a) ~~an *ISD MiFID investment firm* (including a *credit institution* which is an *ISD MiFID investment firm*)~~; or

(b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*);

and the claim is an *ICD claim*; or

(3) both (1) and (2).

...

6.2.2 G An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, ~~an *ISD a MiFID investment firm*~~ or a *UCITS management company*, and its *appointed representatives* are not *relevant persons* in relation to the *firm's passported activities*, unless it has *top-up cover* (and in the case of a *UCITS management company*, only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*). (See definition of "*participant firm*").

INTEGRATED REGULATORY REPORTING INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) the amendments in Part 1 of the Annex come into force on 6 April 2007;
 - (2) the amendments in Parts 2 to 4 of the Annex come into force on 1 November 2007;
 - (3) the amendments in Parts 5 to 6 of the Annex come into force on 1 January 2008;
 - (4) the amendments in Part 7 of the Annex come into force on 1 February 2008;
 - (5) the amendments in Part 8 of the Annex come into force on 1 January 2009;
and
 - (6) the amendments in Part 9 of the Annex come into force on 1 July 2009.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this Instrument.

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting Instrument 2007.

By order of the Board
25 January 2007

Annex

Amendments to the Supervision manual (SUP)

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

Part 1

Amendments relating to personal pension schemes in SUP 16.11 and transitional provisions

16.11 Product Sales Data Reporting

16.11.1 R Application

This section applies to a *firm* which is a *mortgage lender*; or in respect of sales to a *private customer* or a *retail customer*:

- (1) an *insurer*; or
- (2) the *operator* of a *regulated collective investment scheme*, ~~or an investment trust savings scheme,~~ or a personal pension scheme; or
- (3) a *person* who issues or manages the relevant assets of the issuer of a *structured capital-at-risk product*,

unless the *firm* is a *managing agent*.

...

SUP 16 Products covered by the reporting requirements in SUP 16.11

Ann

20G

...

Part 1 Products

...

Table 1 – Retail Investments

Relevant products include

...

Stakeholder pension
<u>Self-invested personal pension</u>
Personal pension
...

Part 2 – Supporting product definitions / guidance for product sales data reporting

Retail investments

Product	Guidance
...	
Stakeholder Pension	See <i>Handbook Glossary</i> for definition of 'stakeholder pension scheme'
<u>Self-invested personal pension</u>	See <i>Handbook Glossary</i> for definition of ' <u>self-invested personal pension scheme</u> '
<i>Personal pension</i>	See <i>Handbook Glossary</i> for definition of ' <i>personal pension scheme</i> '
...	

Amendments to SUP Transitional provisions TP1

SUP TP 1.2

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
12M	...					
<u>12 N</u>	(1)	<u>SUP 16.7.36</u>	<u>R</u>	<p>(1) Subject to (2), <u>SUP 16.7.36R</u> does not apply from <u>6 April 2007 to 31 January 2008</u> to an <u>investment management firm</u> which:</p> <p>(a) was not a <u>firm</u> before <u>6 April 2007</u>; and</p> <p>(b) carries on only the activity of <u>establishing, operating or winding up a personal pension scheme</u>.</p> <p>(2) Notwithstanding (1), a <u>firm</u> described in (1) with an <u>accounting reference date</u> of <u>between 6 April 2007 and 31 January 2008 (inclusive)</u> must <u>submit a copy of its annual accounts to the FSA in accordance with SUP</u></p>	<u>6 April 2007 to 31 January 2008</u>	<u>6 April 2007</u>

				<u>16.7.36R, unless (3) applies. The annual accounts must give a true and fair view of the state of affairs of the firm and of the firm's profit or loss.</u>		
--	--	--	--	---	--	--

...

13	...					
<u>13A</u>	<u>(1)</u>	<u>SUP 3.1.2</u>	<u>R</u>	<u>In relation to an investment management firm which carries on only the activity of establishing, operating or winding up a personal pension scheme and which is authorised by the FSA after 6 April 2007, SUP 3.9 will not apply to the firm's auditor.</u>	<u>6 April 2007 to 31 December 2008</u>	<u>6 April 2007</u>

Part 2

Amendments to SUP 16.7

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

16.7.26 R A *securities and futures firm* which is a category C or D firm or an arranger or venture capital firm must submit reports to the FSA in accordance with SUP 16.7.27R and, in the case of a *securities and futures firm* which is an *ISD investment firm*, SUP 16.7.27AR. A securities and futures firm that is:

- (1) an exempt CAD firm; or
- (2) an exempt BIPRU commodity firm subject to the requirements of Chapter 3 of IPRU(INV);

must also submit reports to the FSA in accordance with SUP 16.7.27BR.

...

16.7.27 R ...

A

16.7.27B R Table financial reports from a securities and futures firm that is:

- (1) an exempt CAD firm; or
- (2) an exempt BIPRU commodity firm subject to the requirements of Chapter 3 of IPRU(INV)

<u>Content of report</u>	<u>Form</u>	<u>Frequency</u>	<u>Due date</u>
<u>Key data</u>	<u>FSA043 (note 1)</u>	<u>In line with Quarterly reporting statement applicable to the firm in SUP 16.7.27R.</u>	<u>As for Quarterly reporting statement applicable to the firm in SUP 16.7.27R.</u>

Note 1 Reports beginning FSA*** are contained within SUP 16 Annex 24R.

...

16.7.31 R ...

- (1) ...
- (2) The reports in SUP 16.7.25AR, ~~and SUP 16.7.27AR~~ and SUP 16.7.27BR in accordance with and in the same format as the *data items* contained in SUP 16 Annex 24R, having regard to SUP 16 Annex 25G.

...

16.7.33 R ...

(1) ...

(b) ...

(c) reports submitted in accordance with (3), ~~and (5)~~ and (6).

...

(4) Reports in (3) must be submitted to the FSA in accordance with the methods permitted by FiRSt 5 software. All other reports in SUP 16.7.24R to SUP 16.7.30R (apart from those in (5) and (6)) must be sent to the address given in SUP 16.3.10G.

...

(6) Reports in SUP 16.7.27BR must be submitted electronically via the system available from or through the FSA’s website in the same format as set out in SUP 16 Annex 24R, having regard to SUP 16 Annex 25G.

...

16.7.35 R An investment management firm which is not one of the types of firm specified in SUP 16 7.37R must submit reports to the FSA in accordance with SUP 16.7.36R and, in the case of an investment management firm that is an ISD investment firm, SUP 16.7.27AR. An investment management firm that is an exempt CAD firm must also submit reports to the FSA in accordance with SUP 16.7.36BR.

...

16.7.36 R ...
A

16.7.36B R Table financial reports from an investment management firm which is an exempt CAD firm

<u>Content of report</u>	<u>Form</u>	<u>Frequency</u>	<u>Due date</u>
<u>Key data</u>	<u>FSA043 (note 1)</u>	<u>In line with Quarterly Financial Return and Annual Financial Return applicable to the firm in SUP 16.7.36R.</u>	<u>As for Quarterly Financial Return and Annual Financial Return applicable to the firm in SUP 16.7.36R.</u>

Note 1 Reports beginning FSA*** are contained within SUP 16 Annex 24R.

...

16.7.38 R ...

(2) ...

(3) SUP 16.7.36BR in accordance with the format set out in SUP 16 Annex 24R and electronically via the system available from or through the FSA's website.

...

16.7.67 R A *UCITS management firm* must submit reports to the FSA in accordance with SUP 16.7.68R and, in the case of a *UCITS investment firm*, SUP 16.7.68AR. A *UCITS firm* that is an *exempt CAD firm* must also submit reports to the FSA in accordance with SUP 16.7.68BR.

...

16.7.68 R ...
A

16.7.68B R Table financial reports from a *UCITS firm* which is an *exempt CAD firm*

<u>Content of report</u>	<u>Form</u>	<u>Frequency</u>	<u>Due date</u>
<u>Key data</u>	<u>FSA043 (note 1)</u>	<u>In line with Quarterly Financial Return and Annual Financial Return applicable to the <i>firm</i> in SUP 16.7.68R.</u>	<u>As for Quarterly Financial Return and Annual Financial Return applicable to the <i>firm</i> in SUP 16.7.68R.</u>

Note 1 Reports beginning FSA*** are contained within SUP 16 Annex 24R.

16.7.69 R ...

(2) ...

(3) SUP 16.7.68BR in accordance with the format set our in SUP 16 Annex 24R and electronically via the system available from or through the FSA's website.

...

16.7.76 R A *firm* not subject to other reporting requirements in SUP 16.7.1G – SUP 16.7.75R (nor to reporting requirements in IPRU(INS) or IPRU(FSOC)):

(1) ...

(2) ...

must submit reports to the FSA in accordance with SUP 16.7.77R. A firm which is a category A1, A2 or A3 personal investment firm must also submit data items in accordance with SUP 16.7.77AR. A firm that is an exempt CAD firm must also submit data items in accordance with SUP 16.7.77BR.

~~A firm which is a category A1, A2 or A3 personal investment firm must also submit data items in accordance with SUP 16.7.77AR.~~

...

16.7.77 R ...

A

16.7.77B R Table financial reports from a firm which is an exempt CAD firm

<u>Content of report</u>	<u>Form</u>	<u>Frequency</u>	<u>Due date</u>
<u>Key data</u>	<u>FSA043</u> <u>(note 1 and 2)</u>	<u>In line with quarterly or half-yearly RMAR applicable to the firm under SUP 16.7.77R.</u>	<u>As for quarterly or half-yearly RMAR applicable to the firm under SUP 16.7.77R</u>

Note 1 Reports beginning FSA*** are contained within SUP 16 Annex 24R.

Note 2 FSA043 must be submitted electronically through the system available from or through the FSA’s website.

...

Amendments to Transitional provisions

TP1.2

...

12N	...					
12O	(1)	SUP 16.7.27B, SUP 16.7.36B, SUP	R	The submission of FSA043 for reporting dates between 1 November 2007 and 31 December 2007 should not be made to the timescales	1 November 2007 to 15 February 2008	1 November 2007

		<u>16.7.68B, SUP 16.7.77B</u>		set out in the underlying rules but instead be submitted between 1 January 2008 and 15 February 2008.		
	(2)	<u>SUP 16.7.24, SUP 16.7.25, SUP 16.7.27</u>	<u>R</u>	<u>A securities and futures firm</u> which is either (1) an <u>exempt CAD firm</u> , or (2) an <u>exempt BIPRU commodity firm</u> to which the requirements of <u>IPRU(INV) Chapter 3</u> apply is not required to submit the <u>Annual Reporting Statement and the Annual Reconciliation under SUP 16.7.25R and SUP 16.7.27R</u> (as appropriate).	<u>1 November 2007 to 31 December 2008</u>	<u>Commencement and 1 November 2007</u>
	(3)	<u>SUP 16.7.35, SUP 16.7.36</u>	<u>R</u>	<u>An investment management firm</u> which is an <u>exempt CAD firm</u> is not required to submit the <u>Annual Financial Return under SUP 16.7.36R</u> .	<u>1 November 2007 to 31 December 2008</u>	<u>Commencement and 1 November 2007</u>
	(4)	<u>SUP 16.7.67, SUP 16.7.68</u>	<u>R</u>	<u>A UCITS firm</u> which is an <u>exempt CAD firm</u> is not required to submit an <u>Annual Financial Return under SUP 16.7.68R, Note 3</u> .	<u>1 November 2007 to 31 December 2008</u>	<u>13 February 2004 and 1 November 2007</u>
	(5)	<u>SUP 16.12.11, SUP 16.12.12</u>	<u>R</u>	<u>An exempt BIPRU commodity firm</u> that does not meet the conditions in <u>BIPRU TP16</u> is not required to submit <u>FSA008</u> for reporting dates prior to 1 February 2008.	<u>1 January 2008 to 31 January 2008</u>	<u>1 January 2008</u>

Part 3

SUP 16 Annex 24 R

All of the text in this section is new and is not underlined, and should be inserted after FSA028.

FSA029
Balance Sheet

		A
Fixed Assets		
1	Intangible assets	
2	Tangible assets	
3	Investments	
4	Total fixed assets	
Current assets		
5	Stocks and Investments	
6	Trade debtors Due within 90 days	
7	Due after 90 days	
8	Non-trade debtors	
9	Sundry debtors	
10	Loans & other assets	
11	Cash at bank and in hand Segregated	
12	Non segregated	
13	Total current assets	
Current liabilities		
14	Creditors	
15	Sundry creditors	
16	Accruals	
17	Bank loans and overdrafts segregated due within 1 year	
18	Bank loans and overdrafts non segregated due within 1 year	
19	Short term subordinated loan due within 1 year	
20	Long term subordinated loan due within 1 year	
21	Net current assets (liabilities)	
Long term liabilities		
22	Creditors	
23	Bank loans and overdrafts segregated due after 1 year	
24	Bank loans and overdrafts non segregated due after 1 year	
25	Short term subordinated loan due after 1 year	
26	Long term subordinated loan due after 1 year	
27	Total long term liabilities	
28	Total assets less total liabilities	
Capital <u>For incorporated entities only</u>		
29	Ordinary shares	
30	Non cumulative preference shares Fixed term	
31	Non fixed term	
32	Cumulative preference shares Fixed term	
33	Non fixed term	
34	Total cumulative preference shares	
35	Share premium account	
36	Other reserves	
37	Revaluation reserve	
38	Retained earnings	
39	Profit / (loss) current year Externally verified	
40	Unverified trading book	
41	Unverified non trading book	
42	Total capital	

Off Balance Sheet items		A	B	C
43	Item no	Type of off balance sheet item		Value
	1			
	...			
	n			

Capital		A
<u>For Partnerships or sole traders only</u>		
44	Capital account	
45	Retained earnings	
46	Current account current year	Externally verified
47		Unverified trading book
48		Unverified non trading book
49	Total capital	

Off Balance Sheet items

A	B	C
50	Item no	Type of off balance sheet item
	1	
	...	
	<i>n</i>	
		Value

Capital		
<u>For LLPs only</u>		
51	Partners Cash Capital Accounts	
52	Partners current accounts	
53	Total Partners Capital	

Off Balance Sheet items

A	B	C
54	Item no	Type of off balance sheet item
	1	
	...	
	<i>n</i>	
		Value

FSA030
Income Statement

		A
Dealing Profit /(Loss)		
1	Dealing profits or (loss) - trading	
2	Dealing profit or (loss) - long term investments	
3	Charges on sales / redemptions of regulated products	
4	Total dealing profit or (loss)	
Revenue		
5	Gross Commission and brokerage	
6	Performance fees	
7	Investment management fees	
8	Investment advisory fees	
9	Corporate Finance	
10	UCITS management fees	
11	Interest and dividends receivable	
12	Other revenue	
13	Foreign exchange gains	
14	Total revenue	
Expenditure		
15	Commissions and fees	
16	Staff costs - salary	
17	Staff costs - bonus	
18	Foreign exchange losses	
19	Accommodation	
20	Interest expense	
21	Other expenditure	
22	Total expenditure	
<u>Following section for incorporated entities only</u>		
23	Profit or (loss) on ordinary activities before taxation	
24	Taxation	
25	Profit or (loss) after taxation	
26	Appropriations	
27	Retained profit or (loss) for the period	
<u>Following section for partnerships (including LLPs) and sole traders</u>		
28	Operating Profit or (loss)	
29	Investment Income	
30	Interest receivable	
31	Profit or (loss) attributable to partners.	

FSA031

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

Regulatory Capital

Part 1

Tier 1

- 1 Paid up share capital (excluding preference shares)
- 2 Eligible LLP Members' Capital
- 3 Share premium account
- 4 Reserves
- 5 Non-cumulative preference shares
- 6 Less: Investment in own shares
- 7 Intangible assets
- 8 Material current year losses
- 9 Material holdings in credit and financial institutions

A

10 Tier 1 Capital

--

Tier 2

- 11 Revaluation reserves
- 12 Fixed term cumulative preference share capital
- 13 Long term subordinated loans
- 14 Other cumulative preference share capital and debt capital
- 15 Qualifying arrangements

16 Own Funds

--

Part 2

- 17 Initial capital
- 18 Less: Investments in own shares
- 19 Intangible assets
- 20 Material unaudited losses
- 21 Original own funds
- 22 Non-fixed term cumulative preference shares
- 23 Fixed term cumulative preference shares
- 24 Non-fixed term long term subordinated loan
- 25 Fixed term long term subordinated loan
- 26 Revaluation reserve
- 27 Less the sum of material holdings in credit and financial institutions and material insurance holdings
- 28 Own Funds

--

Regulatory capital test

29 How do you meet your regulatory capital requirement?

Capital resources requirement

30 Own Funds requirement (Will always be a minimum of £5/£10k even if PII/ combo indicated)

31 Other FSA own funds requirement (if applicable)

32 Surplus / (deficit)

Professional Indemnity Insurance

33 Does your firm hold a Comparable Guarantee in lieu of PII or is it otherwise exempt from PII?

34 Does your firm conduct insurance mediation activities?

	A	B	C	D	E	F	G	H	J	K
	PII Basic information								PII detailed information	
PII policy	Annualised premium	Insurer (from list)	Start date	Renewal date	Limit of indemnity required Single Aggregate		Limit of indemnity received Single Aggregate		Business line (from list)	Policy excess
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

FSA032

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

		A
Regulatory Capital		
<i>Own Funds</i>		
1	Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)	
2	Eligible LLP Members' Capital	
3	Share premium account	
4	Audited reserves (excluding revaluation reserves) and verified interim net profits	
5	Non-cumulative preference shares (if not redeemable by shareholders within 5 years)	
6	Balances on proprietor's or partners' capital accounts	
7	Balances on proprietor's or partners' current accounts	
8	Less: Investments in own shares	
9	Intangible assets	
10	Material current year losses	
11	Material holdings in credit and financial institutions	
12	Excess of current year's drawings over current year profits	
13	Revaluation Reserves	
14	Cumulative preference share capital (if not redeemable by shareholder within 5 years)	
15	Long-Term subordinated loans	
16	Preference share capital (if not redeemable by shareholders within 2 years) and debt capital	
17	Own Funds	
<i>Adjusted net current assets</i>		
18	Net current assets (from balance sheet)	
19	Less: Long term assets adjustment	
20	Connected persons adjustment	
21	Investments adjustment	
22	Adjusted Net Current assets	
Regulatory capital test		
23	How do you meet your regulatory capital requirement?	
<i>Capital requirement</i>		
24	Own funds requirement	
25	Additional own funds requirement for PII (if applicable)	
26	Other FSA capital / own funds requirements (if applicable)	
27	Own Funds	
28	Surplus / (deficit)	
<i>Adjusted net current assets</i>		
29	Adjusted net current assets requirement (if applicable)	
30	Adjusted net current assets (if applicable)	
31	Surplus / (deficit) (if applicable)	

Professional Indemnity Insurance

- 32 Does your firm hold a Comparable Guarantee or equivalent cover in lieu of PII or is it otherwise exempt from holding PII?

Yes / No

- 33 If your firm does not hold a Comparable Guarantee or equivalent cover and is not exempt does the firm currently hold PII?

Yes / No

- 34 Does your firm conduct insurance mediation activities?

Yes / No

- 35 Has your firm renewed its PII cover since the last reporting date?

Yes/ No

- 36 If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here. If not insert N/A.
- 37 Is the cover compliant?

Yes/ No

	A	B	C	D	E	F	G	H	J	K	L
	PII Basic information								PII detailed information		
PII policy	Annualised premium	Insurer (from list)	Start date	Renewal date	Limit of indemnity required		Limit of indemnity received		Business line	Policy excess	Policy exclusions
					Single	Aggregate	Single	Aggregate			
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

- 39 Annual income as stated on the most recent proposal form

A

- 40 Amount of additional capital required for increased excess(es) (Where applicable, total amount for all PII policies)
- 41 Total amount of additional own funds required for policy exclusion(s)
- 42 Total of additional own funds required
- 43 Total of readily realisable own funds
- 44 Excess / (deficit) of readily realisable own funds

FSA033

Capital Adequacy (for firms subject to IPRU(INV) Chapter 3)

		A	B
Regulatory Capital			
<i>Tangible net worth</i>			
1	Capital		
2	Less: Intangible assets		
<i>Eligible Capital Substitutes</i>			
3	Approved subordinated loans		
4	Approved bank bonds		
5	Approved undertakings		
6	Financial resources		
<i>Primary requirement</i>			
7	Base requirement		
8	Liquidity adjustment: Non-trade debtors		
9	Prepayment		
10	Total liquidity adjustment		
11	Charged assets		
12	Contingent liabilities		
13	Deficiencies in subsidiaries		
14	Primary requirement		
Regulatory capital test			
15	Primary Requirement		
16	Position Risk Requirement		
17	Counterparty Risk Requirement		
18	Total Financial Resources Requirement		
19	Financial Resources		
20	Excess / (Deficit)		

Capital adequacy (for firms subject to IPRU(INV) Chapter 5 not subject to the exemption in IPRU(INV) 5.2.3(2)R

		A	B
Regulatory capital			
<i>Tier 1</i>			
1	Paid up share capital (excluding preference shares)		
2	Share premium account		
3	Reserves		
4	Non-cumulative preference shares		
5	Less: Investment in own shares		
6	Intangible assets		
7	Material current year losses		
8	Material holdings in credit and financial institutions		
9	Total deductions		
10	Tier 1 Capital		
<i>Tier 2</i>			
11	Revaluation reserves		
12	Fixed term cumulative preference share capital		
13	Long term subordinated loans		
14	Other cumulative preference share capital and debt capital		
15	Qualifying arrangements		
16	Own Funds		
<i>Tier 3</i>			
17	Net trading book profits		
18	Short term Qualifying Subordinated Loans and excess Tier 2 capital		
19	Less: Illiquid assets		
20	Qualifying property		
21	Liquid capital		
Regulatory capital test			
<i>Liquid capital test</i>			
22	Liquid Capital		
Capital Requirement:			
23	Expenditure Based Requirement		
24	Position Risk Requirement		
25	Counterparty Risk Requirement		
26	Foreign Exchange Risk Requirement		
27	Other Assets Requirement		
28	Total capital requirement		
29	Surplus / Deficit of Liquid Capital		
Annual Expenditure Based Requirement			
30	Total Expenditure		
31	Audited Expenditure (less deductables)		
32	Annual audited expenditure		
33	Expenditure based requirement		
34	Fraction indicator		

FSA035

Capital adequacy (for firms subject to IPRU(INV) Chapter 5 subject to the exemption in 5.2.3(2)R)

		A	B
Regulatory capital			
<i>Tier 1</i>			
1	Paid up share capital (excluding preference shares)		
2	Share premium account		
3	Reserves		
4	Non-cumulative preference shares		
5	Less: Investment in own shares		
6	Intangible assets		
7	Material current year losses		
8	Material holdings in credit and financial institutions		
9	Total deductions		
10	Tier 1 Capital		
<i>Tier 2</i>			
11	Revaluation reserves		
12	Fixed term cumulative preference share capital		
13	Long term subordinated loans		
14	Other cumulative preference share capital and debt capital		
15	Qualifying arrangements		
16	Own Funds		
Regulatory capital test			
<i>Own Funds test</i>			
17	Own Funds		
	Own Funds Requirement: either:		
18	£5 or		
19	£4,000		
20	Surplus / Deficit of Own Funds		

FSA036

Capital adequacy (for UCITS firms subject to UPRU)

	A	B
Regulatory Capital		
<i>Tier 1</i>		
1		
2		
3		
4		
5		
6		
7		
8		
9		
<i>Tier 2</i>		
10		
11		
12		
13		
14		
15		
<i>Tier 3</i>		
16		
17		
Regulatory capital test		
<i>Test 1: Initial capital test</i>		
18		
19		
20		
<i>Test 2: Financial Resources test</i>		
21		
22		
23		
24		
25		
26		
Calculation of financial resources requirement for forthcoming year - UCITS firms		
Annual Audited Fixed Expenditure		
27		
28		
29		
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		

Capital adequacy (for firms subject to IPRU(INV) Chapter 13)

Regulatory Capital

Own Funds

	A	B
1 Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)		
2 Share premium account		
3 Retained profits		
4 Interim net profits		
5 Revaluation reserves		
6 Short term subordinated loans		
7 Debt capital		
8 Balances on proprietors' or partners' capital accounts		
9 Balances on proprietors' or partners' current accounts		
10 Less Intangible assets		
11 Material current year losses		
12 Excess of current year drawings over current year profits		
13 PASS Loan adjustments		
14 Own Funds		
15 Personal assets		
16 Total		

Adjusted net current assets

17 Net current assets (from balance sheet)		
18 Less: Long term assets adjustment		
19 Connected persons adjustment		
20 Investments adjustments		
21 Adjusted net current assets		

Expenditure Based Requirement

22 Total assets less total liabilities		
23 Adjustments required against assets		
24 Adjustment for subordinated loans		
25 Adjustment for indemnity commission		
26 Adjustment for deficiencies in subsidiaries		
27 Adjustment for contingent liabilities		
28 Adjustment for foreign exchange risk		
29 Adjustment for redeemable preference shares		
30 Adjustment for derivatives		
31 Other adjustments against liabilities		
32 Adjusted capital / liquid capital		

Regulatory capital test(s)

33 Category of PIF under IPRU(INV)		
------------------------------------	--	--

Capital requirement

34	Own funds requirement	
35	Additional own funds requirement for PII (if applicable)	
36	Other FSA capital requirements (if applicable)	
37	Own funds	
38	Surplus / (deficit)	

Adjusted net current assets

39	Adjusted net current assets requirement (if applicable)	
40	Adjusted net current assets (if applicable)	
41	Surplus / (deficit) (if applicable)	

Expenditure based requirement

42	Expenditure based requirement (if applicable)	
43	Adjusted capital / illiquid capital (if applicable)	
44	Surplus / (deficit)	

Professional Indemnity Insurance

45	Does your firm hold a Comparable Guarantee or equivalent cover in lieu of PII or is it otherwise exempt from holding PII?	Yes / No
46	If your firm does not hold a comparable guarantee or equivalent cover and is not exempt does the firm currently hold PII?	Yes / No
47	Does your firm conduct insurance mediation activities?	Yes/ No
48	Has your firm renewed its PII cover since the last reporting date	Yes / No
49	If your policy excludes all business activities carried on prior to a particular date (ie a retroactive start date), then insert the date here. If no, insert N/A.	

50	A	B	C	D	E	F	G	H	J	K	L
	PII Basic information								PII detailed information		
PII policy	Annualised premium	Insurer (from list)	Start date	Renewal date	Limit of indemnity required		Limit of indemnity received		Business line	Policy excess	Policy exclusions
					Single	Aggregate	Single	Aggregate			
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

51	Annual income as stated on the most recent proposal form	B
52	Amount of additional capital required for increased excess(es) where applicable, total amount for all policies	
53	Total amount of additional own funds required for policy exclusion(s)	
54	Total of additional own funds required	
55	Total of readily realisable own funds	
56	Excess / (deficit) of readily realisable own funds	

FSA038

Volumes and Type of Business

Total Value of Funds Under Management

- 1 Total funds under management (000s)
- 2 Of which UK funds under management (000s)

A

Number and Type of Customer

- 3 Do you conduct designated investment business with or for retail clients?
- 4 What is the current approximate percentage of your clients that are retail clients?

Yes / No

%

drop down
Below 25%
25% to under 50%
50% to under 75%
75% and over

FSA039

Client Money and Client Assets

- | | | |
|---|---|-------------------------------------|
| 1 | Has your firm held Client Money or Client Assets in this reporting period? | A
<input type="text"/> |
| 2 | Does the firm undertake stock lending activities using clients' custody assets? | <input type="text" value="Yes/No"/> |

FSA040

CFTC DATA: Specialist data for firms subject to CFTC part 30 exemption order

Omnibus letter of Credit

- 1 Balance per previous reporting date
- 2 Addition
- 3 Termination / cancellation
- 4 Current balance

A

Secured amount

- 5 Deficit open trade equity at LME
- 6 House losses at LCH
- 7 Deficit open trade equity of non-LME customers at LCH
- 8 LME forward profit
- 9 Total
- 10 Excess / (deficiency)

--

- 11 Number of occasions when the omnibus letter of credit was deficient
- 12 Total excess / (deficiency) for individual letter of credit

	A	B	C	D
	Secured amount	Value of letter of credit	Excess / (deficiency)	Date rectified
1				
...				
n				
			Total	

A

--

- 13 Number of occasions when any one individual letter of credit was deficient

FSA041

Asset Managers that use Hedge Fund Techniques Report

- 1 Do you manage an unregulated collective investment scheme ("uCIS") that is not domiciled in the UK?
- 2 Do you use derivatives for investment purposes in an uCIS that is not domiciled in the UK?
- 3 Do you solely undertake venture capital management?

A	
	Yes / No
	Yes / No
	Yes / No

For firms identified as a Hedge Fund Manager only:

- 4 Do you provide valuations for any instruments to your fund administrator which, to the best of your knowledge, are relied upon by the administrator in valuing the fund?

Yes / No

Fund's Auditor(s)

For the auditor(s) you use to audit your funds, please provide the following:

- 5 Name(s) of auditing firm(s) that signed the most recent audit opinion
- 6 (Name(s)) & Location(s) of the auditor's office responsible for the most recent audit

Prime broker(s)

- 7 Name(s) of prime broker(s)
- 8 (Name(s)) & Location(s) of prime broker(s)

Custodian(s)

- 9 Name(s) of custodian(s)
- 10 (Name(s)) & Location(s) of custodian(s)

Third Party Administrator(s)

- 11 Name(s) of the third party administrator(s)
- 12 (Name(s)) & Location(s) of the third party administrator(s)

FSA042
UCITS

A

1 Do you operate one or more UK authorised UCITS schemes?

Yes / No

2 If Yes to 1A, do you use derivatives in the scheme(s)?

Yes / No

3 If Yes to 2A, are you using derivatives for investment purposes in your UK authorised UCITS schemes?

Yes/No

FSA043

Key data (for exempt CAD firms)

1	How do you meet your regulatory capital requirements?	A
2	Own funds	

Capital resources requirement

3	Own funds requirement
4	Additional own funds requirement for PII (if applicable)
5	Other FSA own funds requirement (excess above own funds requirement)
6	Surplus/(deficit)

Professional indemnity insurance (PII)

7	Does your firm hold a Comparable Guarantee in lieu of PII or is it otherwise exempt from PII in respect of any regulated	Yes/ No
8	Does your firm conduct insurance mediation activities?	Yes/ No

9	A	B	C	D	E	F	G	H
PII Basic information								
PII policy	Annualised premium	Insurer (from list)	Start date	Renewal date	Limit of indemnity required		Limit of indemnity received	
					Single	Aggregate	Single	Aggregate
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Part 4

SUP 16 Annex 25 G

All of the text in this section is new and is not underlined, and should be inserted after FSA028.

FSA029 – Balance Sheet

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory Annual Accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

Description	Data element	Guidance
Fixed Assets		Fixed assets include all assets used by the firm in its activities on a continuing basis.
Intangible assets	1A	Intangible assets include goodwill, capitalised development costs, patents, licences, exchange seats (such as seats on LIFFE), trademarks and similar rights. Exchange seats held for investment purposes may be treated as a fixed asset investment.

Current assets		
Trade debtors due within 90 days	6A	Amounts due from counterparties should be reflected at gross amounts less any provisions for bad and doubtful debts. Netting is only permitted to the extent that there is express agreement with the counterparty that balances may be settled on a net basis. Firms should ensure that trading book debtors under and over 90 days are disclosed separately.
Trade debtors due after 90 days	7A	
Non-trade debtors	8A	These include debtors not arising from trading book activities. Examples of these are corporate finance fees, commissions, interest and dividends not directly related to items in the trading book. Firms should ensure that non-trading book debtors under and over 90 days and debts with affiliates and non-affiliates are disclosed separately.
Cash at bank and in hand segregated	11A	Segregated client monies on the balance sheet should be disclosed separately from other non segregated funds.
Cash at bank and in hand non segregated	12A	
Capital - <u>for incorporated entities only</u>		
Ordinary shares	29A	
Non cumulative preference shares – fixed term	30A	Cumulative and non cumulative preference shares for fixed and non fixed terms should be disclosed separately. Preference share capital can only be included in financial resources, provided that there is an agreement in place, that redemption may not take place if it would take the firm into a deficit of financial resources.
Non cumulative preference shares – non fixed term	31A	
Cumulative preference shares – fixed term	32A	Preference share capital may only be included in initial capital where the dividends are non-cumulative.
Cumulative preference shares – non fixed term	33A	
Retained earnings	38A	This figure should include audited figures where applicable. The requirement that this figure be audited does not apply to small companies exempted from audit under the Companies Act 2006.

Profit / (loss) current year - externally verified	39A	Incorporated firms should ensure that for both prior year brought forward and current year profit and loss, amounts representing externally audited balances and unverified trading and non trading book balances are identified and disclosed separately. Interim profits may only be included in a firm's initial capital where they have been verified by an external auditor. The requirement that this figure be audited does not apply to small companies exempted from audit under the Companies Act 2006.
Profit / (loss) current year – unverified trading book	40A	
Profit / (loss) current year – unverified non trading book	41A	
Off Balance sheet items	43A, 43B, 43C	Select the off-balance sheet items from the following items: structured products; OTCs; derivatives; operating leases; offshore entities; securitised transactions; and ‘other’.

Capital – for Partnerships or sole traders only

Capital account	44A	This represents capital introduced by the partners or sole trader There should be a legal agreement in place to ensure that this capital can not be removed if it would take the firm into a deficit of its financial resources.
Retained earnings	45A	These can only be included in a firm’s capital where they have been verified by an external auditor.
Current account current year – externally verified	46A	Unincorporated firms should ensure that for both prior year brought forward and current year current account, amounts representing externally audited balances and unverified trading and non trading book balances are identified and disclosed separately. Interim current account may only be included in a firm's initial capital where they have been verified by an external auditor. The requirement that this figure be audited does not apply to small companies exempted from audit under the Companies Act 2006.
Current account current year – unverified trading book	47A	
Current account current year – unverified non trading book	48A	
Off Balance sheet items	50A, 50B, 50C	Select the off-balance sheet items from the following items: structured products; OTCs; derivatives; operating leases; offshore entities; securitised transactions; and ‘other’.

Capital – for Limited Liability Partnerships only

Off Balance sheet items	54A, 54B, 54C	Select the off-balance sheet items from the following items: structured products; OTCs; derivatives; operating leases; offshore entities; securitised transactions; and 'other'.
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FSA029 – Balance sheet validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	4A	=	$1A + 2A + 3A$
2	13A	=	$5A + 6A + 7A + 8A + 9A + 10A + 11A + 12A$
3	21A	=	$13A - 14A + 15A + 16A + 17A + 18A + 19A + 20A$
4	27A	=	$22A + 23A + 24A + 25A + 26A$
5	28A	=	$13A + 21A - 27A$
6	34A		If $29A = 0$, then 0, else $(32A + 33A)$
7	42A		If $29A = 0$, then 0, else $(29A + 30A + 31A + 34A + 35A + 36A + 37A + 38A + 39A + 40A + 41A)$
8	42A		If $29A = 0$, then 0, else 28A
9	44A		If $29A > 0$, then 0
10	49A		If $44A > 0$, then $(44A + 45A + 46A + 47A + 48A)$, else 0
11	49A		If $44A > 0$, then 28A, else 0
12	51A		If $(29A + 44A) > 0$, then 0
13	53A		If $51A > 0$, then $(51A + 52A)$, else 0
14	53A		If $51A > 0$, then 28A, else 0

FSA030 – Income Statement

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

The Income Statement should be reported on a cumulative basis throughout the firm's financial year.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory Annual Accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

Description	Data element	Guidance
Dealing Profit /(Loss)		
Dealing profits or (loss) - trading	1A	This is the total gross profit or loss which arises from market making and other dealings as principal in the financial year to date. Stamp duty, exchange fees, commissions and brokerage and any related interest paid or payable should be deducted.

Revenue	A firm should complete only the sections relevant to the business it undertakes	
Gross Commission and brokerage	5A	<p>This includes all commission income in respect of the relevant regulated business.</p> <p>Gross commissions will include commission that is received and passed on to another person.</p> <p>Where commission is shared between two or more firms, the gross commission should not be double counted, i.e. each firm should report only the commission it has received.</p>
Performance fees	6A	Fees received in relation to the firms regulated activities.
Investment management fees	7A	This is the total of underwriting fees and commissions, fees from investment advice, valuations, management of investments and unit trusts, pension funds, discretionary management and collective investment schemes.
Corporate Finance	9A	This is the total of all income earned by the firm from corporate finance business.
Other revenue	12A	<p>You should record here any income that has derived from its business in the financial year, which has not been recorded under commissions or fees.</p> <p>Such income may include interest on client money, where the firm is permitted to retain this, or payments made by product providers on a basis other than fees or commissions.</p>
Expenditure		
Commissions and fees	15A	This is the total of commissions paid and shared, plus fees, brokerage and other charges paid in relation to the business.
Foreign exchange losses	18A	This is the total of foreign exchange losses.
Interest expense	20A	This is the total of interest payable on borrowings of the firm and interest payable on client bank accounts.

Following section for incorporated entities only

Profit or (loss) on ordinary activities before taxation	23A	Profit / (loss) from the activities carried out by a firm in the carrying out of its business.
Appropriations	26A	Includes dividends paid, or any other items paid out by the firm.

Following section for LLPs only

Operating Profit or (loss)	28A	Operating profit / (loss) arising from the day to day activities of the firm.
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FSA030 – Income statement validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	4A	=	1A + 2A + 3A
2	14A	=	5A + 6A + 7A + 8A + 9A + 10A + 11A + 12A + 13A
3	22A	=	15A + 16A + 17A + 18A + 19A + 20A + 21A
4	23A	=	4A + 14A – 22A
5	25A	=	23A – 24A
6	27A	=	25A – 26A
7	28A		If 23A ≠ 0, then 0, else (4A + 14A – 22A)
8	31A	=	28A + 29A + 30A

FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor a firm's capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory annual accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.

Description	Data element	Guidance
Regulatory capital	This section has two parts. Each firm need only complete one part: <ul style="list-style-type: none"> • Part 1 should only be completed by firms previously subject to the requirements of <i>IPRU(INV)</i> Chapter 5 • Part 2 should only be completed by firms previously subject to the requirements of <i>IPRU(INV)</i> Chapter 3 or 10 	
Part 1	Covers data elements 1A to 17A	
Paid up share capital (excluding preference shares)	1A	Item 1 in <i>IPRU(INV)</i> Table 5.2.2(1)

Share premium account	3A	Item 2 in <i>IPRU(INV)</i> Table 5.2.2(1)
Reserves	4A	Item 3 in <i>IPRU(INV)</i> Table 5.2.2(1)
Non-cumulative preference shares	5A	Item 4 in <i>IPRU(INV)</i> Table 5.2.2(1)
Investment in own shares	6A	Item 5 in <i>IPRU(INV)</i> Table 5.2.2(1)
Intangible shares	7A	Item 6 in <i>IPRU(INV)</i> Table 5.2.2(1)
Material current year losses	8A	Item 7 in <i>IPRU(INV)</i> Table 5.2.2(1)
Material holdings in credit and financial institutions	9A	Item 8 in <i>IPRU(INV)</i> Table 5.2.2(1)
Revaluation reserves	11A	Item 9 in <i>IPRU(INV)</i> Table 5.2.2(1)
Fixed term cumulative preference share capital	12A	Item 10 in <i>IPRU(INV)</i> Table 5.2.2(1)
Long term subordinated loans	13A	Item 11 in <i>IPRU(INV)</i> Table 5.2.2(1)
Other cumulative preference share capital and debt capital	14A	Item 12 in <i>IPRU(INV)</i> Table 5.2.2(1)
Qualifying arrangements	15A	Item 13 in <i>IPRU(INV)</i> Table 5.2.2(1)
Part 2	Covers data elements 17A to 28A	
Initial capital	17A	Initial capital includes ordinary share capital (which is fully paid), perpetual non-cumulative preference share capital (which is fully paid), share premium account, reserves excluding revaluation reserves, audited retained earnings, externally verified interim net profits or current account, partners' capital, eligible LLP members' capital and sole trader capital.
Fixed term cumulative preference shares	23A	Limited to 50% of original own funds (21A)

Regulatory capital test	This is completed by all exempt CAD firms	
How do you meet your regulatory capital requirement?	29A	<p>The rules allow a firm to specify the method in which it will meet the regulatory capital requirement. A firm can:</p> <ul style="list-style-type: none"> • use capital to meet the regulatory requirement; or • use PII to meet the regulatory requirement; or • use a combination of capital and PII to meet the regulatory requirement. <p>A firm should select from the drop-down options.</p>
Other FSA own funds requirements (if applicable)	31A	Firms subject to a requirement under another chapter of <i>IPRU(INV)</i> should include that requirement to the extent it exceeds the own funds requirement in 30A.
<p><i>Professional Indemnity Insurance</i></p> <p>This section requires each firm to confirm it is in compliance with the prudential requirements in relation to professional indemnity insurance (PII). Data is required in relation to all PII policies that a firm has in place, up to a limit of ten (this is provided in columns A-H). If a firm has more than ten policies, it should report only on the ten largest policies by premium. For each insurer, if there are any business lines with different excess, then they should be reported in columns J and K (so there can be multiple entries in columns J and K for each insurer).</p>		
Does your firm hold a Comparable Guarantee in lieu of PII or is it otherwise exempt from PII?	33A	<p>This question will establish whether a firm is exempt from the requirements and so is not required to hold PII.</p> <p>If the firm is required to hold PII – i.e. is not exempt from holding PII – you should enter 'no' in the data field.</p> <p>A firm is NOT exempt from holding PII if:</p> <ul style="list-style-type: none"> • the firm has a group policy with an insurer; or • the firm has permission for the regulated business that requires PII, but does not currently carry it out; or • it is a personal investment firm meeting the exemption requirements for mortgage intermediaries and insurance intermediaries in PRU 9.2. <p>Select either 'Comparable guarantee' or 'Exempt'.</p>

Does your firm conduct insurance mediation activities?	34A	Insurance mediation activities are defined in the FSA Handbook glossary.
Annualised premium	35A	This should state the premium payable (in descending order of size), net of tax and any other add-ons. If the premium covers a period other than 12 months, it should be annualised before ranking.
PII Insurer	35B	Select the PII insurer from the list provided (to follow). If you have more than one policy with the same insurer, they should be combined. If the insurer is not listed, select 'Other'. If a policy is underwritten by more than one insurance undertaking or Lloyd's syndicate, you should select 'multiple'.
Start date	35C	Enter the start date of the policy.
Renewal date	35D	Enter the renewal date of the policy
Limit of indemnity required – single	35E	You should record here the required indemnity limits on the firm's PII policy or policies, in relation to single claims. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limit of indemnity required – aggregate	35F	You should record here the required indemnity limits on the firm's PII policy or policies, in aggregate. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – single	35G	You should record here the indemnity limits on the firm's PII policy or policies obtained in relation to single claims. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – aggregate	35H	You should record here the indemnity limits on the firm's PII policy or policies obtained in aggregate. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.

Business line	35J	<p>For policies that cover all business lines, firms should select ‘All’ from the list provided (to follow). Where the policy contains different excess for different business lines, firms should identify these business lines from the list (or the closest equivalent) and report the (highest) excess for that business line in data element 36K. Once these ‘non-standard’ excesses have been identified, the remaining business lines should be reported under ‘All other’.</p> <p>(Some typical business types include pensions, endowments, FSAVCs, splits/zeros, precipice bonds, income drawdown, lifetime mortgages, discretionary management).</p>
Policy excess	35K	<p>For policies that cover all business lines with no difference in excesses, this should be the excess applicable. Otherwise, it should contain the highest excess for each business line that differs.</p>

FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	10A	=	$1A + 2A + 3A + 4A + 5A - 6A - 7A - 8A - 9A$
2	16A	=	$10A + 11A + 12A + 13A + 14A + 15A$
3	21A	=	$17A - 18A - 19A - 20A$
4	23A	≤	$50\% * 21A$
5	28A	=	$21A + 22A + 23A + 24A + 25A + 26A - 27A$
6	32A	=	$30A + 31A$

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor a firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory annual accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in a wrong way

Description	Data element	Guidance
Regulatory Capital		
Ordinary share capital (fully paid up)	1A	Share capital which is eligible for inclusion as regulatory capital.
Revaluation reserves	13A	Revaluation reserves (unrealised reserves arising from revaluation of fixed assets) can only be included here if audited.

Regulatory capital test(s)		
How do you meet your regulatory capital requirement?	23A	<p>The rules allow a firm to specify the method in which it will meet the regulatory capital requirement. A firm can:</p> <ul style="list-style-type: none"> • use capital to meet the regulatory requirement; or • use PII to meet the regulatory requirement; or • use a combination of capital and PII to meet the regulatory requirement. <p>A firm should select from the drop-down options.</p>
<i>Capital requirement</i>		
Own funds requirement	24A	The own funds requirement ('OFR') should be calculated in accordance with section <i>IPRU(INV)</i> 13.1A.
Additional own funds requirement for PII (if applicable)	25A	If the firm has any increased excesses or exclusions on its PII policies, the total of the additional capital requirements required by <i>IPRU(INV)</i> 13.1.4.
Other FSA capital / own funds requirements (if applicable)	26A	Firms subject to a requirement under <i>IPRU(INV)</i> 13.2-8 or 13.9-12 should include that requirement as calculated by reference to the firm's own funds calculated under <i>IPRU(INV)</i> 13.3 to the extent it exceeds the own funds requirement in 24A. This excludes capital requirements in relation to PII.
Surplus / (deficit)	28A	This is the amount of the firm's own funds in relation to its own funds requirement. A firm's own funds requirement is the total of 24A, 25A and 26A. So, such a firm should compare this requirement with the own funds calculated in 27A to compute the surplus/(deficit).
<i>Adjusted net current assets</i>	<p>The purpose of this test is to ensure that the firm has adequate working capital to be able to meet its liabilities as and when they fall due. It does this by taking the firm's net current assets (from FSA029), and applying the following actions:</p> <ol style="list-style-type: none"> (1) excluding assets which cannot be realised or recovered within twelve months; (2) excluding amounts receivable from connected persons (to the extent that they are not properly secured, except certain allowable deposits); (3) valuing investments at current market value. 	

Adjusted net current assets requirement (if applicable)	29A	All personal investment firms except low resource firms should at all times have adjusted net current assets of at least £1. Low resource firms should enter 'n/a' here.
Adjusted net current assets (if applicable)	30A	Adjusted net current assets should be calculated in accordance with <i>IPRU(INV)</i> 13.11.
Surplus / (deficit) (if applicable)	31A	This shows whether the firm's net current assets are positive.
<p><i>Professional Indemnity Insurance</i></p> <p>This section requires each firm to confirm it is in compliance with the prudential requirements in relation to professional indemnity insurance (PII). Data is required in relation to all PII policies that a firm has in place, up to a limit of ten (this is provided in columns A-H). If a firm has more than ten policies, it should report only on the ten largest policies by premium. For each insurer, if there are any business lines with different excess, then they should be reported in columns J – L (so there can be multiple entries in columns J, K and L for each insurer).</p>		
Does your firm hold a Comparable Guarantee or equivalent cover in lieu of PII or is it otherwise exempt from holding PII?	32A	<p>This question will establish whether a firm is exempt from the requirements and so is not required to hold PII.</p> <p>If the firm is required to hold PII – i.e. is not exempt from holding PII – you should enter 'no' in the data field.</p> <p>A firm is NOT exempt from holding PII if:</p> <ul style="list-style-type: none"> • the firm has a group policy with an insurer; or • the firm has permission for regulated business that requires PII, but does not currently carry it out; or • it is a personal investment firm meeting the exemption requirements for mortgage intermediaries and insurance intermediaries in PRU 9.2. <p>Select either 'Comparable guarantee' or 'Exempt'.</p>
If your firm does not hold a Comparable Guarantee or equivalent cover and is not exempt, does the firm currently hold PII?	33A	This is either 'Yes' or 'No'.

Does the firm conduct insurance mediation activities?	34A	This is either 'Yes' or 'No', and enables us to check that the PII cover meets the minimum requirements.
Has your firm renewed its PII cover since the last reporting date?	35A	This is either 'Yes' or 'No'.
If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here. If not insert N/A.	36A	<p>Required terms of PII are set out in <i>IPRU(INV)</i> 13.1.4.</p> <p>Examples of a retroactive start date:</p> <p>(1) A firm has a retroactive start date of 01/01/2005 on its policy if:</p> <ul style="list-style-type: none"> • A client is advised by the firm to purchase an XYZ policy on 01/03/2004 (i.e. before the retroactive date) • The client makes a formal complaint about the sale of the XYZ policy to the firm on 01/04/2006 (i.e. while this PII cover is still in place). • The complaint is upheld, but the firm's current PII Insurer will not pay out any redress for this claim as the transaction took place before 01/01/2005, the retroactive date in the policy. <p>Insert '01/01/05' for this question on the data item.</p> <p>(2) A firm does not have a retroactive start date if:</p> <ul style="list-style-type: none"> • A client is advised by the firm to purchase an XYZ policy on 01/03/2006. • The client makes a formal complaint about the sale of the XYZ policy to the firm on 01/04/2006 (i.e. while this PII cover is still in place). • The complaint is upheld, and the firm's current PII Insurer will pay out any redress owed by the firm to the client over any prescribed excess, and to the limit of indemnity provided for. There is no date in the policy before which any business transacted may not give rise to a valid claim. <p>Insert 'n/a' for this question on the data item.</p>

Is the cover compliant?	37A	This is either 'Yes' or 'No'.
Annualised premium	38A	This should state the premium payable (in descending order of size), net of tax and any other add-ons. If the premium covers a period other than 12 months, it should be annualised before ranking.
PII Insurer	38B	Select the PII insurer from the list provided (to follow). If you have more than one policy with the same insurer, they should be combined. If the insurer is not listed, select 'Other'. If a policy is underwritten by more than one insurance undertaking or Lloyd's syndicate, you should select 'multiple'.
Start date	38C	Enter the start date of the policy.
Renewal date	38D	Enter the renewal date of the policy
Limit of indemnity required – single	38E	You should record here the required indemnity limits on the firm's PII policy or policies, in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limit of indemnity required – aggregate	38F	You should record here the required indemnity limits on the firm's PII policy or policies, in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – single	38G	You should record here the indemnity limits on the firm's PII policy or policies obtained in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – aggregate	38H	You should record here the indemnity limits on the firm's PII policy or policies obtained in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.

Business line	38J	<p>For policies that cover all business lines, firms should select ‘All’ from the list provided (to follow). Where the policy contains different excess for different business lines, firms should identify these business lines from the list (or the closest equivalent) and report the (highest) excess for that business line in data element 38K. Once these ‘non-standard’ excesses have been identified, the remaining business lines should be reported under ‘All other’.</p> <p>(Some typical business types include pensions, endowments, FSAVCs, splits/zeroes, precipice bonds, income drawdown, lifetime mortgages, discretionary management).</p>
Policy excess	38K	For policies that cover all business lines with no difference in excesses, this should be the excess applicable. Otherwise, it should contain the highest excess for each business line that differs.
Policy exclusions	38L	If there are any exclusions in the firm’s PII policy, the business type(s) to which they relate should be entered here. This is a free text field.
Annual income as stated on the most recent proposal form	39A	<p>This should be the income as stated on the <i>firm’s</i> most recent PII proposal form.</p> <p>This is relevant income arising from all of the <i>firm’s</i> activities for the last accounting year before the policy began or was renewed (<i>IPRU(INV)</i> 13.1.3(3)R).</p>
Amount of additional capital required for policy excess(es)	40A	This should be calculated using the tables in <i>IPRU(INV)</i> 13.1.4(12)E. The total of additional capital (i.e. in relation to all of the firm’s PII policies) should have been reported under ‘additional own funds requirement for PII’ (data element 25A).
Total amount of additional own funds required for policy exclusion(s)	41A	This should be calculated in line with <i>IPRU(INV)</i> 13.1.4(13)R. The total of additional own funds (i.e. in relation to all of the firm’s PII policies) should have been reported under ‘additional own funds for PII’ (data element 25A).
Total of additional own funds required	42A	This represents the total of additional own funds required under <i>IPRU(INV)</i> 13.1.4 to 13.1.4(13)G for all of the firm’s PII policies (data element 26A).

Total of readily realisable own funds	43A	State here the total of the own funds that are classed as 'readily realisable' under the terms of <i>IPRU(INV)</i> 13.1.4(4)G.
Excess / (deficit) of readily realisable own funds	44A	In this field, enter the result of the 'total of readily realisable own funds' less the 'total of additional own funds required'.

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	17A	=	$1A + 2A + 3A + 4A + 5A + 6A + 7A - 8A - 9A - 10A - 11A - 12A + 13A + 14A + 15A + 16A$
2	22A	=	$18A - 19A - 20A - 21A$
3	28A	=	$27A - 24A - 25A - 26A$
4	30A	=	22A
5	31A	=	$30A - 29A$
6	41A	≥	40A
7	41A	=	25A
8	44A	=	$43A - 42A$

FSA033 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 3)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory Annual Accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- the requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

Description	Data element	Guidance
Regulatory Capital		
<i>Tangible net worth</i>	1B and 2B	<p>For an incorporated firm, tangible net worth includes ordinary share capital plus redeemable preference shares, meeting the criteria set out in <i>IPRU(INV)</i> 3- 62R, approved reserves as explained in <i>IPRU(INV)</i> 3-62R, share premium account and retained earnings, less any intangible assets.</p> <p>For a partnership or sole trader, tangible net worth includes the capital account plus current account, less any intangible assets.</p>

<i>Eligible Capital Substitutes</i>	3B to 5B	There are certain limits on subordinated loans, approved bank bonds and approved undertakings which may be taken into financial resources. The total should not exceed four times tangible net worth. The other limits are detailed in <i>IPRU(INV)</i> 3-63R.
<i>Primary requirement</i>		This is the requirement set out in <i>IPRU(INV)</i> 3-70R
Base requirement	7B	The base requirement is the greater of: <ul style="list-style-type: none"> • the absolute minimum requirement which is determined in accordance with <i>IPRU(INV)</i> 3-72R; • the expenditure requirement which is determined in accordance with <i>IPRU(INV)</i> 3-73R; and • the volume of business requirement which is 3.5% of the aggregate of the firm's counterparties' total initial margin requirement.
Total liquidity adjustment	10B	The liquidity adjustment should be calculated in accordance with <i>IPRU(INV)</i> 3-75R and should be deducted in order to arrive at the financial resources.
Charged assets	11B	This is the balance sheet value of each asset charged to a third party (<i>IPRU(INV)</i> 3-76R) unless the related exposure has already been recorded as a liability or is subject to CRR.
Contingent liabilities	12B	An amount should be added to primary requirement in accordance with <i>IPRU(INV)</i> 3-77R.
Deficiencies in subsidiaries	13B	Unless a provision has already been made (ie a reduction of the firm's financial resources), the amount is equal to the deficiency in shareholders' funds in the subsidiary of the firm (<i>IPRU(INV)</i> 3-78R).
Regulatory capital test		
Position Risk Requirement	16A	A firm which trades on its own account should calculate a position risk requirement. The methods and position risk weightings (known as PRRs) to be used can be found in <i>IPRU(INV)</i> 3-80R to 3-169R and <i>IPRU(INV)</i> 3 App 26.

Counterparty Risk Requirement	17A	This section is split into debtors and creditors arising on the trading book. The headings for assets and liabilities are designed to reflect the balance sheet values of transactions analysed by type.
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FSA033 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 3) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	6B	=	1B – 2B + 3B + 4B + 5B
2	10B	=	8A + 9A
3	14B	=	7B + 10B + 11B + 12B + 13B
4	15A	=	14B
5	18B	=	15A + 16A + 17A
6	19B	=	6B
7	20B	=	19B – 18B

FSA034 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 not subject to exemption in IPRU(INV) 5.2.3(2)R)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory annual accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

FSA034 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 not subject to exemption in IPRU(INV) 5.2.3(2)R) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data item		
1	9B	=	5A + 6A + 7A + 8A
2	10B	=	1B + 2B + 3B + 4B + 9B
3	16B	=	10B + 11B + 12B + 13B + 14B + 15B
4	21B	=	16B + 17B + 18B – 19B + 20B
5	22B	=	21B
6	28B	=	23A + 24A + 25A + 26A + 27A
7	29B	=	22B – 28B
8	33B	=	32B * (33B / 52)
9	34B	=	6 or 13

FSA035 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 and to the exemption in IPRU(INV) 5.2.3(2)R)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory Annual Accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

FSA035 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 and to the exemption in IPRU(INV) 5.2.3(2)R) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	9B	=	5A + 6A + 7A + 8A
2	10B	=	1B + 2B + 3B + 4B + 9B
3	16B	=	10B + 11B + 12B + 13B + 14B + 15B
4	18A	=	0 or 5
5	19A	=	0 or 4000
6	19A		If 18A = 0, then 4000, else 0
7	20B	=	17B – (18A + 19A)

FSA036 – Capital Adequacy (for UCITS firms)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose of helping the FSA to monitor firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory Annual Accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- The data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

FSA036 – Capital Adequacy (for UCITS firms) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element	=	
1	9B	=	$1B + 2B + 3B + 4B - 5B - 6B - 7B - 8B$
2	15B	=	$9B + 10B + 11B + 12B + 13B + 14B$
3	17B	=	$15B - 16B$
4	18B	=	$9B$
5	20B	=	$18B - 19B$
6	21B	=	$17B$
7	24B	=	$22A + 23A$
8	25B	=	$40B$
9	26B	=	$21B - (\text{Max } 24B, 25B)$
10	38B	=	$27B - 28A - 29A - 30A - 31A - 32A - 33A - 34A - 35A - 36A - 37A$
11	40B	=	$39B / 4$

FSA037 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 13)

Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS.
- The data item should be unconsolidated.
- For a sole trader, only the assets and liabilities of the business should be included.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the statutory Annual Accounts and should be consistently applied.
- Information required should be prepared in accordance with generally accepted accounting standards.
- the data item should not give a misleading impression of the firm. A data item is likely to give a misleading impression if a firm wrongly omits or includes a material item or presents a material item in the wrong way.
- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

Description	Data element	Guidance
Regulatory Capital		
<i>Own Funds</i>		<i>IPRU(INV)</i> requires that all non-ISD personal investment firms have financial resources of at least £10,000 at all times. The Own Funds test is designed to evaluate firms' adherence to this requirement. In addition, firms that do not fall within the definition of a low resource firm are required to meet the following additional financial resources tests.

Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)	1B	Share capital in FSA030 which is eligible for inclusion as regulatory capital.
Interim net profits	4B	Interim net profits should be verified by the firm's external auditor, net of tax or anticipated dividends and other appropriations to be included as capital. Any interim net profits that have not been verified should not be included in this field unless the firm is eligible to do so. The requirement that this figure be audited does not apply to small companies exempted from audit under the Companies Act 2006.
Revaluation reserves	5B	Revaluation reserves (unrealised reserves arising from revaluation of fixed assets) can only be included here if audited.
<i>Expenditure Based Requirement</i>		This is a capital requirement for personal investment firms that are not low resource firms, based on a firm's overall audited expenditure. The Expenditure Based Requirement is calculated as a fraction of the firm's annual fixed costs which, for this purpose, are based upon the firm's annual audited expenditure and, in general terms, exclude cost items that would not be incurred were there no income. Thus staff bonuses and partners' profit shares (unless guaranteed) and any shared commissions are not treated as fixed costs for the purposes of the calculation.
Adjustments required against assets	23A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part I
Adjustment for subordinated loans	24A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Adjustment for indemnity commission	25A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Adjustment for deficiencies in subsidiaries	26A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Adjustment for contingent liabilities	27A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II

Adjustment for foreign exchange risk	28A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Adjustment for redeemable preference shares	29A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Adjustment for derivative	30A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Other adjustments against liabilities	31A	See IPRU(INV) Table 13.12.3(1)/13.12.3(2) Part II
Regulatory capital test(s)		
<i>Capital requirement</i>		
Own funds requirement	34B	The own funds requirement ('OFR') should be calculated in accordance with section <i>IPRU(INV)</i> 13.10. For a low resource firm, the OFR is always £10,000.
Additional own funds requirement for PII (if applicable)	35B	If the firm has any increased excesses or exclusions on its PII policies, the total of the additional capital requirements required by <i>IPRU(INV)</i> 13.1.4.
Other FSA capital requirements (if applicable)	36B	The FSA may from time to time impose additional requirements on individual firms. If this is the case for your firm, you should enter the relevant amount here. This excludes capital requirements in relation to PII.
Surplus / (deficit)	38B	This should show the amount of the firm's own funds in relation to its own funds requirement.
<i>Adjusted net current assets</i>	<p>The purpose of this test is to ensure that the firm has adequate working capital to be able to meet its liabilities as and when they fall due. It does this by taking the firm's net current assets (from the balance sheet), and applying the following:</p> <p>(1) excluding assets which cannot be realised or recovered within twelve months;</p> <p>(2) excluding amounts receivable from connected persons (to the extent that they are not properly secured, except certain allowable deposits); and</p> <p>(3) valuing investments at current market value.</p> <p>The resulting balance should be at least £1.</p>	

Adjusted net current assets requirement (if applicable)	39B	All personal investment firms except low resource firms should at all times have adjusted net current assets of at least £1. Low resource firms should enter 'n/a' here.
Adjusted net current assets (if applicable)	40B	All personal investment firms except low resource firms should at all times have adjusted net current assets of at least £1. Low resource firms should enter 'n/a' here. Adjusted net current assets should be calculated in accordance with <i>IPRU(INV)</i> 13.11.
Surplus / (deficit) (if applicable)	41B	This shows whether the firm's net current assets are positive.
<i>Expenditure based requirement</i>		This is a capital requirement for personal investment firms that are not low resource firms, based on a firm's overall audited expenditure. The Expenditure Based Requirement is calculated as a fraction of the firm's annual fixed costs which, for this purpose, are based upon the firm's annual audited expenditure and, in general terms, exclude cost items that would not be incurred were there no income. Thus staff bonuses and partners' profit shares (unless guaranteed) and any shared commissions are not treated as fixed costs for the purposes of the calculation.
Expenditure based requirement (if applicable)	42B	Personal investment firms, except low resource firms, should calculate their expenditure based requirement ('EBR') in accordance <i>IPRU(INV)</i> 13.12. Low resource firms should enter 'n/a' here.
Adjusted capital / illiquid capital (if applicable)	43B	Adjusted/liquid capital should be calculated in accordance with <i>IPRU(INV)</i> 13.12 Low resource firms should enter 'n/a' here.
<i>Professional Indemnity Insurance</i>		
This section requires each firm to confirm it is in compliance with the prudential requirements in relation to professional indemnity insurance (PII). Data is required in relation to all PII policies that a firm has in place, up to a limit of ten (this is provided in columns A-H). If a firm has more than ten policies, it should report only on the ten largest policies by premium. For each insurer, if there are any business lines with different excess, then they should be reported in columns J – L (so there can be multiple entries in columns J, K and L for each insurer).		

Does your firm hold a Comparable Guarantee or equivalent cover in lieu of PII or is it otherwise exempt from holding PII?	45B	<p>This question will establish whether a firm is exempt from the requirements and so is not required to hold PII.</p> <p>If the firm is required to hold PII – i.e. is not exempt from holding PII – you should enter 'no' in the data field.</p> <p>A firm is NOT exempt from holding PII if:</p> <ul style="list-style-type: none"> • the firm has a group policy with an insurer; or • the firm has permission for the regulated business that requires PII, but does not currently carry it out; or • it is a personal investment firm meeting the exemption requirements for mortgage intermediaries and insurance intermediaries in <i>PRU 9.2</i>. <p>Select either 'Comparable guarantee' or 'Exempt'.</p>
If your firm does not hold a Comparable Guarantee or equivalent cover and is not exempt, does the firm currently hold PII?	46B	<i>Firms</i> are required to take out and maintain PII at all times.
Does your firm conduct insurance mediation activities	47B	This is either 'Yes' or 'No', and enables us to check that the PII cover meets the minimum requirements.
Has your firm renewed its PII cover since the last reporting date?	48B	This is either 'Yes' or 'No'.

<p>If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here. If not insert N/A.</p>	<p>49B</p>	<p>Required terms of PII are set in <i>IPRU(INV)</i> 13.1.4.</p> <p>Examples of a retroactive start date:</p> <p>(1) A firm has a retroactive start date of 01/01/2005 on its policy if:</p> <ul style="list-style-type: none"> • A client is advised by the firm to purchase an XYZ policy on 01/03/2004 (i.e. before the retroactive date) • The client makes a formal complaint about the sale of the XYZ policy to the firm on 01/04/2006 (i.e. while this PII cover is still in place). • The complaint is upheld, but the firm's current PII Insurer will not pay out any redress for this claim as the transaction took place before 01/01/2005, the retroactive date in the policy. <p>Insert '01/01/05' for this data element.</p> <p>(2) A firm does not have a retroactive start date if:</p> <ul style="list-style-type: none"> • A client is advised by the firm to purchase an XYZ policy on 01/03/2006. • The client makes a formal complaint about the sale of the XYZ policy to the firm on 01/04/2006 (i.e. while this PII cover is still in place). • The complaint is upheld, and the firm's current PII Insurer will pay out any redress owed by the firm to the client over any prescribed excess, and to the limit of indemnity provided for. There is no date in the policy before which any business transacted may not give rise to a valid claim. <p>Insert 'n/a' for this data element.</p>
<p>Annualised premium</p>	<p>50A</p>	<p>This should state the premium payable (in descending order of size), net of tax and any other add-ons. If the premium covers a period other than 12 months, it should be annualised before ranking.</p>

PII Insurer	50B	Select the PII insurer from the list provided (to follow). If you have more than one policy with the same insurer, they should be combined. If the insurer is not listed, select 'Other'. If a policy is underwritten by more than one insurance undertaking or Lloyd's syndicate, you should select 'multiple'.
Start date	50C	Enter the start date of the policy.
Renewal date	50D	Enter the renewal date of the policy.
Limit of indemnity required – single	50E	You should record here the required indemnity limits on the firm's PII policy or policies, in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limit of indemnity required – aggregate	50F	You should record here the required indemnity limits on the firm's PII policy or policies, in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – single	50G	You should record here the indemnity limits on the firm's PII policy or policies obtained in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – aggregate	50H	You should record here the indemnity limits on the firm's PII policy or policies obtained in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.

Business line	50J	<p>For policies that cover all business lines, firms should select ‘All’ from the list provided (to follow). Where the policy contains different excess for different business lines, firms should identify these business lines from the list (or the closest equivalent) and report the (highest) excess for that business line in data element 50K. Once these ‘non-standard’ excesses have been identified, the remaining business lines should be reported under ‘All other’.</p> <p>(Some typical business types include pensions, endowments, FSAVCs, splits/zeroes, precipice bonds, income drawdown, lifetime mortgages, discretionary management).</p>
Policy excess	50K	For policies that cover all business lines with no difference in excesses, this should be the excess applicable. Otherwise, it should contain the highest excess for each business line that differs.
Policy exclusions	50L	If there are any exclusions in the firm’s PII policy, the business type(s) to which they relate should be entered here. This is a free text field.
Annual income as stated on the most recent proposal form	51B	<p>This should be the income as stated on the <i>firm's</i> most recent PII proposal form.</p> <p>For a <i>personal investment firm</i>, this is relevant income arising from all of the <i>firm's</i> activities for the last accounting year before the policy began or was renewed (<i>IPRU(INV)</i> 13.1.3(3)R).</p>
Amount of additional capital required for increased excess(es) where applicable, total amount for all PII policies)	52B	This should be calculated using the tables in <i>IPRU(INV)</i> 13.1.4(12)E. The total of additional capital (i.e. in relation to all of the firm’s PII policies) should have been reported under ‘additional capital requirements for PII’ and/or ‘additional own funds.’
Total amount of additional own funds required for policy exclusion(s)	53B	This should be calculated in line with <i>IPRU(INV)</i> 13.1.4(13)R. The total of additional own funds (i.e. in relation to all of the firm’s PII policies) should have been reported under ‘additional capital requirements for PII’ and/or ‘additional own funds for PII’.
Total of additional own funds required	54B	This represents the total of additional own funds required under <i>IPRU(INV)</i> 13.1.4 to 13.1.4(13)G for all of the firm’s PII policies.

Total of readily realisable own funds	55B	<i>Personal investment firms</i> only - you should state here the total of the own funds that are classed as 'readily realisable' under the terms of <i>IPRU(INV)</i> 13.1.4(4)R.
Excess / (deficit) of readily realisable own funds	56B	In this field, enter the result of the 'total of additional own funds required' less the 'total of readily realisable own funds'

FSA037 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 13) validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	14B	=	$1B + 2B + 3B + 4B + 5B + 6B + 7B + 8B + 9B - 10A - 11A - 12A + 13B$
2	16B	=	$14B + 15B$
3	21B	=	$17B - 18A - 19A - 20A$
4	32B	=	$22B + 23A + 24A - 25A - 26A - 27A - 28A - 29A - 30A - 31A$
5	37B	=	$14B$
6	38B	=	$37B - 14B - 35B - 36B$
7	41B	=	$40B - 39B$
8	44B	=	$43B - 42B$
9	54B	=	$52B + 53B$
10	56B	=	$55B - 54B$

FSA038 – Volumes and Type of Business

Description	Data element	Guidance
UK funds under management	2A	<p>This data element is intended to capture the proportion of UK clients as a percentage of total funds under management UK funds relate to management agreements that are directly contracted with UK resident clients.</p> <p>For example, a UK authorised collective investment scheme constitutes a UK client for the purposes of this question.</p>
Do you conduct <i>designated investment business</i> with or for retail clients?	3A	<p>This data element in part helps us to differentiate between firms that have direct contact with retail clients in carrying on designated investment business services and firms which are operators, trustees or depositaries of Authorised Unit Trusts (AUTs), Open Ended Investment Companies (OEICs), Recognised schemes (RSs) and Unregulated collective investment schemes (UCISs) in which the unit/shareholders would be retail clients but the firms do not conduct designated investment business directly with or for them. So, a firm that is conducting designated investment business directly with or for an AUT, OEIC, RS or UCIS should, when answering the question in respect of those clients, have regard to how the AUT, OEIC, RS or UCIS has been classified by the firm and not the notional classification of the underlying unit/share holders. Clearly, where the firm has other clients, it will need to take into account their classification when answering the question.</p> <p>If your firm is eligible and has applied under Rule 1.1.7 of <i>DISP</i> (Dispute Resolution: Complaints) for exemption from <i>DISP</i> 1.2 – <i>DISP</i> 1.7, in that the firm does not conduct and is not reasonably likely to conduct, business with eligible complainants, then, in respect of data element 3A, it is possible that you will not be conducting designated investment business for or with retail clients, but firms should note that the definition of eligible complainant is different to that of retail client.</p> <p>Where firms conduct non advised investment services (execution only services) for retail clients and are required to complete an appropriateness test (under MiFID) for a retail client in relation to a transaction or service, please be aware that the outcome of that appropriateness test does not alter the classification of that client.</p>

<p>What is the current approximate percentage of your clients are retail clients?</p>	<p>4A</p>	<p>The purpose of this data element is to give supervisors an indication of the make up of the firm's client base. Whilst it is accepted that this question does not demonstrate a firm's compliance with a particular rule, it will assist supervisors in understanding the level of potential risk facing a firm from those risks that are specific to activities with private customers/retail clients. Firms should be aware that the FSA is not expecting firms to be able to determine an exact number of private customers/retail clients when answering this question, rather the FSA is asking for an approximate answer and is not explicitly or implicitly requiring firms to implement systems, or modify existing ones, to collate client classification and activity information. However, the FSA does expect firms to have adequate risk management systems and controls in place to manage their affairs and risks responsibly and would expect an authorised firm to be able to make a reasonable estimate in answer to this question within the bands specified.</p> <p>It is acknowledged that a client may have different accounts and be classified as a private customer/retail client in relation to one area of business and classified as an intermediate customer or market counterparty/professional client for another. It is acknowledged that this may lead to double counting of some clients between classifications. It is not envisaged that this situation will cause great anomalies in the information provided within the bands specified.</p> <p>The FSA will not expect firms to apply a stringent criteria to filter out customers that become inactive for the purpose of this question. The answer provided by the firm should, however reflect a firm's recent and ongoing activities. The FSA would expect a firm to have sufficient management information to be able to avoid a large discrepancy between the true current position and a distorted position through the inclusion of inactive clients, when answering this question.</p>
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FSA038 – Volumes and Type of Business validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element	
1	2A	If 1A > 0, then ≥ 0 , else 0
2	4A	If 3A = Yes, then ≥ 0 , else, 0

FSA039 – Client Money and Client Assets

Description	Data element	Guidance
Has your firm held <i>Client Money</i> or Client Assets in this reporting period?	1A	Firms should choose from the options: No; Yes – Client assets; Yes – Client Money; and Yes – Both. Please see the <i>Handbook Glossary</i> for the defined term of <i>Client Money</i> .
Does the firm undertake or allow stock lending activities using <i>clients'</i> custody assets?	2A	Please answer yes or no as applicable. For the purposes of this question, stock lending is an agreement for the temporary transfer of securities, in which the borrower undertakes to return equivalent securities at a pre-determined time. The lender retains ownership of the securities, and typically earns income from the borrower for agreeing to the loan, but the borrower is able to exercise the voting rights attached to the securities.

FSA039 – Client Money and Client Assets validations

Internal validations

There are no internal validations for this data item.

FSA040 – CFTC

Description	Data element	Guidance
Balance per previous reporting date	1A	Total amount of all bank bonds held to cover customers' unrealised LME profits as at the previous reporting date.
Addition	2A	Total additions to those bank bonds during the current reporting period.
Termination / cancellation	3A	Total reductions to those bank bonds during the current reporting period.
Current balance	4A	Total amount of all those bank bonds held to cover customers' unrealised LME profits as at the current reporting date.
Deficit open trade equity at LME	5A	Total open trade deficit of US and non-US LME customer positions as at the current reporting date.
House losses at LCH	6A	Any net deficit in the firm's proprietary positions at LCH.Clearnet.
Deficit open trade equity of non-LME customers at LCH	7A	Aggregate customer deficit related to non-segregated non-LME positions cleared at LCH.Clearnet.
LME forward profit	8A	The aggregate of all forward profits on LME positions of US customers.
Total	9A	The lower of (8A) or (5A+6A+7A)
Excess / (deficiency)	10A	4A-9A
Number of occasions when the omnibus letter of credit was deficient	11A	The number of days during the current reporting period when 10A would have been negative.
Secured amount	12A	The secured amount covered by individual letters of credit.
Value of letter of credit	12B	The amount of the individual letter of credit covering that secured amount.
Excess / (deficiency)	12C	12B – 12A
Date rectified	12D	Where a letter of credit was not sufficient to cover the relevant secured amount as at the reporting date, the date on which the deficiency was rectified.

Number of occasions when any one individual letter of credit was deficient	13A	The number of deficiencies on individual letters of credit during the current reporting period.
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FSA040 – CFTC validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data item		
1	4A	=	$1A + 2A - 3A$
2	9A	=	$\text{Min}(8A, (5A + 6A + 7A))$
3	10A	=	$4A - 9A$
4	12C	=	$12B - 12A$

FSA041 – Asset Managers that use Hedge Fund Techniques Report

Description	Data element	Guidance
Do you manage an unregulated collective investment scheme ("uCIS") that is not domiciled in the UK?	1A	<p>An unregulated Collective Investment Scheme is, we believe, a term that is reasonably well-understood by regulated firms and one which is typically used by hedge funds. We have excluded onshore uCIS as these are used by some mainstream asset managers for pooling smaller defined benefit pension plans.</p> <p>FSA Handbook Glossary Definition</p> <p><i>An unregulated collective investment scheme is a collective investment scheme that is not a regulated collective investment scheme.</i></p> <p><u>Regulated</u></p> <p>Schemes may become regulated under FSMA by one of four routes:</p> <ul style="list-style-type: none"> • Individual scheme authorisation of unit trusts or ICVCs • Under section 264 of FSMA as schemes constituted in other EEA states (UCITS schemes) • Under section 272 of FSMA as individually recognised overseas schemes • Under section 270 of FSMA as schemes authorised in designated countries or territories <p><u>Collective investment scheme</u></p> <p>Defined in Section 235 of FSMA as:</p> <ul style="list-style-type: none"> • <i>any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and</i>

		<ul style="list-style-type: none"> • <i>which are not excluded by the Financial Services and Markets Act (Collective Investment Schemes) Order 2001 (SI 2001/1062).</i>
Do you use derivatives for investment purposes in an uCIS that is not domiciled in the UK?	2A	"Using derivatives for investment purposes" is a term used in European legislation with which we believe managers are familiar This term suggests that derivatives are not being used solely in pursuit of efficient portfolio management.
Do you solely undertake venture capital management?	3A	<p>"Undertaking venture capital management" is defined in our Handbook and is currently the basis of a notification requirement. The purpose of inclusion of this question is to exclude pure private equity/ venture capital managers who use uCIS structures</p> <p>FSA Handbook Glossary Definition</p> <p><u><i>venture capital investment</i></u></p> <p><i>a designated investment which, at the time the investment is made, is:</i></p> <p><i>(a) in a new or developing company or venture; or</i></p> <p><i>(b) in a management buy-out or buy-in; or</i></p> <p><i>(c) made as a means of financing the investee company or venture and accompanied by a right of consultation, or rights to information, or board representation, or management rights; or</i></p> <p><i>(d) acquired with a view to, or in order to, facilitate a transaction falling within (a) to (c).</i></p>
Do you provide valuations for any instruments to your fund administrator which, to the best of your knowledge, are relied upon by the administrator in valuing the fund?	4A	For managers identified as a using hedge fund techniques
Firms that have answered "Yes" to question 1 and "No" to question 2 should answer the following questions.		

<p>For the auditor(s) you use to audit your funds please provide the following:</p> <p>Name(s) of auditing firm(s) that signed the most recent audit opinion.</p>	5A	<p>The configuration of this data field is yet to be decided. At present, we propose that a list of the most frequently occurring auditor firms is available in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None').</p> <p>We are conscious that several branches of the same audit firm or group may have been involved in effecting a single fund audit. On the basis of legal responsibility, we believe it is appropriate that the name and location of the signatory audit firm be captured in this section.</p>
<p>For the auditor(s) you use to audit your funds please provide the following:</p> <p>(Name(s)) & Location(s) of the auditor's office responsible for the audit.</p>	6A	<p>We propose that this field will be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name(s) of the auditor(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>
<p>Name(s) of prime broker(s)</p>	7A	<p>The configuration of this data field is yet to be decided At present, we propose that a list of the most frequently occurring prime broker firms is available in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None').</p>
<p>(Name(s) &) Location(s) of prime broker(s)</p>	8A	<p>We propose that this field be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name of the prime broker(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>
<p>Name(s) of custodian(s)</p>	9A	<p>The configuration of this data field is yet to be decided At present, we propose that a list of the most frequently occurring custodian firms is available in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None').</p>

(Name(s)) & Location(s) of custodian(s)	10A	<p>We propose that this field be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name of the custodian(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>
Name(s) of the third party administrator(s)	11A	<p>The configuration of this data field is yet to be decided At present, we propose that a list of the most frequently occurring third party administrator firms is available in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None').</p>
(Name(s)) & Location(s) of the third party administrator(s)	12A	<p>We propose that this field be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name of the custodian(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>

FSA041 – Asset Managers that use Hedge Fund Techniques Report validations

Internal validations

There are no internal validations for this data item.

FSA042 – UCITS

Description	Data element	Guidance
Do you use derivatives in the scheme(s)?	2B	FSA Handbook Glossary Definition: <i>Derivative: a contract for differences, a future or an option.</i>
Are you using derivatives for investment purposes?	4A	"Using derivatives for investment purposes" is a term with which we believe managers are familiar This term suggests that derivatives are not being used in pursuit of efficient portfolio management
Have you notified the FSA of the following details of your Risk Management Process: The methods used for estimating risks in derivative and forward transactions	5B	Required under <i>COLL 5.2.24 (2)(a)</i> http://fsahandbook.info/FSA/html/handbook/COLL/5/2
Have you notified the FSA of the following details of your Risk Management Process: The types of derivatives and forward transactions to be used within the scheme(s) together with the underlying risks and relevant quantitative limits	6B	Required under <i>COLL 5.2.24 (2)(a)</i> http://fsahandbook.info/FSA/html/handbook/COLL/5/2
Have there been any material alterations to the details provided within the last 6 months?	7B	The degree of materiality is to be decided by the manager and is in line with <i>COLL 5.2.24 (3)</i> . http://fsahandbook.info/FSA/html/handbook/COLL/5/2

FSA042 – UCITS validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data item	
1	2A	If 1A = No, then No
2	3A	If 2A = No, then No

FSA043 – Key data

Introduction

The purpose of the key data sheet is to help the FSA to monitor an *exempt CAD firm's* capital adequacy and financial soundness in the period to 1 January 2009.

Defined Terms

Terms referred to in these notes where defined by the Companies Act 1985 or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- the data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 1985) or IFRS
- the data item should be unconsolidated

Firms that should provide this Key Data Sheet

Firms defined as *exempt CAD firms*¹ (ECFs) will submit this data item in addition to their existing returns.

Information that will need to be provided to the FSA

This data item should be completed by all ECFs. Subject to the activities undertaken by the ECF, it will need to fill out part (or possibly all) of their current return. This is set out in more detail below:

ECFs previously subject to IPRU(INV) Chapter 5 (investment management firms):

These firms should fill out SUP 16 Annex 5R, which will include the Annual Profit and Loss, Balance Sheet, Financial Resources Statement and the Declaration.

A firm only conducting MiFID-scope activities would not need to fill out all of the Financial Resources Statement section of SUP 16 Annex 5R (i.e. not provide information for data line items 48-52). If the firm is subject to a higher capital requirement due to its non-MiFID scope activities the firm may wish to fill in the sections Satisfaction of Financial Resources and Calculation of Financial Resources Requirement for Forthcoming Year. We do not necessarily require a firm to fill out these other parts of the existing returns as an aggregate figure for the 'higher of' test should be provided in data element 4A.

¹ An exempt CAD firm (ECF) is authorised to receive and transmit orders from investors and/or to give investment advice, without holding client money or securities for its MiFID scope activities and without permission for any other MiFID scope investment service or activity. For further information, see the draft perimeter guidance in Annex 5 to our CP06/9: 'Organisational systems and controls: common platform for firms' including the answers to questions 62 and 63. MiFID scope investment services and activities are set out in Annex 1 Section A to MiFID.

ECFs subject to IPRU(INV) Chapter 13 (personal investment firms):

This key data sheet will need to be completed by all ECFs that are personal investment firms (PIFs). Subject to the activities undertaken by ECFs they will need to fill out part (or possibly all) of their current return.

These firms should fill out the RMAR, which will include Section A: Balance Sheet, Section B: Profit and Loss Account, Section C: Client Money and Assets, Section D: Regulatory Capital, Section E: PII Self-Certification, Section F: Threshold Conditions, Section G: Training and Competence, Section H: Conduct of Business, Section I: Supplementary product sales data and Section J: Data required for calculation of fees.

For regulatory capital reporting all ECFs that are PIFs should fill out section D3: Financial Resources – ISD personal investment firms of the RMAR. This is to ensure that all ECFs use a calculation of own funds that is CRD equivalent / compliant. Only ECFs that are subject to an expenditure based requirement should complete Test 2 of Section D3. We do not necessarily require a firm to fill out other parts of the existing returns (that have not been identified above) as an aggregate figure for the 'higher of' test should be provided in data element 4A of FSA043. Firms may continue to fill out the rest of the RMAR where appropriate.

Other ECFs, including those previously subject to IPRU(INV) Chapter 3 (securities and futures firms that are not ISD-scope firms) and IPRU(INV) Chapter 10 (securities and futures firms that are ISD-scope firms):

These firms should fill out SUP 16 Annex 10R Section 1, which will include the Standard Reporting Statement, Balance Sheet, Profit & Loss and Financial Resources.

We require ECFs that were previously subject to IPRU(INV) Chapter 3 to report on this form so that the information is CRD equivalent / compliant for the calculation of own funds.

Where appropriate the firm would not need to fill out all of the Financial Resources section of SUP 16 Annex 10R Section 1 form (i.e. not provide information for data line items 108 - 115, 117). If the firm is subject to a higher capital requirement due to its non-MiFID scope activities the firm may wish to fill in the sections Position Risk Requirement (PRR), Counterparty Risk Requirement and Foreign Exchange Risk Requirement (FRR). We do not necessarily require a firm to fill out these other parts of the existing returns as an aggregate figure for the 'higher of' test should be provided in data element 4A on FSA043.

Description	Data element	Guidance
Regulatory capital test		
How do you meet your regulatory capital requirement?	1A	<p>The rules allow a firm to specify the method in which it will meet the regulatory capital requirement. A firm can:</p> <ul style="list-style-type: none"> • use capital to meet the regulatory requirement; or • use PII insurance to meet the regulatory requirement; or • use a combination of capital and PII to meet the regulatory requirement. <p>A firm should select from the drop down options.</p>
Own funds	2A	<p>Own funds held by the firm should equal the calculation provided in the existing reporting forms.</p> <p>Investment management firms previously subject to <i>IPRU(INV)</i> Chapter 5 - own funds is the same as that calculated in <i>SUP</i> 16 Annex 5R and equal to data line item 47.</p> <p>Personal investment firms subject to <i>IPRU(INV)</i> Chapter 13 - own funds held by the firm and should be the same as that calculated in the RMAR using Section D3, Own Funds (Test 1) – RR0314.</p> <p>Other firms, including those previously subject to <i>IPRU(INV)</i> Chapter 3 and Chapter 10 - own funds is the same as that calculated in <i>SUP</i> 16 Annex 10R Section 1: Financial Resources and equal to data line items: [102+103+105+106+104+107]-116.</p>
Own funds requirement	3A	<p>For a personal investment firm. the own funds requirement should be calculated in accordance with section <i>IPRU(INV)</i> 13.1A.</p> <p>For other firms the own funds should be calculated in accordance with <i>IPRU(INV)</i> 9.</p>
Additional own funds requirement for PII (if applicable)	4A	<p>For personal investment firms, if the firm has any increased excesses or exclusions on its PII policies, the total of the additional capital requirements required by <i>IPRU(INV)</i> 13.1.4.</p>

Other FSA own funds requirements (excess above own funds requirement)	5A	Firms subject to a higher requirement than that specified for ECFs should include that requirement to the extent it exceeds the own funds requirement in data line item 4.
<i>Professional Indemnity Insurance</i>		
This section requires each firm to confirm it is in compliance with the prudential requirements in relation to professional indemnity insurance (PII). Data is required in relation to all PII policies that a firm has in place, up to a limit of ten (this is provided in columns A-H). If a firm has more than ten policies, it should report only on the ten largest policies by premium.		
Annualised premium	9A	This should state the premium payable (in descending order of size), net of tax and any other add-ons. If the premium covers a period other than 12 months, it should be annualised before ranking.
PII Insurer	9B	Select the PII insurer from the list provided (to follow). If you have more than one policy with the same insurer, they should be combined. If the insurer is not listed, select 'Other'. If a policy is underwritten by more than one insurance undertaking or Lloyd's syndicate, you should select 'multiple'.
Start date	9C	Enter the start date of the policy.
Renewal date	9D	Enter the renewal date of the policy.
Limit of indemnity required – single	9E	You should record here the required indemnity limits on the firm's PII policy or policies, in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limit of indemnity required – aggregate	9F	You should record here the required indemnity limits on the firm's PII policy or policies, in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.
Limited of indemnity obtained – single	9G	You should record here the indemnity limits on the firm's PII policy or policies obtained in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a

		different currency.
Limited of indemnity obtained – aggregate	9H	You should record here the indemnity limits on the firm’s PII policy or policies obtained in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.

FSA043 – Key data validations

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
1	6A	=	2A – 3A – 4A – 5A
2	9G	≥	9E
3	9H	≥	9F

Part 5

Amendments to SUP 16.12

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

- 16.12.1 G ...
- (1) an ~~bank~~incoming EEA firm with *permission* for cross border services only;
 - (2) an *oil market participant* that is not subject to the requirements of IPRU(INV) Chapter 3;
 - (3) an *authorised professional firm*, which must comply with SUP 16.12.30R and SUP 16.12.31R; and
 - (4) ...

- ...
- 16.12.3 R
- (1) ...
 - (2) ...
 - (3) (2) does not apply to:
 - (a) *credit unions* solely in relation to the reporting requirement for RAG 1 activities, where SUP 16.3.6R to SUP 16.3.10G will apply; ~~and~~
 - (b) *firms* in RAG 2 in relation to the reporting requirements for RAG 2 activities; and
 - (c) those data items specified as “No standard format”, where SUP 16.3.6R to SUP 16.3.10G will apply.
 - (4) A *firm* that is a member of a *financial conglomerate* must also submit financial reports as required by SUP 16.12.32 R

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

	(1)	(2)	(3)	(4)
<i>RAG number</i>	<i>Regulated Activities</i>	Provisions containing:		
		<i>applicable data items</i>	<i>reporting frequency/period</i>	<i>Due date</i>
<i>RAG 1</i>	...	...	...	...

RAG 2.1	<ul style="list-style-type: none"> • effecting contracts of insurance • carrying out contracts of insurance • entering as provider into a funeral plan contract 	to follow SUP 16.12.8R	to follow SUP 16.12.8R	to follow SUP 16.12.8R
RAG 2.2	<ul style="list-style-type: none"> • managing the underwriting capacity of a Lloyds syndicate as a managing agent at Lloyds • advising on syndicate participation at Lloyds • arranging deals in contracts of insurance written at Lloyds 	to follow SUP 16.12.9R	to follow SUP 16.12.9R	to follow SUP 16.12.9R
RAG 3	<ul style="list-style-type: none"> • dealing in investment as principal • dealing in investments as agent • advising on investments (excluding retail investment activities) • arranging (bringing about) deals in investments (excluding retail investment activities) 	SUP 16.12.10R SUP 16.12.11R	SUP 16.12.10R SUP 16.12.12R	SUP 16.12.10R SUP 16.12.13R
RAG 4	<ul style="list-style-type: none"> • managing investments • establishing, operating or winding up a regulated collective investment scheme • establishing, operating or winding up an unregulated collective investment scheme • establishing, operating or winding up a stakeholder pension scheme • <u>establishing, operating or winding up a personal pension scheme</u> • acting as depository or sole director of an OEIC 	SUP 16.12.14R SUP 16.12.15R	SUP 16.12.14R SUP 16.12.16R	SUP 16.12.14R SUP 16.12.17R
RAG 5	<ul style="list-style-type: none"> • entering into a regulated mortgage contract • administering a regulated mortgage contract 	to follow SUP 16.12.18AR	to follow SUP 16.12.18AR	to follow SUP 16.12.18AR
RAG 6	<ul style="list-style-type: none"> • acting as trustee of an authorised unit trust • safeguarding and administration of assets (without arranging) • arranging safeguarding and administration of assets 	to follow SUP 16.12.19R	to follow SUP 16.12.20R	to follow SUP 16.12.21R
...
RAG 9	<ul style="list-style-type: none"> • mortgage mediation activity • insurance mediation activity (non-investment insurance contracts) 	to follow SUP 16.12.28R	to follow SUP 16.12.28R	to follow SUP 16.12.28R
RAG 10	<ul style="list-style-type: none"> • the activities of an RIE/RCH 	to follow SUP 16.12.29R	to follow SUP 16.12.29R	to follow SUP 16.12.29R

...

Regulated Activity Group 2.1

16.12.8 ~~{to follow}~~

- R (1) The financial reporting requirements for RAG 2.1 activities for insurers, excluding friendly societies, are set out in IPRU(INS).
- (2) The financial reporting requirements for RAG 2.1 activities for friendly societies are set out in IPRU(FSOC).
- (3) A UK insurance special purpose vehicle must submit a copy of its annual audited financial statements within 3 months of its accounting reference date, but the report is only required if it was audited as a result of a statutory provision other than under the Act.

Regulated Activity Group 2.2

16.12.9 ~~{to follow}~~

- R The applicable data items referred to in SUP 16.12.4R are set out according to type of firm in the table below:

<u>Data item</u>	<u>the Society of Lloyds (note 1)</u>		<u>member's adviser (note 3)</u>	
	<u>Frequency</u>	<u>Submission deadline</u>	<u>Frequency</u>	<u>Submission deadline</u>
<u>Annual audited accounts</u>	<u>Annually</u>	<u>6 months after the Society's accounting reference date</u>		
<u>Annual Lloyd's return</u>	<u>Annually</u>	<u>6 months after the Society's accounting reference date</u>		
<u>Syndicate returns (note 2)</u>	<u>Annually</u>	<u>6 months after the Society's accounting reference date</u>		
<u>Audited annual financial statements</u>			<u>Annually</u>	<u>3 months after the firm's accounting reference date</u>
<u>Annual reporting statement</u>			<u>Annually</u>	<u>3 months after the firm's accounting reference date</u>
<u>Annual reconciliation</u>			<u>Annually</u>	<u>3 months after the firm's accounting reference date</u>
<u>Audited accounts of any</u>			<u>Annually</u>	<u>3 months after the firm's accounting reference date</u>

<u>subsidiary, unless the rules in this chapter require those subsidiaries to submit accounts to the FSA</u>				
<u>Quarterly reporting statement</u>			<u>Quarterly</u>	<u>15 business days after the quarter end</u>
<u>Note 1</u>	<u>The Society of Lloyd's must prepare its reports in the format specified in LLD15, unless Note 2 applies</u>			
<u>Note 2</u>	<u>The Society must ensure that the annual syndicate returns are prepared in accordance with, and in the format set out in, Lloyd's Syndicate Accounting Byelaw (No. 18 of 1994) as amended and in force at commencement.</u>			
<u>Note 3</u>	<u>A member's adviser must prepare its reports in accordance with, and in the format set out in, SUP 16 Annex 10 and as required by section 6 of that annex. Guidance notes for the completion of the reports is contained in SUP 16 Annex 11.</u>			

Regulated Activity Group 3

16.12.10 ~~{to follow}~~

R (1) SUP 16.12.11R to SUP 16.12.13R do not apply to:

(a) a lead regulated firm;

(b) an OPS firm;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms (note 17)</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU

Annual accounts	No standard format			[to follow] <u>No standard format</u>				
<u>Annual reconciliation</u>				<u>No standard format</u> (note 19)	<u>No standard format</u>		<u>No standard format</u> (note 13)	
Annual accounts of the <i>mixed-activity holding company</i> (note 10)	...							
Solvency statement	...			No standard format (note 20)	<u>No standard format</u> (note 11)			
Balance sheet	...	...	...	<u>FSA029</u> (notes 16 and 18)	<u>FSA029</u> (note 16)	<u>FSA029</u>	<u>FSA029</u> (note 16)	<u>FSA029</u> (note 16)
Income statement	...	...	...	<u>FSA030</u> (notes 16 and 18)	<u>FSA030</u> (note 16)	<u>FSA030</u>	<u>FSA030</u> (note 16)	<u>FSA030</u> (note 16)
Capital adequacy	...	...	...	<u>FSA033</u> (notes 16 and 18)	<u>FSA034</u> or <u>FSA035</u> (note 14 and 16)	<u>FSA031</u>	<u>FSA032</u> (note 15) or <u>FSA037</u> (note 15 and 16)	<u>FSA036</u> (note 16)
Credit risk	...	...	...		
Market risk	...	...	...		
Market risk - supplementary	...	...	...		
Operational risk	...	...	...		
Large exposures	...	...	...		
UK integrated	...	...	...		

group large exposures								
Solo consolidation data	...	...	...		
Pillar 2 questionnaire	...	...	...		
Non-EEA sub-group	...	...	...		
Volumes and type of business	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038 (note 18)</u>	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038</u>
Client money and client assets	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039 (note 18)</u>	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039</u>
CFTC	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>
Asset managers that use hedge fund techniques	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041 (note 18)</u>	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041</u>
UCITS	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042 (note 18)</u>	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042</u>
Note 1	...							
...								
Note 13	<u>This does not apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.</u>							
Note 14	<u>FSA034 must be completed by a firm not subject to the exemption in IPRU(INV) 5.2.3(2)R.</u> <u>FSA035 must be completed by a firm subject to the exemption in IPRU(INV) 5.2.3(2)R.</u>							
Note 15	<u>FSA032 must be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.</u> <u>FSA037 must be completed by any other firm subject to IPRU(INV) Chapter 13 carrying out RAG 3 activities.</u>							
Note 16	<u>The annual data item to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual data item must (except for exempt CAD firms or firms subject to the small firms audit exemption) be audited before it is submitted.</u>							
Note 17	<u>An exempt BIPRU commodity firm will, by virtue of the definition of BIPRU TP 15, be exempt from completing FSA003 (and thus FSA004, FSA005, FSA006 and FSA007) for the duration of the transitional provision. It is however required to submit all other data items applicable according to the firm's BIPRU classification including, for the avoidance of doubt, BIPRU TP 16.</u>							
Note 18	<u>Except if the firm is an adviser, local or traded options market maker (as referred to in IPRU(INV) 3-60(4)R.</u>							
Note 19	<u>In the case of an adviser, local or traded options market maker (as referred to in IPRU(INV) 3-60(4)R), it is only required from partnerships and bodies</u>							

	<i>corporate</i> , and then only if the report was audited as a result of a statutory provision other than under the <i>Act</i> .
Note 20	Only required in the case of an <i>adviser, local</i> or traded options market maker (as referred to in <i>IPRU(INV) 3-60(4)R</i>) that is a <i>sole trader</i> .

16.12.12 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.164R* are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	Consolidated <i>BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
Annual accounts		{to follow} <u>Annually</u>
<u>Annual reconciliation</u>					<u>Annually</u>
Annual accounts of the <i>mixed-activity holding company</i>		
Solvency statement		Annually
FSA001	
FSA002	
FSA003	
FSA004	
FSA005	
FSA006	
FSA007	
FSA008	
FSA016		
FSA018		
FSA019	
FSA028		
<u>FSA029</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA030</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA031</u>					<u>Quarterly</u>
<u>FSA032</u>					<u>Quarterly</u>
<u>FSA033</u>					<u>Quarterly and annually (note 1)</u>

<u>FSA034</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA035</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA036</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA037</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA038</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>		<u>Half yearly</u>
<u>FSA039</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>		<u>Half yearly</u>
<u>FSA040</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>		<u>Quarterly</u>
<u>FSA041</u>	<u>Annually</u>	<u>Annually</u>	<u>Annually</u>		<u>Annually</u>
<u>FSA042</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>		<u>Quarterly</u>
<u>Note 1</u>	<u>The annual data item to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual data item must (except for exempt CAD firms or firms subject to the small firms audit exemption) be audited before it is submitted.</u>				

16.12.13 R The applicable due dates for submission referred to in SUP 16.12.64R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.12R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				...
<u>Annual reconciliation</u>				<u>80 business days</u>
Annual accounts of the <i>mixed-activity holding company</i>				...
Solvency statement				3 months
FSA001		
FSA002		
FSA003	
FSA004		
FSA005		
FSA006		...		
FSA007				...
FSA008		...		
FSA016			...	
FSA018		...		
FSA019				...
FSA028			...	

<u>FSA029</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA030</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA031</u>		<u>20 business days</u>		
<u>FSA032</u>		<u>20 business days</u>		
<u>FSA033</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA034</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA035</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA036</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA037</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA038</u>			<u>30 business days</u>	
<u>FSA039</u>			<u>30 business days</u>	
<u>FSA040</u>		<u>15 business days</u>		
<u>FSA041</u>				<u>30 business days</u>
<u>FSA042</u>		<u>20 business days</u>		
Note 1	...			
...				

Regulated Activity Group 4

16.12.14 ~~{to follow}~~

R (1) SUP 16.12.15 R to SUP 16.12.17 R do not apply to:

(a) a lead regulated firm;

(b) an OPS firm;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
<u>Annual accounts</u>	No standard format			{to follow}				
<u>Annual accounts</u>	No standard format							
<u>Annual</u>				No	No		No	

<u>reconciliation</u>				<u>standard format</u>	<u>standard format</u>		<u>standard format (note 13)</u>	
Annual accounts of the <i>mixed-activity holding company</i> (note 10)	...							
Solvency statement (note 11)	...				<u>No standard format</u>			
Balance sheet	...	...	...	<u>FSA029 (note 16)</u>	<u>FSA029 (note 16)</u>	<u>FSA029</u>	<u>FSA029 (note 16)</u>	<u>FSA029 (note 16)</u>
Income statement	...	...	...	<u>FSA030 (note 16)</u>	<u>FSA030 (note 16)</u>	<u>FSA030</u>	<u>FSA030 (note 16)</u>	<u>FSA030 (note 16)</u>
Capital adequacy	...	...	...	<u>FSA033 (note 16)</u>	<u>FSA034 or FSA035 (note 14 and 16)</u>	<u>FSA031</u>	<u>FSA032 (note 14) or FSA037 (note 15 and 16)</u>	<u>FSA036 (note 16)</u>
Credit risk	...	...	...		
Market risk	...	...	...		
Market risk - supplementary	...	...	...		
Operational risk	...	...	...		
Large exposures	...	...	...		
UK integrated group large exposures	...	...	...		
Solo consolidation data	...	...	...		
Pillar 2 questionnaire	...	...	...		
Non-EEA sub-group	...	...	...		
Non-EEA	...	...	...		

sub-group								
<u>Volumes and type of business</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>
<u>Client money and client assets</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>
<u>CFTC</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>
<u>Asset managers that use hedge fund techniques</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>
<u>UCITS</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>
Note 1	...							
...								
Note 13	<u>This does not apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.</u>							
Note 14	<u>FSA034 must be completed by a firm not subject to the exemption in IPRU(INV) 5.2.3(2)R.</u> <u>FSA035 must be completed by a firm subject to the exemption in IPRU(INV) 5.2.3(2)R.</u>							
Note 15	<u>FSA032 must be completed by a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.</u> <u>FSA037 must be completed by any other firm subject to IPRU(INV) Chapter 13 carrying out RAG 4 activities.</u>							
Note 16	<u>The annual data item to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual data item must (except for exempt CAD firms or firms subject to the small firms audit exemption) be audited before it is submitted.</u>							

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.154R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Firms' prudential category				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
Annual accounts		{to follow} <u>Annually</u>
<u>Annual reconciliation</u>					<u>Annually</u>
Annual accounts of		

the <i>mixed-activity holding company</i>					
Solvency statement	...	...	...		<u>Annually</u>
FSA001	...	...	...	...
FSA002	...	...	...	...
FSA003	...	...	...	...
FSA004	...	...	...	...
FSA005	...	...	...	...
FSA006	...	...	...	...
FSA007	...	...	...	...
FSA008	...	...	...	...
FSA016	...	...	...
FSA018	...	...	...
FSA019	...	...	...	...
FSA028	...	...	...
<u>FSA029</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA030</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA031</u>					
<u>FSA032</u>					
<u>FSA033</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA034</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA035</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA036</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA037</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA038</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>		<u>Half yearly</u>
<u>FSA039</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>		<u>Half yearly</u>
<u>FSA040</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>		<u>Quarterly</u>
<u>FSA041</u>	<u>Annually</u>	<u>Annually</u>	<u>Annually</u>		<u>Annually</u>
<u>FSA042</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>		<u>Quarterly</u>
<u>Note 1</u>	<u>The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted.</u>				

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				3 months, or <u>80 business days</u> (note 1)
<u>Annual reconciliation</u>				<u>80 business days</u>
Annual accounts of the <i>mixed-activity holding company</i>				...
Solvency statement				3 months
FSA001		...	...
FSA002		...	...
FSA003	...	...	...
FSA004		...	...
FSA005		...	...
FSA006		...		
FSA007				...
FSA008		...		
FSA016			...	
FSA018		...		
FSA019				...
FSA028			...	
<u>FSA029</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA030</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA031</u>		<u>20 business days</u>		
<u>FSA032</u>		<u>20 business days</u>		
<u>FSA033</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA034</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA035</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA036</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA037</u>		<u>20 business days</u>		<u>80 business days</u>
<u>FSA038</u>			<u>30 business days</u>	
<u>FSA039</u>			<u>30 business days</u>	
<u>FSA040</u>		<u>15 business days</u>		
<u>FSA041</u>				<u>30 business days</u>
<u>FSA042</u>		<u>20 business days</u>		
Note 1	<i>BIPRU investment firms – 3 months: Non-BIPRU firms – 80 business days</i>			
...				

Regulated Activity Group 5

16.12.18 {to follow}

R (1) SUP 16.12.18AR does not apply to:

(a) a lead regulated firm;

(b) an OPS firm;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.18 R The applicable data items, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

<u>Description of data item</u>	<u>Data item (note 1)</u>	<u>Frequency</u>	<u>Submission deadline</u>
<u>Annual accounts</u>	<u>No standard format</u>	<u>Annually</u>	<u>3 months</u>
<u>Balance Sheet</u>	<u>Sections A.1 and A.2 MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Income Statement</u>	<u>Sections B.0 and B.1 MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Capital Adequacy</u>	<u>Section C MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Lending – Business flow and rates</u>	<u>Section D MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Residential Lending to individuals – New business profile</u>	<u>Section E MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Lending – Arrears analysis</u>	<u>Section F MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Mortgage administration – Business profile</u>	<u>Section G MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Mortgage Administration – Arrears analysis</u>	<u>Section H MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Analysis of loans to customers</u>	<u>Section A3 MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Provisions analysis</u>	<u>Section B2 MLAR</u>	<u>Quarterly</u>	<u>20 business days</u>
<u>Fees and levies</u>	<u>Section J MLAR</u>	<u>Annually</u>	<u>30 business days</u>
<u>Note 1</u>	<u>When submitting the completed data item required, a firm must use</u>		

	the format of the <i>data item</i> set out in SUP 16 Ann 19AR. Guidance notes for the completion of the data items is set out in SUP 16 Ann 19BG.
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Regulated Activity Group 6

16.12.19 ~~{To follow}~~

R (1) SUP 16.12.19AR to SUP 16.12 21R do not apply to:

(a) a lead regulated firm;

(b) an OPS firm;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.19 R The applicable data items referred to in SUP 16.12.4R are set out according to type of firm in the table below:

<u>Description of data item</u>	<u>Firm's prudential category and applicable data item (note 1)</u>				
	<u>IPRU(INV) Chapter 3</u>	<u>IPRU(INV) Chapter 5</u>	<u>IPRU(INV) Chapter 9</u>	<u>IPRU(INV) Chapter 13</u>	<u>UPRU</u>
<u>Annual accounts</u>	<u>No standard format</u>				
<u>Annual reconciliation</u>	<u>No standard format</u>	<u>No standard format</u>		<u>No standard format (note 2)</u>	
<u>Solvency statement</u>		<u>No standard format (note 6)</u>			
<u>Balance sheet</u>	<u>FSA029 (note 3)</u>	<u>FSA029 (note 3)</u>	<u>FSA029</u>	<u>FSA029 (note 3)</u>	<u>FSA029 (note 3)</u>
<u>Income statement</u>	<u>FSA030 (note 3)</u>	<u>FSA030 (note 3)</u>	<u>FSA030</u>	<u>FSA030 (note 3)</u>	<u>FSA030 (note 3)</u>
<u>Capital adequacy</u>	<u>FSA033 (note 3)</u>	<u>FSA034 or FSA035 (note 3 and 4)</u>	<u>FSA031</u>	<u>FSA032 (note 5) or FSA037 (note 5 and 3)</u>	<u>FSA036 (note 3)</u>
<u>Volumes and type of business</u>	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038</u>	<u>FSA038</u>
<u>Client money and</u>	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039</u>	<u>FSA039</u>

<u>client assets</u>					
<u>CFTC</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>	<u>FSA040</u>
<u>Asset managers that use hedge fund techniques</u>	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041</u>	<u>FSA041</u>
<u>UCITS</u>	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042</u>	<u>FSA042</u>
<u>Note 1</u>	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in <i>SUP</i> 16 Ann 24R. Guidance notes for completion of the data items are contained in <i>SUP</i> 16 Ann 25G.				
<u>Note 2</u>	<u>This does not apply to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>.</u>				
<u>Note 3</u>	<u>The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted.</u>				
<u>Note 4</u>	<u>FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R.</u> <u>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R.</u>				
<u>Note 5</u>	<u>FSA032 must be completed by a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>.</u> <u>FSA037 must be completed by any other <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 carrying out <i>RAG 6</i> activities.</u>				
<u>Note 6</u>	<u>Only applicable to a <i>firm</i> that is a <i>partnership</i>, when the report must be submitted by each <i>partner</i>.</u>				

16.12.20 [To follow]

R The applicable reporting frequencies for submission of *data items* referred to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<u>Annual accounts</u>	<u>Annually</u>
<u>Annual reconciliation</u>	<u>Annually</u>
<u>Solvency statement</u>	<u>Annually</u>
<u>FSA029</u>	<u>Quarterly and annually (note 1)</u>
<u>FSA030</u>	<u>Quarterly and annually (note 1)</u>
<u>FSA031</u>	<u>Quarterly</u>
<u>FSA032</u>	<u>Quarterly</u>
<u>FSA033</u>	<u>Quarterly and annually (note 1)</u>
<u>FSA034</u>	<u>Quarterly and annually (note 1)</u>
<u>FSA035</u>	<u>Quarterly and annually (note 1)</u>
<u>FSA036</u>	<u>Quarterly and annually (note 1)</u>

<u>FSA037</u>	<u>Quarterly and annually (note 1)</u>
<u>FSA038</u>	<u>Half yearly</u>
<u>FSA039</u>	<u>Half yearly</u>
<u>FSA040</u>	<u>Quarterly</u>
<u>FSA041</u>	<u>Annually</u>
<u>FSA042</u>	<u>Quarterly</u>
<u>Note 1</u>	<u>The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted.</u>

16.12.21 [To follow]

R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.20R.

<u>Data item</u>	<u>Quarterly submission</u>	<u>Half yearly submission</u>	<u>Annual submission</u>
<u>Annual accounts</u>			<u>80 business days</u>
<u>Annual reconciliation</u>			<u>80 business days</u>
<u>Solvency statement</u>			<u>3 months</u>
<u>FSA029</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA030</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA031</u>	<u>20 business days</u>		
<u>FSA032</u>	<u>20 business days</u>		
<u>FSA033</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA034</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA035</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA036</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA037</u>	<u>20 business days</u>		<u>80 business days</u>
<u>FSA038</u>		<u>30 business days</u>	
<u>FSA039</u>		<u>30 business days</u>	
<u>FSA040</u>	<u>15 business days</u>		
<u>FSA041</u>			<u>30 business days</u>
<u>FSA042</u>	<u>20 business days</u>		

Regulated Activity Group 7

16.12.22 **R** (1) SUP 16.12.22AR to SUP 16.12.24R do not apply to:

(a) a lead regulated firm;

(b) an OPS firm;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.22 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>Data item</i>	Firm prudential category and applicable <i>data item</i> (note 1)				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>IPRU-(INV) Chapter 13 firms carrying out European – wide activities under MiFID</i>	<i>IPRU-(INV) Chapter 13 firms not carrying out European-wide activities under MiFID</i>
Annual accounts	{to follow}	
Annual accounts of the <i>mixed-activity holding company</i> (note 10)		
Solvency statement		
Balance Sheet	<u>Section A RMAR</u>	<u>Section A RMAR</u>
Income Statement	<u>Section B RMAR</u>	<u>Section B RMAR</u>
Capital Adequacy	<u>FSA031</u>	<u>Section D1 and D2 RMAR</u>
Credit risk		
Market risk		
Market risk - supplementary		
Operational risk		
Large exposures		
UK integrated group large exposures		
Solo		

consolidation data					
Pillar 2 questionnaire	...	...	...
Non-EEA subgroup	...	...	...
Professional indemnity insurance	...	...	...	<u>Section E RMAR</u>	<u>Section E RMAR</u>
Threshold Conditions	...	...	...	<u>Section F RMAR</u>	<u>Section F RMAR</u>
Training and Competence	...	...	...	<u>Section G RMAR</u>	<u>Section G RMAR</u>
COB data	...	...	...	<u>Section H RMAR</u>	<u>Section H RMAR</u>
Supplementary product sales data	...	...	...	<u>Section I RMAR</u>	<u>Section I RMAR</u>
<u>Client money and client assets</u>				<u>Section C RMAR</u>	<u>Section C RMAR</u>
Fees and levies	...	...	...	<u>Section J RMAR</u>	<u>Section J RMAR</u>
Note 1	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in <i>SUP 16 Ann 24R</i> , or <i>SUP 16 Ann 18AR</i> in the case of the <u>RMAR</u> . Guidance notes for the completion of the data items is set out in <i>SUP 16 Ann 25G</i> , or <i>SUP 16 Ann 18BG</i> in the case of the <u>RMAR</u> .				
...					

16.12.23 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.4R* are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Frequency				
	Unconsolidated <i>BIPRU investment firm</i>	Solo consolidated <i>BIPRU investment firm</i>	Consolidated <i>BIPRU investment firm</i>	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
Annual accounts	...			[to follow]	
Annual accounts of the <i>mixed-activity holding</i>	...				

<i>company</i>					
Solvency statement	...				
FSA001	...	...	...
FSA002	...	...	...
FSA003	...	...	...
FSA004	...	...	...
FSA005	...	...	...
FSA006	...	...	...
FSA007	...	...	...
FSA008	...	...	...
FSA016		...			
FSA018	...	...	...
FSA019	...	...	...
FSA028	...	...	
<u>FSA031</u>				<u>Quarterly</u>	<u>Quarterly</u>
<u>Section A RMAR</u>				<u>Half yearly</u>	<u>Quarterly</u>
<u>Section B RMAR</u>				<u>Half yearly</u>	<u>Quarterly</u>
<u>Section C RMAR</u>				<u>Half yearly</u>	<u>Quarterly</u>
<u>Section D1 and D2 RMAR</u>				<u>Half yearly</u>	<u>Quarterly</u>
Section E RMAR	...	...	...	<u>Half yearly</u>	<u>Quarterly</u>
Section F RMAR	...	...	...	<u>Half yearly</u>	<u>Half yearly</u>
Section G RMAR	...	...	...	<u>Half yearly</u>	<u>Half yearly</u>
Section H RMAR	...	...	...	<u>Half yearly</u>	<u>Half yearly</u>
Section I RMAR	...	...	...	<u>Half yearly</u>	<u>Half yearly</u>
Section J RMAR	...	...	...	<u>Annually</u>	<u>Annually</u>
Note 1:	<i>BIPRU 730K firms and BIPRU 125 K firms – quarterly; BIPRU 50K firms – half yearly.</i>				
Note 2:	<i>BIPRU 730K firms – monthly; BIPRU 125K firms – quarterly; BIPRU 50K firms – half yearly.</i>				

16.12.24 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.23R.

<i>Data item</i>	Monthly	Quarterly	Half yearly	Annual
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	submission	submission	submission	submission
Annual accounts				3 months
Annual accounts of the <i>mixed-activity holding company</i>				7 months
Solvency statement				3 months
FSA001		...	...
FSA002		...	...
FSA003	...	...	...
FSA004		...	...
FSA005		...	...
FSA006		...		
FSA007				...
FSA008		...		
FSA016			...	
FSA018		...		
FSA019				...
FSA028			...	
<u>FSA031</u>		<u>20 business days</u>		
<u>Section A RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section B RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section C RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section D1 and D2 RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section E RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section F RMAR</u>			<u>30 business days</u>	
<u>Section G RMAR</u>			<u>30 business days</u>	
<u>Section H RMAR</u>			<u>30 business days</u>	
<u>Section I RMAR</u>			<u>30 business days</u>	
<u>Section J RMAR</u>				<u>30 business days</u>
Note 1	For unconsolidated and solo consolidated reports			
Note 2	For <i>UK consolidation group</i> reports			

Regulated Activity Group 8

16.12.25 R (1) SUP 16.12.25AR does not apply to:

- (a) a lead regulated firm;
- (b) an OPS firm;
- (c) a local authority;
- (d) a service company.
- (2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.
- (3) A service company must submit a copy of its annual audited financial statements (only if the report was audited as a result of a statutory provision other than under the Act) within 6 months from its accounting reference date.

16.12.25 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of data item	Firms prudential category and applicable data item (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
Annual accounts	No standard format			[to follow]				
Annual accounts	No standard format							
Annual reconciliation				No standard format	Not standard format		No standard format (note 13)	
Annual accounts of the mixed-activity holding company (note 10)	No standard format							
Solvency statement (note 11)	No standard format				No standard format			
Balance sheet	...	...	...	FSA029 (note 16)	FSA029 (note 16)	FSA029	FSA029 (note 16)	FSA029 (note 16)

Income statement	...	...	...	<u>FSA03</u> <u>0 (note</u> <u>16)</u>	<u>FSA03</u> <u>0 (note</u> <u>16)</u>	<u>FSA03</u> <u>0</u>	<u>FSA03</u> <u>0 (note</u> <u>16)</u>	<u>FSA03</u> <u>0 (note</u> <u>16)</u>
Capital adequacy	...	...	...	<u>FSA03</u> <u>3 (note</u> <u>16)</u>	<u>FSA03</u> <u>4 or</u> <u>FSA03</u> <u>5 (note</u> <u>14 and</u> <u>16)</u>	<u>FSA03</u> <u>3</u>	<u>FSA03</u> <u>2 (note</u> <u>15 or</u> <u>FSA03</u> <u>7 (note</u> <u>15 and</u> <u>16)</u>	<u>FSA03</u> <u>6 (note</u> <u>16)</u>
Credit risk	...	...	...		
Market risk	...	...	...		
Market risk - supplementary	...	...	...		
Operational risk	...	...	...		
Large exposures	...	...	...		
UK Integrated group large exposures	...	...	...		
Solo consolidation data	...	...	...		
Pillar 2 questionnaire	...	...	...		
Non-EEA sub-group	...	...	...		
<u>Volumes and type of business</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>	<u>FSA03</u> <u>8</u>
<u>Client money and client assets</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>	<u>FSA03</u> <u>9</u>
<u>CFTC</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>	<u>FSA04</u> <u>0</u>
<u>Asset managers that use hedge fund techniques</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>	<u>FSA04</u> <u>1</u>
<u>UCITS</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>	<u>FSA04</u> <u>2</u>
Note 1:	...							
...								
Note 12	...							
Note 13	<u>This does not apply to firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm.</u>							

Note 14	<u>FSA034 must be completed by a <i>firm</i> not subject to the exemption in IPRU(INV) 5.2.3(2)R.</u> <u>FSA035 must be completed by a <i>firm</i> subject to the exemption in IPRU(INV) 5.2.3(2) R.</u>
Note 15	<u>FSA032 must be completed by a <i>firm</i> subject to IPRU(INV) Chapter 13 which is an <i>exempt CAD firm</i>.</u> <u>FSA037 must be completed by any other <i>firm</i> subject to IPRU(INV) Chapter 13 carrying out RAG 8 activities.</u>
Note 16	<u>The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted.</u>

16.12.26 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.25R are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
Annual accounts		[to follow] <u>Annually</u>
<u>Annual reconciliation</u>					<u>Annually</u>
Annual accounts of the <i>mixed-activity holding company</i>	
Solvency statement		<u>Annually</u>
FSA001	
FSA002	
FSA003	
FSA004	
FSA005	
FSA006		
FSA007	
FSA008	
FSA016		
FSA018		
FSA019	
FSA028		
<u>FSA029</u>					<u>Quarterly and annually (note 1)</u>
<u>FSA030</u>					<u>Quarterly and</u>

					<u>annually</u> (note 1)
<u>FSA031</u>					<u>Quarterly</u>
<u>FSA032</u>					<u>Quarterly</u>
<u>FSA033</u>					<u>Quarterly and</u> <u>annually</u> (note 1)
<u>FSA034</u>					<u>Quarterly and</u> <u>annually</u> (note 1)
<u>FSA035</u>					<u>Quarterly and</u> <u>annually</u> (note 1)
<u>FSA036</u>					<u>Quarterly and</u> <u>annually</u> (note 1)
<u>FSA037</u>					<u>Quarterly and</u> <u>annually</u> (note 1)
<u>FSA038</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>
<u>FSA039</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>
<u>FSA040</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>
<u>FSA041</u>	<u>Annually</u>	<u>Annually</u>	<u>Annually</u>	<u>Annually</u>	<u>Annually</u>
<u>FSA042</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Quarterly</u>
<u>Note 1</u>	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted.				

16.12.27 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.26R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				80 <i>business days</i>
<u>Annual reconciliation</u>				<u>80 <i>business days</i></u>
Annual accounts of the <i>mixed-activity holding company</i>				...
Solvency statement				3 months
FSA001		
FSA002		
FSA003	
FSA004		

FSA005		...	...
FSA006		...	...
FSA007				...
FSA008		...		
FSA016			...	
FSA018		...		
FSA019				...
FSA028			...	
FSA029		<u>20 business days</u>		<u>80 business days</u>
FSA030		<u>20 business days</u>		<u>80 business days</u>
FSA031		<u>20 business days</u>		
FSA032		<u>20 business days</u>		
FSA033		<u>20 business days</u>		<u>80 business days</u>
FSA034		<u>20 business days</u>		<u>80 business days</u>
FSA035		<u>20 business days</u>		<u>80 business days</u>
FSA036		<u>20 business days</u>		<u>80 business days</u>
FSA037		<u>20 business days</u>		<u>80 business days</u>
FSA038			<u>30 business days</u>	
FSA039			<u>30 business days</u>	
FSA040		<u>15 business days</u>		
FSA041				<u>30 business days</u>
FSA042		<u>20 business days</u>		
Note 1	For unconsolidated and solo consolidated reports.			
Note 2	For <i>UK consolidation group</i> reports			

Regulated Activity Group 9

16.12.28 ~~{to follow}~~

R (1) SUP 16.12.28AR does not apply to:

(a) a lead regulated firm;

(b) an OPS firm;

(c) a local authority.

(2) A lead regulated firm and an OPS firm must submit a copy of its annual report and audited accounts within 80 business days from its accounting reference date.

16.12.28 R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4 R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

		Frequency	Submission deadline
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<u>Description of data item</u>	<u>Data item (note 1)</u>	<u>Frequency</u>		<u>Submission deadline</u>
		<u>Annual regulated business revenue up to and including £5 million</u>	<u>Annual regulated business revenue over £5 million</u>	
<u>Balance Sheet</u>	<u>Section A RMAR</u>	<u>Half yearly</u>	<u>Quarterly</u>	<u>30 business days</u>
<u>Income Statement</u>	<u>Section B RMAR</u>	<u>Half yearly</u>	<u>Quarterly</u>	<u>30 business days</u>
<u>Capital Adequacy</u>	<u>Section D1 RMAR</u>	<u>Half yearly</u>	<u>Quarterly</u>	<u>30 business days</u>
<u>Professional indemnity insurance</u>	<u>Section E RMAR</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Threshold Conditions</u>	<u>Section F RMAR</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Training and Competence</u>	<u>Section G RMAR</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>COB data</u>	<u>Section H RMAR</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>30 business days</u>
<u>Supplementary product sales data</u>	<u>Section I RMAR</u>	<u>Annually</u>	<u>Annually</u>	<u>30 business days</u>
<u>Client money and client assets</u>	<u>Section C RMAR</u>	<u>Half yearly</u>	<u>Quarterly</u>	<u>30 business days</u>
<u>Fees and levies</u>	<u>Section J RMAR</u>	<u>Annually</u>	<u>Annually</u>	<u>30 business days</u>
<u>Note 1</u>	<u>When submitting the completed data item required, a firm must use the format of the data item set out in SUP 16 Ann 18AR. Guidance notes for the completion of the data items is set out in SUP 16 Ann 18BG.</u>			

Regulated Activity Group 10

16.12.29 {to follow}

G Recognised bodies (RIEs and RCHs) have separate reporting requirements agreed between the recognised body and the FSA.

Authorised professional firms

16.12.30 {to follow}

R (1) An authorised professional firm must submit an annual questionnaire, contained in SUP 16 Ann 9R, unless:

- (a) its only regulated activities are one or more of:
- (i) insurance mediation;
 - (ii) mortgage mediation;
 - (iii) retail investment;
 - (iv) mortgage lending;
 - (v) mortgage administration; or
- (b) its "main business" as determined by IPRU(INV) 2.1.2R(3) is advising on, or arranging deals in, packaged products, or managing investments for private customers;

in which case the authorised professional firm must complete the appropriate report specified in SUP 16.12.31R

- (2) The due date for submission of the annual questionnaire is four months after the firm's accounting reference date.
- (3) An authorised professional firm must also, where applicable, submit a report to the FSA in accordance with SUP 16.12.31R.

Authorised professional firms

16.12.31 {to follow}

R Table of data items from an authorised professional firm

<u>Report</u>	<u>Return (note 1)</u>	<u>Frequency</u>	<u>Due date</u>
<u>Adequate information relating to the following activities:</u> (1) <u>insurance mediation activity;</u> (2) <u>mortgage mediation activity;</u> (3) <u>retail investment activity.</u> (4) <u>advising on, or arranging deals in, packaged products, or managing investments for private customers where these activities are the authorised professional firm's "main business" as determined by IPRU(INV) 2.1.2 R (3)</u>	<u>RMAR (Note 3)</u>	<u>Half yearly (quarterly for sections A to E for larger firms, subject to Note 3 exemptions) (note 2)</u>	<u>For half yearly report: 30 business days after period end</u> <u>For quarterly report: 30 business days after quarter end</u>
<u>Adequate information relating to mortgage lending and mortgage</u>	<u>MLAR</u>	<u>Quarterly</u>	<u>20 business days after quarter end</u>

<u>administration.</u>	
<u>Note 1</u>	<u>When giving the report required, a <i>firm</i> must use the return indicated. The RMAR and MLAR are located at SUP 16 Ann 18AR and SUP 16 Ann 19AR respectively. Guidance on the completion of the <i>data items</i> are located at SUP 16 Ann 18BG and SUP 16 Ann 19BG respectively.</u>
<u>Note 2</u>	<u>For the purposes of RMAR reporting, a larger <i>firm</i> is a <i>firm</i> whose annual regulated business revenue in its previous financial year was greater than £5m. Annual regulated business revenue for these purposes is a <i>firm's</i> total revenue relating to <i>insurance mediation activity, mortgage mediation activity and retail investment activity</i>.</u>
<u>Note 3</u>	<u>A <i>firm</i> which submits an MLAR is not required to submit sections A and B of the RMAR.</u>
<u>Note 4</u>	<u>Reporting dates are calculated from a <i>firm's</i> <i>accounting reference date</i>.</u>

...

Part 6

SUP Transitional provisions TP1

...
SUP TP 1.2

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12M	(4)	...				
	(5)	SUP 16.12.11	R	<i>Firms in Regulated Activity Group 3, other than exempt BIPRU commodity firms, are not required to submit the following data items for reporting dates falling prior to 1 January 2009:</i> FSA005 FSA006 FSA007	1 January 2008 to 31 December 2008	1 January 2008
	(6)	...				
	...					
	(9)	<u>SUP 16.12.11</u>	<u>R</u>	<u>Exempt BIPRU commodity firms are not required to submit the following data items for reporting dates falling prior to 1 January 2009:</u> <u>FSA001</u> <u>FSA002</u> <u>FSA016</u> <u>FSA018</u> <u>FSA028</u>	<u>1 January 2008 to 31 December 2008</u>	<u>1 January 2008</u>
	(10)	<u>SUP 16.12.11</u>	<u>R</u>	<u>Exempt BIPRU commodity firms are not required to submit the following data items for reporting dates falling prior to 1 January 2011:</u> <u>FSA003</u> <u>FSA004</u> <u>FSA005</u> <u>FSA006</u> <u>FSA007</u> <u>FSA019</u>	<u>1 January 2008 to 31 December 2010</u>	<u>1 January 2008</u>
...						

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
12O	...					
12 P	(1)	<u>SUP 16.7.20,</u> <u>SUP 16.7.21,</u> <u>SUP 16.7.26,</u> <u>SUP 16.7.27,</u> <u>SUP 16.7.27B,</u> <u>SUP 16.7.28,</u> <u>SUP 16.7.29,</u> <u>SUP 16.7.30,</u> <u>SUP 16.7.35,</u> <u>SUP 16.7.36,</u> <u>SUP 16.7.36B,</u> <u>SUP 16.7.54,</u> <u>SUP 16.7.54A,</u> <u>SUP 16.7.55,</u> <u>SUP 16.7.56,</u> <u>SUP 16.7.57,</u> <u>SUP 16.7.58,</u> <u>SUP 16.7.67,</u> <u>SUP 16.7.68,</u> <u>SUP 16.7.68B,</u> <u>SUP 16.7.76,</u> <u>SUP 16.7.77</u>	R	<u>Except to the extent required by a transitional provision in TP12Q, a firm, other than a BIPRU firm, will not be required to report under these rules in respect of reporting dates after 31 December 2007, but will instead report under SUP 16.12.</u>	<u>1 January 2008 to 31 December 2008</u>	<u>1 January 2008</u>

<u>12 Q</u>	(1)	<u>SUP 16.12.11</u>	R	<u>Firms in Regulated Activity Group 3:</u> <u>(1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009:</u> <u>FSA029</u> <u>FSA030</u> <u>FSA031</u> <u>FSA032</u> <u>FSA033</u> <u>FSA034</u> <u>FSA035</u> <u>FSA036</u> <u>FSA037</u>	<u>1 January 2008 to 31 December 2008</u>	<u>1 January 2008</u>
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				<u>FSA038</u> <u>FSA039</u> <u>FSA040</u> <u>FSA041</u> <u>FSA042</u> (2) are instead required to report as set out TP12Q (5).		
	(2)	<u>SUP</u> <u>16.12.14</u>	<u>R</u>	<u>Firms in Regulated Activity Group 4:</u> (1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009: <u>FSA029</u> <u>FSA030</u> <u>FSA031</u> <u>FSA032</u> <u>FSA033</u> <u>FSA034</u> <u>FSA035</u> <u>FSA036</u> <u>FSA037</u> <u>FSA038</u> <u>FSA039</u> <u>FSA040</u> <u>FSA041</u> <u>FSA042</u> (2) are instead required to report as set out TP 12N (1), TP12Q (5) or TP12R (1).	<u>1 January</u> <u>2008 to 31</u> <u>December</u> <u>2008</u>	<u>1 January</u> <u>2008</u>
	(3)	<u>SUP</u> <u>16.12.19</u>	<u>R</u>	<u>Firms in Regulated Activity Group 6:</u> (1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009: <u>FSA029</u> <u>FSA030</u> <u>FSA031</u> <u>FSA032</u> <u>FSA033</u> <u>FSA034</u> <u>FSA035</u> <u>FSA036</u> <u>FSA037</u> <u>FSA038</u> <u>FSA039</u> <u>FSA040</u> <u>FSA041</u> <u>FSA042</u>	<u>1 January</u> <u>2008 to 31</u> <u>December</u> <u>2008</u>	<u>1 January</u> <u>2008</u>

				(2) are instead required to report as set out TP12Q (5).		
	(4)	<u>SUP 16.12.25</u>	R	<p>Firms in <i>Regulated Activity Group 8</i>: (1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009: <u>FSA029</u> <u>FSA030</u> <u>FSA031</u> <u>FSA032</u> <u>FSA033</u> <u>FSA034</u> <u>FSA035</u> <u>FSA036</u> <u>FSA037</u> <u>FSA038</u> <u>FSA039</u> <u>FSA040</u> <u>FSA041</u> <u>FSA042</u></p> <p>(2) are instead required to report as set out TP12Q (5).</p>	<u>1 January 2008 to 31 December 2008</u>	<u>1 January 2008</u>
	(5)	<u>SUP 16.12.11, SUP 16.12.14, SUP 16.12.19, SUP 16.12.25</u>	R	<p>(1) A <i>securities and futures firm</i> that is : (a) not a <i>BIPRU firm</i>, an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodity firm</i> must submit the annual reporting statement, the annual reconciliation and the quarterly reporting statement in the manner and to the timescales set out in <i>SUP 16.7.27R</i>, and <i>SUP 16.7.31R</i> to <i>SUP 16.7.34G</i>; (b) either an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodity firm</i> (to which the requirements of <i>IPRU(INV)</i> Chapter 3 apply) must submit the quarterly reporting statement in the manner and to the timescales set out in <i>SUP 16.7.27R</i>, and <i>SUP 16.7.31R</i> to <i>SUP 16.7.34G</i> and <i>FSA043</i> in the manner and to the timescale set out in <i>SUP 16.7.27BR</i>; (2) except in the case of an</p>	<u>1 January 2008 to 31 December 2008</u>	<u>1 January 2008</u>

			<p><u>investment management firm that is not a BIPRU firm, is not an exempt CAD firm and is authorised by the FSA after 5 April 2007, an investment management firm that is:</u></p> <p><u>(a) neither a BIPRU firm nor an exempt CAD firm must submit the annual reporting statement and the quarterly financial return in the manner and to the timescales set out in SUP 16.7.36R to SUP 16.7.38R;</u></p> <p><u>(b) an exempt CAD firm must submit the quarterly financial return in the manner and to the timescales set out in SUP 16.7.36R to SUP 16.7.38R, and FSA043 in the manner and to the timescale set out in SUP 16.7.36BR;</u></p> <p><u>(3) a UCITS firm:</u></p> <p><u>(a) other than an exempt CAD firm must submit the Annual Financial Return and the Quarterly Financial Return in the manner and to the timescales set out in SUP 16.7.68R and SUP 16.7.69R;</u></p> <p><u>(b) that is an exempt CAD firm must submit the Quarterly Financial Return in the manner and to the timescales set out in SUP 16.7.68R and SUP 16.7.69R and FSA043 in the manner and to the timescale set out in SUP 16.7.68BR; and</u></p> <p><u>(4) a firm that satisfies the criteria in SUP 16.7.76R and is:</u></p> <p><u>(a) neither a BIPRU investment firm nor an exempt CAD firm must submit the RMAR and MLAR in the manner and to the timescales set out in SUP 16.7.77R;</u></p>	
--	--	--	---	--

			<p><u>(b) that is an exempt CAD firm must submit the RMAR and MLAR in the manner and to the timescales set out in SUP 16.7.77R and FSA043 in the manner and to the timescale set out in SUP 16.7.77BR.</u></p>		
--	--	--	--	--	--

Part 7

SUP Transitional provisions TP1

...
SUP TP 1.2

...						
12Q	...					
12R	(1)	SUP <u>16.12.14</u>	R	<u>(1) An investment management firm that is not a BIPRU firm and is authorised by the FSA on or after 6 April 2007, and which carries on only the activity of establishing, operating or winding up a personal pension scheme, must submit FSA029, FSA030 and either FSA034 or FSA035 (subject to (2) below) six monthly, based on the firm's accounting reference date, and within 20 business days in the manner set out in (3) below; (2) FSA034 must be completed by a firm not subject to the exemption in IPRU(INV) 5.2.3(2)R, while FSA035 must be completed by a firm subject to the exemption in IPRU(INV) 5.2.3(2)R; and (3) FSA029, FSA030, FSA034 and FSA035 should be submitted to the FSA in the manner to be specified by the FSA.</u>	<u>1 February 2008 to 31 December 2008</u>	<u>1 February 2008</u>
	(2)	SUP <u>16.12.11</u>	R	<u>An exempt BIPRU commodity firm that, at the reporting date for large exposures data item FSA008, satisfies the conditions of BIPRU TP 16 is not required to submit FSA008 for that reporting date.</u>	<u>1 February 2008 to 31 December 2010</u>	<u>1 February 2008</u>

Part 8

Amendments to SUP Transitional provisions TP1

SUP TP 1.2

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
12R	...					
<u>12 S</u>	<u>(1)</u>	<u>SUP 16.12.15, SUP 16.12.16, SUP 16.12.17</u>	<u>R</u>	<u>In the case of an exempt BIPRU commodity firm that is subject to the requirements of IPRU(INV) Chapter 3, it is required to submit the capital adequacy data item FSA033 in the manner and to the frequency and timescales set out for firms other than BIPRU firms that are subject to IPRU(INV) Chapter 3 in SUP 16.12.15R to SUP 16.12.17R.</u>	<u>1 January 2009 to 31 December 2010</u>	<u>1 January 2009</u>

Part 9

Amendments to SUP 16

Delete entire Chapter *SUP* 16.7 and replace with the following:

SUP 16.7 [Deleted]

Delete SUP 16 Annexes 1R, 2G, 3R, 4G, 5R, 16R, 17G, 22R and 23G in their entirety and replace with the following:

Annex 1R [deleted]

Annex 2G [deleted]

Annex 3R [deleted]

Annex 4G [deleted]

Annex 5R [deleted]

...

Annex 16R [deleted]

Annex 17G [deleted]

...

Annex 22R [deleted]

Annex 23G [deleted]

...

**TAKEOVER BIDS DIRECTIVE (CONSEQUENTIAL AMENDMENTS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 145 (Financial promotion rules);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 February 2007.

Amendments to the Handbook

- D. The sourcebooks or manuals of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this Instrument listed against them in column (2).

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential Sourcebook for Investment Business (IPRU(INV))	Annex B
Conduct of Business sourcebook (COB)	Annex C
Market Conduct sourcebook (MAR)	Annex D
Supervision manual (SUP)	Annex E
Enforcement manual (ENF)	Annex F

Citation

- E. This instrument may be cited as the Takeover Bids Directive (Consequential Amendments) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Glossary of definitions

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

...	...
<i>SARs</i>	the Rules Governing Substantial Acquisitions of Shares issued on the authority of the <i>Takeover Panel</i>.
...	
<i>takeover or related operation</i>	<p>(a) any transaction falling within paragraph 43(b) (Companies and transactions to which the Code applies <u>Companies, Transactions and Persons subject to the Code</u>) of the introduction to the <i>Takeover Code</i> and, for this purpose, an offer for non-voting, non-equity share capital is to be regarded as falling within the <i>Takeover Code</i> even if not required by rule 15 of that Code;</p> <p>(b) any transaction subject to the <i>SARs</i>;</p> <p>(eb) any transaction which would have fallen within (a) were it not for the fact that the company which is the subject of the transaction does not satisfy the tests set out in paragraph 43(a) (Companies and transactions to which the Code applies <u>Companies, Transactions and Persons subject to the Code</u>) of the introduction to the <i>Takeover Code</i>;</p> <p>(d) any transaction which would have been subject to the <i>SARs</i> but where the shares the subject of the transaction are in a company which does not satisfy the test of residency set out in the second and third paragraphs of Section 2 (Scope) of the Introduction to the <i>SARs</i>;</p> <p>(ec) any offer...</p> <p>(fd) any transaction or arrangement entered into in contemplation or furtherance of any offer, transaction or arrangement falling within (a) to (ec); and</p> <p>(ge) any transaction or arrangement entered into by way of defence or protection against any offer, transaction or arrangement falling within (a) to (fd) which has taken place or which is contemplated.</p>

Annex B

Amendments to the Interim Prudential sourcebook for Investment Firms (IPRU(INV))

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

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 3

...

Takeover Code means the City Code on Takeovers and Mergers ~~and the Rules Governing Substantial Acquisitions of Shares~~ published by the Takeover Panel;

APPENDIX 1 (INTERPRETATION) GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

...

SARs means ~~the Rules Governing Substantial Acquisition of Shares issued on the authority of the Takeover Panel.~~

...

takeover or related operation means:

- (a) any transaction falling within paragraph ~~43~~(b) ~~(Companies and transactions to which the Code applies~~ Companies, Transactions and Persons subject to the Code) of the introduction to the *Takeover Code* and, for this purpose, an offer for non-voting, non-equity share capital is to be regarded as falling within the *Takeover Code* even if not required by rule 15 of that Code;
- (b) ~~any transaction subject to the SARs;~~
- (eb) any transaction which would have fallen within (a) were it not for the fact that the company which is the subject of the transaction does not satisfy the tests set out in paragraph ~~43~~(a) ~~(Companies and transactions to which the Code applies~~ Companies, Transactions and Persons subject to the Code) of the introduction to the *Takeover Code* and, for this purpose, an offer for non-voting, non-equity share capital is to be regarded as falling within the *Takeover Code* even if not required by

~~rule 15 of that Code;~~

- ~~(d) any transaction which would have been subject to the SARs but where the shares the subject of the transaction are in a company which does not satisfy the test of residency set out in the second and third paragraphs of Section 2 Scope of the Introduction to the SARs;~~
- (~~e~~) any offer...
- (~~f~~) any transaction or arrangement entered into in contemplation or furtherance of any offer, transaction or arrangement falling within (a) to (~~e~~); and
- (~~g~~) any transaction or arrangement entered into by way of defence or protection against any offer, transaction or arrangement falling within (a) to (~~f~~) which has taken place or which is contemplated.

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 10

...

Takeover Code means the City Code on Takeovers and Mergers ~~and the Rules Governing Substantial Acquisitions of Shares~~ published by the Takeover Panel;

Annex C

Amendments to the Conduct of Business sourcebook (COB)

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

COB 1.6.5 G ~~*Firms* should, when relevant, make reference to MAR 4 (Endorsement of the Takeover Code). The effect of this endorsement in MAR 4, is that, should a *firm* to whom the endorsement applies fail to comply with the City Code on Takeovers and Mergers ('*Takeover Code*'), the Rules Governing Substantial Acquisition of Shares ('*SARs*') or rulings or requirements made by the *Takeover Panel*, the *Takeover Panel* can request the FSA to take enforcement action against that *firm*.~~

...

COB 3.2.5 R Exemptions

This table belongs to COB 3.2.4 R

Exemptions	
This chapter does not apply to the following:	
(1)	...
(7)	a <i>financial promotion</i> which is subject to the <i>Takeover Code</i> or the <i>SARs</i> (or exempted from complying with the <i>Takeover Code</i> or the <i>SARs</i> by that Code, those rules , or by a ruling of the <i>Takeover Panel</i>) or to the requirements relating to <i>takeovers</i> or <i>related operations</i> in another <i>EEA State</i> ;
...	

Annex D

Amendments to the Market Conduct sourcebook (MAR)

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

MAR 1.5.7 E Factors to be taken into account: standards of behaviour

In the opinion of the FSA, ...

(1) ...

(a) information which is required to be disseminated under the *Takeover Code* ~~or SARs~~ (or its ~~their~~ equivalents in the relevant jurisdiction) on, or in relation to, *qualifying investments*; or

(b) ...

...

MAR 1.10.3 G Takeover Code ~~and SARs~~

There are no rules in the *Takeover Code* ~~or the SARs~~, which permit or require a *person* to behave in a way which amounts to *market abuse*.

MAR 1.10.4 C *Behaviour* conforming with any of the rules of the *Takeover Code* ~~or SARs~~ about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, does not, of itself, amount to *market abuse*, if:

...

MAR 1.10.5 C Table: Provisions of the *Takeover Code* ~~or SARs~~ conformity with which will not, of itself, amount to market abuse (This table belongs to MAR 1.10.4C):

...	
<u>SAR provisions:</u>	
<u>Timing of disclosure</u>	3 4.1(a) and (e), 4.3, 4.4
<u>Content of announcements</u>	4.2

...

MAR 4.1 Application and purpose

Application

...

MAR 4.1.3 G ~~The *Takeover Code* and the *SARs* provide valuable regulation in the areas of takeovers, mergers and substantial acquisition of *shares* of companies. The purpose of endorsing the *Takeover Code* and the *SARs* is to provide them with statutory support. The other requirements in this chapter provide further support for the functions of the *Takeover Panel*.~~

MAR 4.1.4 G ~~Endorsing the *Takeover Code* and the *SARs* and imposing the other requirements in this chapter furthers the FSA's *regulatory objectives*, and in particular the objectives of market confidence and protection of consumers.~~

MAR 4.2 [deleted]

MAR 4.3 ~~Further~~ Support of the Takeover Panel's functions

MAR 4.3.1 R A *firm* must not act, or continue to act, for any *person* in connection with a transaction to which the *Takeover Code* ~~or the *SARs*~~ applies (including a ~~rule 8~~ transaction subject to rule 8 (Disclosure of dealings during the offer period; also indemnity and other arrangements) of the *Takeover Code*) if the *firm* has reasonable grounds for believing that the *person* in question, or his principal, is not complying or is not likely to comply with the *Takeover Code* ~~or the *SARs*~~.

MAR 4.3.2 G (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code* ~~and *SARs*~~. It may also, from time to time, name in those notices *persons* as *persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code* ~~or the *SARs*~~. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).

...

MAR 4.3.3 G (1) Where a restriction under MAR 4.3.1 R applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* ~~or the *SARs*~~ applies.

- (2) Where a restriction under MAR 4.3.1 R applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* ~~or the SARs~~ applies.

...
MAR 4.3.4 G ...

- (2) While the *FSA* recognises the duty of *authorised professional firms* to act in the best interests of their clients, the duty cannot override the provisions of the *Takeover Code* ~~or SARs~~ so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code* ~~or SARs~~.

...

MAR 5.5.3 G Handbook provisions applicable to ATSS

	Part of Handbook	Applicability to ATSS
	...	
Business standards	...	
	...	
	Market Conduct sourcebook (<i>MAR</i>)	The Code of Market Conduct (The Code of Market Conduct) applies. Price Stabilising Rules (Price Stabilising Rules) and Endorsement of the Takeover Code (Endorsement of the Takeover Code) are likely to be of limited relevance to the business of an <i>ATS operator</i>
	...	

Annex E

Amendments to the Supervision Manual (SUP)

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

- SUP 11.4.11 G The steps that the *FSA* expects a *firm* to take ...
- ...
 - (3) monitoring public announcements made under the relevant disclosure provisions of the *Takeover Code* or other rules made by the *Takeover Panel* (~~for example the *SARs*~~);
 - ...

Annex F

Amendments to the Enforcement Manual (ENF)

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

ENF 11.8 Action involving other regulatory authorities

ENF 11.8.1 G Some types of breach committed by *firms* and *approved persons* may potentially result not only in disciplinary action by the *FSA*, but also action by other regulatory authorities. These authorities could include, for example, the *RIEs*, the *designated professional bodies*, the *Takeover Panel* and the *Society*, as well as overseas authorities (action concerning criminal offences and liaison with other prosecuting authorities is dealt with separately in ENF 15).

...

ENF 14.5 Factors determining whether the *FSA* may impose a financial penalty in market abuse cases

ENF 14.5.1 G The factors which the *FSA* may take into account ...

(1) ...

(d) whether, and if so to what extent, the *behaviour* complied with the rules of any relevant *prescribed market* or any other relevant market or other regulatory requirements (including the *Takeover Code* ~~or the *SARs*~~) or any relevant codes of conduct or best practice;

(2) ...

(e) whether, and if so to what extent, the *behaviour* complied with the rules of any relevant *prescribed market* or any other relevant market or other regulatory requirements (including the *Takeover Code* ~~or the *SARs*~~) or any relevant codes of conduct or best practice.

...

ENF 14.9 Action involving other UK regulatory authorities

ENF 14.9.1 G As stated in ENF 11.8 (Action involving other regulatory authorities), some *market abuse* cases may involve not only potential action by the *FSA*, but also potential action by other regulatory authorities, such as the *Takeover Panel* or an *RIE*. Thus, for example, in relation to *behaviour* which may have occurred or be occurring on a *prescribed market*, the *FSA* will refer to the relevant *RIE* and give due weight to its views. In a case where the *FSA* considers that it would be appropriate to bring action against a *person* under the *market abuse regime*, the relevant *RIE* may also wish to bring action against the *person* for breaches of its own rules. In each case, the *FSA* will coordinate action with the *RIE* concerned to ensure that cases are dealt with effectively and fairly, under operating arrangements [to be agreed] between the *FSA* and the *RIEs*. The *FSA* will have regard to all the circumstances of the case, including whether the other regulatory authorities have adequate powers to address the *behaviour* in question. The *FSA* will, where appropriate, adopt a similar approach in respect of other regulatory authorities.

ENF 14.9.2 G In relation to *behaviour* which may have happened or be happening in the context of a *takeover bid* ~~or to which the *SARs* are relevant~~, the *FSA* will refer to the *Takeover Panel* and give due weight to its views in the context of the *Takeover Panel's* powers and responsibilities. Where the *Takeover Code* ~~or *SARs*~~ have procedures for complaint about any *behaviour*, the *FSA* expects parties to exhaust those procedures. The *FSA* will not, save in exceptional circumstances, take action under any of section 123 (*FSA's* power to impose penalties), section 129 (Power of court to impose penalties), section 381 (Injunctions - see ENF 6), sections 383 or 384 (Restitution - see ENF 9) in respect of *behaviour* to which the *Takeover Code* ~~or *SARs*~~ is relevant before the conclusion of the procedures available under the *Takeover Code* ~~or the *SARs*~~, ~~as the case may be.~~

...

ENF 14.9.4 G If any of the circumstances in ENF 14.9.6 G apply, and the *FSA* considers that the use of its disciplinary powers under section 123 or 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the *Takeover Code* ~~or *SARs*~~ applies except in the circumstances set out in ENF 14.9.7 G.

ENF 14.9.5 G In any case where the *FSA* considers that the use of its powers under any of sections 123, 129, 381, 383 or 384 of the *Act* may be appropriate, if that use may affect the timetable or outcome of a *takeover bid* ~~or a tender offer governed by the *SARs*~~ or where it is appropriate in the context of any exercise by the *Takeover Panel* of the Panel's powers and authority, it the *FSA* will consult the *Takeover Panel* before using any of those powers.

ENF14.9.6 G Where the *behaviour* of a *person* which amounts to *market abuse* is *behaviour* to which the *Takeover Code* or the *SARs* are is relevant, the use of the *Takeover Panel's* ~~informal~~ powers will often be sufficient to address the relevant concerns. In cases where this is not so, the *FSA* will need to consider, against the background of this manual, whether it is appropriate to use any of its own powers under the *market abuse regime*. The principal circumstances in which the *FSA* is likely to consider such exercise are:

- (1) ~~where the *Takeover Panel* is unable to investigate properly due to lack of cooperation by the relevant *person*;~~
- (21) where the *behaviour* falls within sections 118(2)(a), 118(3) or 118(4) of the *Act*;
- (3) ~~where a *person* has deliberately or recklessly failed to comply with a *Takeover Panel* ruling;~~
- (42) where the *FSA's* approach in previous similar cases (which may have happened otherwise than in the context of a *takeover bid*) suggests that a financial penalty should be imposed (see ENF 14.6.2 G (4));
- (5) ~~where the *Takeover Panel* asks the *FSA* to consider the use of its powers to impose a financial penalty;~~
- (63) where the *behaviour* extends to *securities* or a class of *securities* which may be outside the *Takeover Panel's* jurisdiction;
- (74) where the *behaviour* threatens or has threatened the stability of the *financial system*; and
- (85) where for any other reason the *Takeover Panel* asks the *FSA* to consider the use of any of its powers referred to in ENF 14.9.2 G.

ENF 14.9.7 G The exceptional circumstances in which the *FSA* will consider the use of powers during a *takeover bid* are listed in ENF 14.9.6 G (1), ~~to~~ ENF 14.9.6 G (3), ~~ENF 14.9.6 G (6)~~, ENF 14.9.6 G (74) and, depending on the circumstances, ENF 14.9.6 G (85).

...

ENF 14.10 [deleted]

DISPUTE RESOLUTION: COMPLAINTS (MIFID) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power) of the Act;
 - (2) section 156 (General supplementary powers) of the Act; and
 - (3) section 157(1) (Guidance) of the Act;
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The Dispute Resolution: Complaints sourcebook is amended by inserting the provisions in the Annex to this instrument.

Citation

- E. This instrument may be cited as the Dispute Resolution: Complaints (MiFID) Instrument 2007.

By order of the Board
25 January 2007

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined. Where an entire section is being deleted this will be indicated.

TP1 Transitional provisions

TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook Provisions: coming into force
1	...				
<u>1A</u>	<u>DISP 1</u>	<u>R</u>	<u>A complaint received by a firm on or before 31 October 2007 should be handled, resolved, recorded and reported in accordance with the requirements of DISP as they stood at the date the complaint was received.</u>	<u>From 1 November 2007</u>	<u>1 November 2007</u>
2	...				

The whole of DISP 1 is deleted and replaced with the following:

Treating complainants fairly

1.1 Purpose, interpretation and application

1.1.1 R This chapter applies to the *MiFID business* of a *firm*.

1.1.2 R This chapter applies only to the extent necessary to implement *MiFID* and the *MiFID implementing directive*.

Application to firms

- 1.1.3 R (1) This chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it in the *United Kingdom*.
- (2) However, in relation to *complaints* concerning the *MiFID business* of a *firm*, the *complaints handling rules* and the *complaints record rule*:
- (a) apply only in relation to *complaints* from *retail clients*, and do not apply in relation to *complaints* from *eligible complainants* who are not *retail clients*; and
- (b) apply to the *branch* of a *UK firm* in another *EEA State*; and
- (c) do not apply to the *branch* of an *EEA firm* in the *United Kingdom*.
- 1.1.4 [intentionally blank]
- 1.1.5 [intentionally blank]
- 1.1.6 [intentionally blank]
- 1.1.7 [intentionally blank]
- 1.2 Complaints handling rules
- 1.2.1 R Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by:
- (1) a *firm*; and
- (2) a *branch* of a *UK firm* in another *EEA State*.
- [Note: article 10 of the *MiFID implementing Directive*]
- 1.3 [intentionally blank]
- 1.3.1 [intentionally blank]
- 1.4 [intentionally blank]
- 1.4.1 [intentionally blank]
- 1.5 Complaints record rule
- 1.5.1 R A *firm* and a *branch* of a *UK firm* in another *EEA State* must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:
- (1) at least five years where the *complaint* relates to *MiFID business*; and

(2) three years for all other *complaints*,
 from the date the *complaint* was received.

[Note: article 10 of the *MiFID implementing Directive*]

DISP Sch 1 Record keeping requirements

DISP Sch 1.1 G

...

DISP Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>DISP</i> 1.5.1R	Complaints <i>Complaints</i> subject to <i>DISP</i> 1.4.1.1 –DISP 1.1.6 G	Not specified but see <i>DISP</i> 1.5.2G <u>Each</u> <u>complaint</u> received and the <u>measures taken</u> <u>for its resolution</u>	On receipt	<u>5 years for</u> <u>complaints</u> <u>relating to</u> <u>MiFID business</u> <u>and 3 years for</u> <u>all other</u> <u>complaints</u>

MARKETS (MIFID) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 293 (Notification requirements); and
 - (5) section 395(5) (The Authority's procedures).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA'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)
Market Conduct sourcebook (MAR)	Annex A
Market Conduct sourcebook (MAR) – insertion of MAR 6	Annex B
Market Conduct sourcebook (MAR) – insertion of MAR 7	Annex C
Supervision Manual – SUP	Annex D
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex E
Decision Making manual (DEC)	Annex F

Citation

- E. This instrument may be cited as the Markets (MiFID) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, all the text is new and is not underlined.

Delete MAR 5 and replace it with the following chapter:

5 Multilateral trading facilities (MTFs)

5.1 Application

5.1.1 R This chapter applies to:

- (1) a *UK domestic firm* which operates an *MTF* from an establishment in the *United Kingdom* or elsewhere; or
- (2) an *overseas firm* which operates an *MTF* from an establishment in the *United Kingdom*.

5.1.2 R In this chapter, provisions marked "EU" apply to an *overseas firm* as if they were *rules*.

5.2 Purpose

5.2.1 G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTFs*, specifically articles 14, 26, 29 and 30 of *MiFID*. This chapter does not apply to bilateral systems, which are excluded from the *MTF* definition. It sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

5.3 Trading process requirements

5.3.1 R A *firm* operating an *MTF* must have:

- (1) transparent and non-discretionary rules and procedures for fair and orderly trading;

[Note: Article 14(1) of *MiFID*]

- (2) objective criteria for the efficient execution of orders;

[Note: Article 14(1) of *MiFID*]

- (3) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[Note: Subparagraph 1 of Article 14(2) of *MiFID*]

- (4) transparent rules, based on objective criteria, governing access to its facility, which rules must provide that its members or participants

are *investment firms*, *BCD credit institutions* or other persons who:

- (a) are fit and proper;
- (b) have a sufficient level of trading ability and competence;
- (c) where applicable, have adequate organisational arrangements;
- (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the *firm* operating the *MTF* may have established in order to guarantee the adequate settlement of transactions; and

[Note: Article 14(4) and 42(3) of *MiFID*]

- (5) where applicable must provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgment, taking into account both the nature of the users and the types of instrument traded.

[Note: Subparagraph 2 of Article 14(2) of *MiFID*]

Publication of pre and post-trade information for shares not admitted to trading on a regulated market

- 5.3.2 G In the case of shares not *admitted to trading* on a *regulated market*, the *FSA* expects that in order to fulfil the requirements in *MAR 5.3.1R* as regards fair and orderly trading, the *firm* operating the *MTF* will make public on reasonable commercial terms:
- (1) on a continuous basis during *normal trading hours*, information about the quotes and orders relating to these shares which the *MTF* displays or advertises to its users; and
 - (2) as close to real time as possible, information about the price, volume and time of transactions in these shares executed under its systems.

- 5.3.3 G The *firm* may make information about a large quote, order or transaction available under *MAR 5.3.2G* on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.

Publication of post-trade information for financial instruments other than shares

- 5.3.4 G Where *financial instruments* other than shares are traded on an *MTF*, and the same or substantially similar instruments are also traded on a *UK RIE*, a *regulated market* or an *EEA commodities market*, the *FSA* expects that in order to fulfil the requirements in *MAR 5.3.1R* as regards fair and orderly trading, the *firm* operating the *MTF* will make public, on reasonable commercial terms and as close to real time as possible, the price, volume and time of the transactions executed under its systems.
- 5.3.5 G For large transactions in *debt securities*, an indication that volume exceeded

a certain figure (not being less than £7 million or its equivalent) instead of the actual volume is sufficient transparency of the volume of a trade.

- 5.3.6 G The *firm* may make information about a large quote, order or transaction available under *MAR* 5.3.4G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.

Operation of a primary market in shares not admitted to trading on a regulated market

- 5.3.7 G The *FSA* will be minded to impose a variation on the *Part IV permission* of an *MTF* operator that operates a primary market in shares *not admitted to trading on a regulated market* in order to ensure its fulfilment of the requirements in *MAR* 5.3.1R as regards fair and orderly trading.

Transferable securities traded without issuer consent

- 5.3.8 R Where a *transferable security*, which has been *admitted to trading on a regulated market*, is also traded on an *MTF* without the consent of the *issuer*, the *firm* operating the *MTF* must not make the *issuer* subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that *MTF*.

[Note: Article 14(6) of *MiFID*]

5.4 Finalisation of transactions

- 5.4.1 R A *firm* operating an *MTF* must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in that *MTF*; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[Note: Article 14(5) of *MiFID*]

5.5 Monitoring compliance with the rules of the MTF

- 5.5.1 R A *firm* operating an *MTF* must:

- (1) have effective arrangements and procedures, relevant to the *MTF*, for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

[Note: Article 26(1) of *MiFID*]

5.6 Reporting requirements

5.6.1 R A *firm* operating an *MTF* must:

- (1) report to the *FSA*:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions; and
 - (c) conduct that may involve market abuse;
- (2) supply the information required under this *rule* without delay to the *FSA* and any other authority competent for the investigation and prosecution of market abuse; and
- (3) provide full assistance to the *FSA*, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the *firm's* systems.

[Note: Article 26(2) of *MiFID*]

5.7 Pre-trade transparency requirements for shares

5.7.1 R Unless disapplication of this *rule* under *MAR* 5.7.6G is relevant, in respect of shares admitted to trading on a *regulated market*, a *firm* operating an *MTF* must make public, on reasonable commercial terms and on a continuous basis during *normal trading hours*:

- (1) the current bid and offer prices which are advertised through its systems; and
- (2) the depth of trading interests at those prices.

[Note: Article 29(1) of *MiFID*]

Pre-trade information

5.7.2	EU	<ol style="list-style-type: none">1. An <i>investment firm</i> or <i>market operator</i> operating an <i>MTF</i> or a <i>regulated market</i> shall, in respect of each share <i>admitted to trading</i> on a <i>regulated market</i> that is traded within a system operated by it and specified in Table 1 of Annex II [of the <i>MiFID Regulation</i>], make public the information set out in paragraphs 2 to 6.2. Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.
-------	----	--

3.	<p>Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.</p> <p>The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.</p> <p>In exceptional market conditions, however, one-way prices may be allowed for a limited time.</p>
4.	<p>Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.</p>
5.	<p>Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.</p> <p>In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.</p>
6.	<p>A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II [of the <i>MiFID Regulation</i>].</p>
[Note: Article 17 of the <i>MiFID Regulation</i>]	

5.7.3 EU Table 1: Information to be made public in accordance with Article 17

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy	The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and

	orders on the basis of the best available price on a continuous basis	offer price levels
Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
Trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit
[Note: Table 1, Annex II of the <i>MiFID Regulation</i>]		

Publication of pre-trade information

5.7.4

EU	<ol style="list-style-type: none"> 1. A <i>regulated market, MTF</i> or <i>systematic internaliser</i> shall be considered to publish pre-trade information on a continuous basis during <i>normal trading hours</i> if that information is published as soon as it becomes available during the <i>normal trading hours</i> of the <i>regulated market, MTF</i> or <i>systematic internaliser</i> concerned, and remains available until it is updated. 2. Pre-trade information ... shall be made available as close to real time as possible. ...
----	--

[Note: Article 29(1) and (2) of the *MiFID Regulation*]

5.7.5 EU Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

[Note: Recital (18) to the *MiFID Regulation*]

Disapplication of the pre-trade transparency requirements

5.7.6 G The obligation in *MAR 5.7.1R* to make public certain pre-trade information will not be applied based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in *MAR 5.7.8EU*, *MAR 5.7.9EU*, *MAR 5.7.10EU* and *MAR 5.7.11EU*. In particular, the obligation will not be applied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

[Note: Article 29(2) of *MiFID* and Recital 12 and Articles 18, 19, 20, 33 and 34 of the *MiFID Regulation*]

5.7.7 EU If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, *competent authorities* should treat all *regulated markets* and *MTFs* equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all *regulated markets* and *MTFs* that they authorise under [the *MiFID*] Directive 2004/39/EC, or to none. *Competent authorities* which grant the waivers or deferrals should not impose additional requirements.

[Note: Recital 12 to the *MiFID Regulation*]

5.7.8 EU 1. Waivers in accordance with Article 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC may be granted by the *competent authorities* for systems operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:

- (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
- (b) they formalise negotiated transactions, each of which meets the following criteria:
 - (i) it is made at or within the current volume weighted

spread reflected on the order book or the quotes of the market makers of the *regulated market* or *MTF* operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;

- (ii) it is subject to conditions other than the current market price of the share.

For the purposes of point (b), the other conditions specified in the rules of the *regulated market* or *MTF* for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

- 2. Waivers in accordance with Articles 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the *regulated market* or the *MTF* pending their being disclosed to the market.

[Note: Article 18 of the *MiFID Regulation*]

5.7.9

EU

For the purpose of Article 18(1)(b) [of the *MiFID Regulation*] a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* and where that member or participant in doing so undertakes one of the following tasks:

- (a) *dealing on own account* with another member or participant who acts for the account of a *client*;
- (b) dealing with another member or participant, where both are executing orders on own account;
- (c) acting for the account of both the buyer and seller;
- (d) acting for the account of the buyer, where another member or participant acts for the account of the seller;
- (e) trading for own account against a *client* order.

[Note: Article 19 of the *MiFID Regulation*]

5.7.10

EU

An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [of the *MiFID Regulation*]. For the purposes of determining whether an order is large in scale compared to

normal market size, all shares *admitted to trading* on a *regulated market* shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33 [of the *MiFID Regulation*].

[Note: Article 20 of the *MiFID Regulation*]

5.7.11 EU Table 2: Orders large in scale compared with normal market size

Class in terms of average daily turnover (ADT)	ADT < €500 000	€500 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €25 000 000	€25 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000

[Note: Table 2, Annex II of the *MiFID Regulation*]

5.7.12 G The *FSA* will publish on its website the calculations and estimates for shares *admitted to trading* on a *regulated market*, made by the *FSA* under the provisions in Articles 33 and 34 of the *MiFID Regulation*.

5.8 Provisions common to pre- and post-trade transparency requirements for shares

5.8.1 EU For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this [*MiFID*] *Regulation*, pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: Article 30 of the *MiFID Regulation*]

5.8.2	EU	<p>Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the <i>MiFID Regulation</i>], shall satisfy the following conditions:</p> <ul style="list-style-type: none"> (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected; (b) it must facilitate the consolidation of the data with similar data from other sources; (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost. <p>[Note: Article 32 of the <i>MiFID Regulation</i>]</p>
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5.9 Post-trade transparency requirements for shares

5.9.1 R In respect of shares *admitted to trading on a regulated market*, and subject to the deferred publication provisions in *MAR 5.9.6EU* and *MAR 5.9.7R*, a *firm* operating an *MTF* must make public, on reasonable commercial terms and as close to real-time as possible, the price, volume and time of the transactions which are advertised through its systems. This requirement does not apply to the details of a transaction executed on an *MTF* that is made public under the systems of a *regulated market*.

[Note: Article 30(1) of *MiFID*]

5.9.2	EU	<p>Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.</p> <p>[Note: Recital 18 to the <i>MiFID Regulation</i>]</p>
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Post-trade information

5.9.3	EU	<p>1. <i>Investment firms, regulated markets and investment firms and market operators</i> operating an <i>MTF</i> shall, with regard to transactions in respect of shares admitted to trading on <i>regulated markets</i> concluded by them or, in the case of <i>regulated markets</i> or <i>MTFs</i>, within their systems, make public the following details:</p> <ul style="list-style-type: none"> (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [of the <i>MiFID Regulation</i>]; (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;
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- (c) an indication that the trade was a negotiated trade, where applicable;
- (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.

[Note: Article 27(1) of the *MiFID Regulation*]

Publication of post-trade information

- 5.9.4 EU
2. ... post-trade information relating to transactions taking place on trading venues within *normal trading hours*, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.
 3. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purpose of determining whether deferred publication in respect of that transaction is available under Article 28 [of the *MiFID Regulation*].
 4. Post-trade information relating to transactions taking place on a trading venue but outside its *normal trading hours* shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.

[Note: Article 29 (2) to (4) of the *MiFID Regulation*]

- 5.9.5 EU
1. ... A reference to the opening of the trading day shall be a reference to the commencement of the *normal trading hours* of the trading venue....

[Note: Article 4(1) of the *MiFID Regulation*]

Deferred publication of post-trade information

- 5.9.6 EU
- The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II [of the *MiFID Regulation*] [reproduced in *MAR 7 Annex 1*] for the class of share and transaction concerned, provided that the following criteria are satisfied:
- (a) the transaction is between an *investment firm dealing on own account* and a *client* of that firm;

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 [of the *MiFID Regulation*].

[Note: Article 28 of the *MiFID Regulation*]

5.9.7 R An *MTF* must obtain the prior approval of the *FSA* to proposed arrangements for deferred post-trade publication and must clearly disclose such arrangements to market participants and the investing public.

[Note: Article 30(2) of *MiFID*]

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, all the text is new and is not underlined.

Insert the following text as MAR 6:

6.1 Application

- 6.1.1 R Except as regards the reporting requirement in *MAR 6.4.1R*, this chapter applies to:
- (1) a *MiFID investment firm* which is a *systematic internaliser* in shares when dealing in sizes up to standard market size; or
 - (2) a *third country investment firm* which is a *systematic internaliser* in shares when dealing in the *United Kingdom* in sizes up to standard market size.
- 6.1.2 R The *systematic internaliser* reporting requirement in *MAR 6.4.1R* applies to an *investment firm* which is authorised by the *FSA*.
- 6.1.3 R In this chapter, provisions marked "EU" apply to a *third country investment firm* which is a *systematic internaliser* as if they were *rules*.

6.2 Purpose

- 6.2.1 G The purpose of this chapter is to implement Article 27 of *MiFID*, which deals with the requirements on *systematic internalisers* for pre-trade transparency in shares, the *execution of orders on behalf of clients* and standards and conditions for trading. It also provides a rule requiring *investment firms* to notify the *FSA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to Article 21(4) of the *MiFID Regulation*. The chapter sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

6.3 Criteria for determining whether an investment firm is a systematic internaliser

- 6.3.1 EU 1. Where an *investment firm deals on own account* by executing *client orders* outside a *regulated market* or an *MTF*, it shall be treated as a *systematic internaliser* if it meets the following criteria indicating that it performs that activity on an organised, frequent and systematic basis:
- (a) the activity has a material commercial role for the *firm* and is carried on in accordance with non-discretionary rules and procedures;
 - (b) the activity is carried on by personnel, or by means of an automated technical system, assigned to that purpose,

	<p>irrespective of whether those personnel or that system are used exclusively for that purpose;</p> <p>(c) the activity is available to <i>clients</i> on a regular or continuous basis.</p> <p>2. An <i>investment firm</i> will cease to be a <i>systematic internaliser</i> in one or more shares if it ceases to carry on the activity specified in paragraph 1 in respect of those shares, provided that it has announced in advance that it intends to cease that activity using the same publication channels for that announcement as it uses to publish its quotes or, where that is not possible, using a channel which is equally accessible to its <i>clients</i> and other market participants.</p> <p>3. The activity of <i>dealing on own account</i> by executing <i>client</i> orders shall not be treated as performed on an organised, frequent and systematic basis where the following conditions apply:</p> <p>(a) the activity is performed on an ad-hoc and irregular bilateral basis with wholesale counterparties as part of business relationships which are themselves characterised by dealings above standard market size;</p> <p>(b) the transactions are carried out outside the systems habitually used by the <i>firm</i> concerned for any business that it carries out in the capacity of a <i>systematic internaliser</i>.</p>
	[Note: Article 21(1) to (3) of the <i>MiFID Regulation</i>]

6.3.2	EU	<p>An activity should be considered as having a material commercial role for an <i>investment firm</i> if the activity is a significant source of revenue, or a significant source of cost. An assessment of significance for these purposes should, in every case, take into account the extent to which the activity is conducted or organised separately, the monetary value of the activity, and its comparative significance by reference both to the overall business of the firm and to its overall activity in the market for the share concerned in which the firm operates. It should be possible to consider an activity to be a significant source of revenue for a firm even if only one or two of the factors mentioned is relevant in a particular case.</p>
		[Note: Recital 15 to the <i>MiFID Regulation</i>]

6.4 Systematic internaliser reporting requirement

6.4.1	R	<p>An <i>investment firm</i>, which is authorised by the <i>FSA</i>, must promptly notify the <i>FSA</i> in writing of its status as a <i>systematic internaliser</i> in respect of shares <i>admitted to trading</i> on a <i>regulated market</i>:</p>
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- (1) when it gains that status; or
- (2) if it ceases to have that status.

[Note: Article 21(4) of the *MiFID Regulation*]

6.4.2 G The notification under *MAR* 6.4.1R can be addressed to the *firm's* usual supervisory contact at the *FSA*.

6.5 Obligations on systematic internalisers in shares to make public firm quotes

6.5.1 R A *systematic internaliser* in shares when dealing in sizes up to standard market size must publish a firm quote in relation to any share *admitted to trading* on a *regulated market* for which it is:

- (1) a *systematic internaliser* in that share; and
- (2) there is a liquid market for that share.

[Note: Subparagraphs 1 and 2 of Article 27(1) of *MiFID*]

6.5.2 R Where there is no liquid market for a share, the *systematic internaliser* must disclose quotes to its *clients* on request.

[Note: Subparagraph 1 of Article 27(1) of *MiFID*]

6.5.3 R A *systematic internaliser* may:

- (1) update a quote at any time; and
- (2) under exceptional market conditions, withdraw a quote.

[Note: Subparagraph 1 of Article 27(3) of *MiFID*]

6.6 Size and content of quotes

6.6.1 R (1) A *systematic internaliser* may decide the size or sizes at which it will quote.

(2) The quote can be up to standard market size for the class of shares to which the share belongs.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.2 R Each quote must include:

- (1) a firm bid price; or
- (2) a firm offer price;

in respect of each size for which the *systematic internaliser* quotes.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.3 G A *systematic internaliser* is not obliged to publish firm quotes in relation to transactions above standard market size.

[Note: Recital 51 to *MiFID*]

6.7 Prices reflecting prevailing market conditions

6.7.1 R A firm bid or offer price in respect of a particular share must reflect the prevailing market conditions for that share.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.7.2 EU A *systematic internaliser* shall, for each liquid share for which it is a *systematic internaliser*, maintain the following:

(a) a quote or quotes which are close in price to comparable quotes for the same share in other trading venues; and

(b) a record of its quoted prices, which it shall retain for a period of 12 months or such longer period as it considers appropriate.

The obligation laid down in point (b) is without prejudice to the obligation of the *investment firm* under Article 25(2) [implemented at *SUP* 17.4.6R] of [the *MiFID*] Directive 2004/39/EC to keep at the disposal of the competent authority for at least 5 years the relevant data relating to all transactions it has carried out.

[Note: Article 24 of the *MiFID Regulation*]

6.8 Liquid market for shares, share class, standard market size and relevant market

6.8.1 G A *systematic internaliser* will need to refer to the provisions in *MAR* 6.8.3EU, *MAR* 6.8.4EU, *MAR* 6.8.5EU, *MAR* 6.8.6EU and *MAR* 6.8.7EU and the material the *FSA* publishes in relation to those provisions to determine:

(1) whether there is a liquid market for a share;

(2) the class to which a share should be allocated;

(3) the standard market size for each class of shares; and

(4) the relevant market for a share.

[Note: Article 27(1), (2) and (7) of *MiFID*]

6.8.2 G The *FSA* will publish on its website the material referred to in *MAR* 6.8.1R as regards liquid market for shares, share class, standard market size and the relevant market for a share.

6.8.3 EU Shares not traded daily should not be considered as having a liquid market for the purposes of [the *MiFID*] Directive 2004/39/EC. However, if, for exceptional reasons, trading in a share is suspended for reasons related to

the preservation of an orderly market or force majeure and therefore a share is not traded during some trading days, this should not mean that the share cannot be considered to have a liquid market.

[Note: Recital 16 to the *MiFID Regulation*]

6.8.4

EU

1. The most relevant market in terms of liquidity for a financial instrument which is *admitted to trading* on a *regulated market*, hereinafter "the most relevant market", shall be determined in accordance with paragraphs 2 to 8.
2. In the case of a share or other transferable security covered by Article 4(1)(18)(a) of [the *MiFID*] Directive 2004/39/EC or of a unit in a collective investment undertaking, the most relevant market shall be the Member State where the share or the unit was first *admitted to trading* on a *regulated market*. ...
8. Where a financial instrument covered by paragraphs 2 ... was first *admitted to trading* on more than one *regulated market* simultaneously, and all those *regulated markets* share the same home Member State, that Member State shall be the most relevant market.

Where the *regulated markets* concerned do not share the same home Member State, the most relevant market in terms of liquidity for that instrument shall be the market where the turnover of that instrument is highest.

For the purposes of determining the most relevant market where the turnover of the instrument is highest, each competent authority that has authorised one of the *regulated markets* concerned shall calculate the turnover for that instrument in its respective market for the previous calendar year, provided that the instrument was *admitted to trading* at the beginning of that year.

Where the turnover for the relevant financial instrument cannot be calculated by reason of insufficient or non-existent data and the issuer has its registered office in a Member State, the most relevant market shall be the market of the Member State where the registered office of the *issuer* is situated.

However, where the *issuer* does not have its registered office in a Member State, the most relevant market for that instrument shall be the market where the turnover of the relevant instrument class is the highest. For the purposes of determining that market, each *competent authority* that has authorised one of the *regulated markets* concerned shall calculate the turnover of the instruments of the same class in its respective market for the preceding calendar year.

The relevant classes of financial instrument are the following:

(a) shares; ...

[Note: Article 9(1),(2) and (8) of the *MiFID Regulation*]

1. A share admitted to trading on a *regulated market* shall be considered to have a liquid market if the share is traded daily, with a free float of less than EUR 500 million, and one of the following conditions is satisfied:
 - (a) the average daily number of transactions in the share is not less than 500;
 - (b) the average daily turnover for the share is not less than EUR 2 million.

However, a Member State may, in respect of shares for which it is the most relevant market, specify by notice that both those conditions are to apply. That notice shall be made public.

2. A Member State may specify the minimum number of liquid shares for that Member State. The minimum number shall be no greater than five. The specification shall be made public.
3. Where, pursuant to paragraph 1, a Member State would be the most relevant market for fewer liquid shares than the minimum number specified in accordance with paragraph 2, the *competent authority* for that Member State may designate one or more additional liquid shares, provided that the total number of shares which are considered in consequence to be liquid shares for which that Member State is the most relevant market does not exceed the minimum number specified by that Member State.

The *competent authority* shall designate the additional liquid shares successively in decreasing order of average daily turnover from among the shares for which it is the relevant *competent authority* that are *admitted to trading* on a *regulated market* and are traded daily.

4. For the purposes of the first subparagraph of paragraph 1, the calculation of the free float of a share shall exclude holdings exceeding 5% of the total voting rights of the *issuer*, unless such a holding is held by a collective investment undertaking or a pension fund.

Voting rights shall be calculated on the basis of all the shares to which voting rights are attached, even if the exercise of such a right is suspended.

5. A share shall not be considered to have a liquid market for the purposes of Article 27 of [the *MiFID*] Directive 2004/39/EC until six weeks after its first *admission to trading* on a *regulated market*, if the estimate of the total market capitalisation for that share at the start of the first day's trading after that admission, provided in accordance with Article 33(3) [of the *MiFID Regulation*], is less than EUR 500 million.

6. Each *competent authority* shall ensure the maintenance and publication of a list of all liquid shares for which it is the relevant *competent authority*.

It shall ensure the list is current by reviewing it at least annually.

The list shall be made available to the Committee of European Securities Regulators. It shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with Article 34(5) [of the *MiFID Regulation*].

[Note: Article 22 of the *MiFID Regulation*]

6.8.6 EU In order to determine the standard market size for liquid shares, those shares shall be grouped into classes in terms of the average value of orders executed in accordance with Table 3 in Annex II [of the *MiFID Regulation*].

[Note: Article 23 of the *MiFID Regulation*]

6.8.7 EU Table 3: Standard market sizes

Class in terms of average value of transactions (AVT)	AVT < €10 000	€10 000	€20 000	€30 000	€40 000	€50 000	€70 000	Etc
	≤AVT < €20 000	≤AVT < €30 000	≤AVT < €40 000	≤AVT < €50 000	≤AVT < €70 000	≤AVT < €90 000		
Standard market size	€7 500	€15 000	€25 000	€35 000	€45 000	€60 000	€80 000	Etc

[Note: Table 3 of Annex II of the *MiFID Regulation*]

6.8.8 G The *FSA* will publish on its website the calculations and estimates for shares admitted to trading on a regulated market, made by the *FSA* under the provisions in Articles 33 and 34 of the *MiFID Regulation*.

6.9 Publication of quotes

6.9.1 R Where a publication obligation arises under *MAR* 6.5.1R, a *systematic internaliser* must make its quotes public:

- (1) on a regular and continuous basis during normal trading hours; and
- (2) in a manner which is easily accessible to other market participants on a reasonable commercial basis.

[Note: Subparagraphs 1 and 2 of Article 27(3) of *MiFID*]

6.9.2 EU 1. A regulated market, *MTF* or *systematic internaliser* shall be considered to publish pre-trade information on a continuous basis during *normal trading hours* if that information is published as soon as it becomes available during the *normal trading hours* of the

	<p><i>regulated market, MTF or systematic internaliser</i> concerned, and remains available until it is updated.</p> <p>2. Pre-trade information, and post-trade information relating to transactions taking place within <i>normal trading hours</i>, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.</p> <p>3. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of the transaction is available under Article 28 [of the <i>MiFID Regulation</i>].</p>
	[Note: Article 29(1) to (3) of the <i>MiFID Regulation</i>]

6.9.3	EU	Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
		[Note: Recital 18 to the <i>MiFID Regulation</i>]

6.9.4	EU	For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the <i>MiFID</i>] Directive 2004/39/EC and of this Regulation, pre- and post-trade information shall be considered to have been made public or available to the public if it is made available generally through one of the following to investors located in the Community:
		<p>(a) the facilities of a <i>regulated market</i> or an <i>MTF</i>;</p> <p>(b) the facilities of a third party;</p> <p>(c) proprietary arrangements.</p>
		[Note: Article 30 of the <i>MiFID Regulation</i>]

6.9.5	EU	Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the <i>MiFID Regulation</i>] shall satisfy the following conditions:
		(a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for

	errors, and corrected as soon as errors are detected;
(b)	it must facilitate the consolidation of the data with similar data from other sources;
(c)	it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.
[Note: Article 32 of the <i>MiFID Regulation</i>]	

6.10 Execution price of retail client orders

- 6.10.1 R A *systematic internaliser* must, while complying with the obligation to execute orders on terms most favourable to the *client* set out in *COBS 12.2*, execute an order up to standard market size received from a *retail client* in relation to shares for which it is a *systematic internaliser*:
- (1) at the price quoted at the time of the reception of the order; or
 - (2) if the order does not match the quotation size or sizes, in compliance with the execution price rules in *MAR 6.12.1R* or *MAR 6.12.2R*.

[Note: Subparagraphs 3 and 6 of Article 27(3) of *MiFID*]

6.11 Execution price of professional client orders

- 6.11.1 R A *systematic internaliser* may execute an order up to standard market size received from a *professional client* in relation to shares for which it is a *systematic internaliser*:
- (1) at the price quoted at the time of the reception of the order; or
 - (2) at a better price for the *professional client* where:
 - (a) this price falls within a published range close to market conditions; and
 - (b) the order is of a size bigger than the size customarily undertaken by a retail investor; or
 - (3) at a different price which benefits the *professional client* where:
 - (a) execution in several securities is part of one transaction; or
 - (b) the order is subject to conditions other than the current market price.

[Note: Subparagraphs 4 and 5 of Article 27(3) of *MiFID*]

- | | | |
|--------|----|--|
| 6.11.2 | EU | For the purposes of the fourth subparagraph of Article 27(3) of [the <i>MiFID</i>] Directive 2004/39/EC, an order shall be regarded as being of a size bigger than the size customarily undertaken by a retail investor if it exceeds |
|--------|----|--|

EUR 7 500.

[Note: Article 26 of the *MiFID Regulation*]

- 6.11.3 EU 1. For the purposes of the fifth sub-paragraph of Article 27(3) of [the *MiFID*] Directive 2004/39/EC, execution in several securities shall be regarded as part of one transaction if that one transaction is a portfolio trade that involves 10 or more securities.
- For the same purposes, an order subject to conditions other than the current market price means any order which is neither an order for the execution of a transaction in shares at the prevailing market price, nor a *limit order*.

[Note: Article 25(1) of the *MiFID Regulation*]

6.12 Execution price of client orders not matching quotation sizes

6.12.1 R Where a *systematic internaliser* quotes:

- (1) in only one quote in a share; or
- (2) its highest quote is lower than the standard market size for the class of shares to which the share belongs;

and it receives a *client* order that is bigger than the quotation size, but lower than the standard market size, the order may be executed, but that part of the order which exceeds the quotation size must either be executed at the quoted price or, if it is a *professional client* order, as permitted under the execution price provisions in *MAR* 6.11.1R.

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.12.2 R Where a *systematic internaliser* quotes in different sizes and it receives a *client* order between those sizes, the order may be executed:

- (1) at one of the quoted prices in compliance with the *client* order handling rules set out in *COBS* 12.3, *COBS* 12.4.1R and *COBS* 12.4.5R; or
- (2) if it is a *professional client* order, as permitted under the execution price provisions in *MAR* 6.11.1R.

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.13 Standards and conditions for trading

6.13.1 R A *systematic internaliser* must have clear standards which set out and govern the basis on which it will decide which investors are given access to its quotes. The standards must operate:

- (1) in an objective, non-discriminatory way within the categories of *retail* and *professional clients*; and

(2) on the basis of its commercial policy, including considerations such as:

- (i) investor credit status;
- (ii) counterparty risk; and
- (iii) final settlement of the transaction;

and a *systematic internaliser* may refuse to enter into or discontinue business relationships with investors on this policy basis.

[Note: Recital 50 and Article 27(5) of *MiFID*]

6.13.2 G *Systematic internalisers* might decide to give access to their quotes only to *retail clients*, only to *professional clients*, or to both. They should not be allowed to discriminate within those categories of *clients*.

[Note: Recital 50 to *MiFID*]

6.14 Limiting risk of exposure to multiple transactions

6.14.1 R A *systematic internaliser* may limit the number of transactions from the same *client* that it undertakes to enter at the published quote, provided it does so in a non-discriminatory way within the categories of *retail* and *professional clients*.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.2 R A *systematic internaliser* may limit the total number of transactions from different *clients* at the same time that it undertakes to enter at the published quote, provided that it does so:

- (1) in a non-discriminatory way within the categories of *retail* and *professional clients*;
- (2) in accordance with the provisions of the *client* order handling rules set out in *COBS* 12.3, *COBS* 12.4.1R and *COBS* 12.4.5R; and
- (3) that the number or volume of orders sought by *clients* considerably exceeds the norm.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.3	EU	2. For the purposes of Article 27(6) of [the <i>MiFID</i>] Directive 2004/39/EC, the number or volume of orders shall be regarded as considerably exceeding the norm if a <i>systematic internaliser</i> cannot execute those orders without exposing itself to undue risk. In order to identify the number and volume of orders that it can execute without exposing itself to undue risk, a <i>systematic internaliser</i> shall maintain and implement as part of its risk management policy under Article 7 of Commission Directive
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2006/73/EC [the *MiFID implementing Directive*] a non-discriminatory policy which takes into account the volume of the transactions, the capital that the firm has available to cover the risk for that type of trade, and the prevailing conditions in the market in which the *firm* is operating.

3. Where, in accordance with Article 27(6) of [the *MiFID*] Directive 2004/39/EC, an *investment firm* limits the number or volume of orders it undertakes to execute, it shall set out in writing, and make available to *clients* and potential *clients*, the arrangements designed to ensure that such a limitation does not result in the discriminatory treatment of *clients*.

[Note: Article 25(2) and (3) of the *MiFID Regulation*]

Insert the following text into MAR TP 1. In this section underlining indicates new text.

MAR TP 1

Transitional Provisions

...

3) Transitional provisions for *MAR 6* (*systematic internaliser* reporting requirements)

A provision giving effect to Article 21 (4) of the *MiFID Regulation* as regards creating the initial list of all *systematic internalisers*.

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>2</u>	<u>MAR 6</u>	<u>R</u>	<u>An investment firm, which is authorised by the FSA, must notify the FSA in writing by 1 December 2007 if at 1 November 2007 it is a systematic internaliser in respect of shares admitted to trading on a regulated market.</u>	<u>From 1 November 2007 to 2 December 2007</u>	<u>1 November 2007</u>

Annex C

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, all the text is new and is not underlined.

Insert the following text as MAR 7:

7 Disclosure of information on certain trades undertaken outside a regulated market or MTF

7.1 Application

Who?

7.1.1 R This chapter applies to:

- (1) a *MiFID investment firm*; and to
- (2) a *third country investment firm*.

What?

7.1.2 R A *firm*, which, either on its own account or on behalf of *clients*, concludes *transactions* in shares *admitted to trading* on a *regulated market* outside a *regulated market* or *MTF*, must make public the volume and price of those *transactions* and the time at which they were concluded.

[Note: article 28(1) of *MiFID*]

Where?

7.1.3 R This chapter applies in respect of *transactions* in shares (which are admitted to trading on a *regulated market*) executed in the *United Kingdom*.

7.1.4 G Article 32 (7) of *MiFID* provides that the *competent authority* of the Member State in which a *branch* is located shall assume responsibility for ensuring that the services provided by the *branch* within its territory comply with the obligations under Article 28.

Status of EU provisions as rules in certain instances

7.1.5 R In this chapter, paragraphs marked "EU", including *MAR 7 Ann 1 EU*, shall

apply to a *third country investment firm* as if those provisions were *rules*.

7.2 Making post-trade information public

Publication of information

- 7.2.1 R The information required by *MAR 7.1.2R* shall be made public as close to real-time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

[Note: article 28(1) of *MiFID*]

Details of information to be made public

- 7.2.2 EU *A firm ... shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded by them ... make public the following details:*
- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of *SUP 17 Ann 1EU*;
 - (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;
 - (c) an indication that the trade was a negotiated trade, where applicable;
 - (d) any amendments to previously disclosed information, where applicable.
- Those details shall be made public either by reference to each *transaction* or in a form aggregating the volume and price of all *transactions* in the same share taking place at the same time.
- [Note: article 27(1) of the *MiFID Regulation*]

Information requirements specific to systematic internalisers

- 7.2.3 EU By way of exception, a *systematic internaliser* shall be entitled to use the acronym 'SI' instead of the venue identification referred to in *MAR 7.2.2EU (a)* in respect of a *transaction* in a share that is executed in its capacity as a *systematic internaliser* in respect of that share.
- The *systematic internaliser* may exercise that right only as long as it makes available to the public aggregate quarterly data as to the *transactions* executed in its capacity as a *systematic internaliser* in respect of that share relating to the most recent calendar quarter, or part of a calendar quarter, during which the firm acted as a *systematic internaliser* in respect of that share. That data shall be made available no later than one month after the end of each calendar

quarter.

It may also exercise that right during the period between 1 November 2007, or the date on which the firm commences to be a *systematic internaliser* in relation to a share, whichever is the later, and the date that aggregate quarterly data in relation to a share is first due to be published.

[Note: article 27(2) of the *MiFID Regulation*. The date, '1 November 2007', is specified in article 41(2) of the *MiFID Regulation*]

7.2.4 EU The aggregated quarterly data referred to in the second subparagraph of *MAR* 7.2.3EU shall contain the following information for the share in respect of each *trading day* of the calendar quarter concerned:

- (a) the highest price;
- (b) the lowest price;
- (c) the average price;
- (d) the total number of shares traded;
- (e) the total number of *transactions*;
- (f) such other information as the *systematic internaliser* decides to make available.

[Note: article 27(3) of the *MiFID Regulation*]

Arrangements between firms for making information public

7.2.5 EU Where the *transaction* is executed outside the rules of a *regulated market* or an *MTF*, one of the following ... *firms* shall, by agreement between the parties, arrange to make the information public:

- (a) the *firm* that sells the share concerned;
- (b) the *firm* that acts on behalf of or arranges the *transaction* for the seller;
- (c) the *firm* that acts on behalf of or arranges the *transaction* for the buyer;
- (d) the *firm* that buys the share concerned.

In the absence of such an agreement, the information shall be made public by the *firm* determined by proceeding sequentially from point (a) to point (d) until the first point that applies to the case in question.

The parties shall take all reasonable steps to ensure that the *transaction* is made public as a single *transaction*. For those purposes two matching trades entered at the same time with a single party interposed shall be considered to be a single *transaction*.

[Note: article 27(4) of the *MiFID Regulation*]

Deferred publication of large transactions

7.2.6 EU The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in *MAR 7 Ann1EU* for the class of share and *transaction* concerned, provided that the following criteria are satisfied:

- (a) the *transaction* is between an investment *firm dealing on own account* and a *client* of that firm;
- (b) the size of the *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in *MAR 7 Ann1EU*.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading* on a *regulated market* shall be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.

[Note: article 28 of the *MiFID Regulation*]

Publication and availability of post trade transparency data

7.2.7 EU Post-trade information relating to *transactions* taking place on *trading venues* and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*.

[Note: article 29(2) of the *MiFID Regulation*]

7.2.8 EU Information relating to a *portfolio trade* shall be made available with respect to each constituent *transaction* as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent *transaction* shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under *MAR 7.2.6EU*.

[Note: article 29(3) of the *MiFID Regulation*]

7.2.9 EU Post-trade information relating to *transactions* taking place on a *trading venue* but outside its normal trading hours shall be made public before the opening of the next *trading day* of the *trading venue* on which the *transaction* took place.

[Note: article 29(4) of the *MiFID Regulation*]

7.2.10 EU For *transactions* that take place outside a *trading venue*, post-trade information shall be made public:

(a) if the *transaction* takes place during a *trading day* of the most relevant market for the share concerned, or during the *firm's* normal trading hours, as close to real time as possible. Post-trade information relating to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*;

(b) in a case not covered by point (a), immediately upon the commencement of the *firm's* normal trading hours or at the latest before the opening of the next *trading day* in the most relevant market for that share.

[Note: article 29(5) of the *MiFID Regulation*.]

Public availability of post-trade information

7.2.11 EU For the purposes of *MAR 7*, post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: article 30 of the *MiFID Regulation*]

Arrangements for making information public

7.2.12 EU Any arrangement to make information public, adopted for the purposes of *MAR 7.2.11EU*, shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for

<p>errors, and corrected as soon as errors are detected;</p> <p>(b) it must facilitate the consolidation of the data with similar data from other sources;</p> <p>(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.</p>
<p>[Note: article 32 of the <i>MiFID Regulation</i>]</p>

Publication of results of calculations and estimates made by the FSA.

- 7.2.13 G The information relating to 'minimum qualifying size' referred to in Article 28 of the *MiFID Regulation* (see *MAR 7.2.6EU*) and the results of calculations and estimates required to be published as a result of Articles 33 and 34 of the *MiFID Regulation* are available at [*insert FSA web-site address*] and at [*insert CESR web address*].

Trade Data Monitors

- 7.2.14 G A trade data monitor is a provider of services and facilities for the verification of post-trade information as contemplated by this chapter and an approved trade data monitor is a provider which has been assessed by the *FSA* as having the capacity to provide services and facilities in accordance with the service criteria published on the *FSA's* web-site at [*insert FSA web-site address*].

The *FSA* will consider that use of an approved trade data monitor by a *firm* will satisfy a *firm's* obligations under *MAR 7.2.12EU*, though the approved trade data monitor must continue to have the capacity to provide the services and facilities in accordance with the above service criteria at the time that the *firm* uses the approved trade data monitor.

Use of an approved trade data monitor does not affect a *firm's* obligations under *MAR 7.2.10EU* regarding the timing of the disclosure of post-trade information.

MAR 7 Annex 1

EU *MAR 7 Ann1EU*: Deferred publication thresholds and delays

Table 4: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily *turnover* (ADT), the minimum qualifying size of *transaction* that will qualify for that delay in respect of a share of that type.

		Class of shares in terms of average daily turnover (ADT)			
		ADT < €100 000	€100 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	€10 000	Greater of 5% of ADT and €25 000	Lower of 10% of ADT and €3 500 000	Lower of 10% of ADT and €7 500 000
	180 minutes	€25 000	Greater of 15% of ADT and €75 000	Lower of 15% of ADT and €5 000 000	Lower of 20% of ADT and €15 000 000
	Until end of <i>trading day</i> (or roll-over to noon of next <i>trading day</i> if trade undertaken in final 2 hours of <i>trading day</i>)	€45 000	Greater of 25% of ADT and €100 000	Lower of 25% of ADT and €10 000 000	Lower of 30% of ADT and €30 000 000
	Until end of <i>trading day</i> next after trade	€60 000	Greater of 50% of ADT and €100 000	Greater of 50% of ADT and €1 000 000	100% of ADT
	Until end of second <i>trading day</i> next after trade	€80 000	100% of ADT	100% of ADT	250% of ADT
	Until end of third <i>trading day</i> next after trade		250% of ADT	250% of ADT	

Annex D

Amendments to the Supervision manual (SUP)

In this Annex, all the text is new and is not underlined.

Delete SUP 17 and replace it with the following chapter:

17 Transaction Reporting

17.1 Application

Who?

17.1.1 R This chapter applies to:

- (1) a *MiFID investment firm*;
- (2) a *third country investment firm*; and to
- (3) a *person* who is the operator of an *approved reporting mechanism* or of a *regulated market* or *MTF* that is used by a *firm* to report *transactions* to the *FSA*; and
- (4) a firm acting in its capacity as a manager or operator of:
 - (i) a *collective investment undertaking*; or
 - (ii) a *pension scheme*; or
 - (iii) an *occupational pension scheme*; or
 - (iv) a *personal pension scheme*; or
 - (v) a *stakeholder pension scheme*.

17.1.2 G Article 32(7) of *MiFID* requires the *FSA* to apply the *transaction* reporting requirements in Article 25 to the *UK branches* of *EEA* investment firms and branches of *credit institutions* in respect of reportable transactions arising in the course of services provided in the UK.

17.1.3 G Article 32(7) of *MiFID* provides that the branch of a *UK firm* operating from an establishment in another *EEA state* must satisfy the *transaction* reporting requirements of the *competent authority* in that other Member State in respect of reportable transactions arising in the course of services provided in that other Member State.

What?

- 17.1.4 R A *firm* which executes a *transaction*:
- (1) in any *financial instrument* admitted to trading on a *regulated market* or a *prescribed market* (whether or not the *transaction* was carried out on such a market); or
 - (2) in any *OTC derivative* the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related *financial instrument* which is *admitted to trading* on a *regulated market* or on a *prescribed market*;

must report the details of the *transaction* to the *FSA*.

[Note: article 25(3) of *MiFID*].

Where?

- 17.1.5 R This chapter applies in respect of transactions executed in the *United Kingdom*.

Status of EU provisions as rules in certain instances

- 17.1.6 R In this chapter, paragraphs marked "EU", including *SUP 17 Ann 1EU*, shall apply to a *firm* as if those provisions were *rules* to the extent that it executes a *transaction* in a *financial instrument* which is specified by *SUP 17.1.4R* but which is beyond the scope of article 25(3) of *MiFID*.

Guidance on the reporting of certain transactions

- 17.1.7 G (1) The movement, reallocation or transfer of *financial instruments* within the accounts of one legal entity will be reportable where the movement, reallocation or transfer is as a result of an agreement to transfer rights in a *financial instrument* to which this chapter applies between *clients* of the *firm* or between the *firm* (or a member of its *group*) and a *client*, and where the movement, reallocation or transfer involves a *transaction* within the meaning of Article 5 of the *MiFID Regulation*.
- (2) For a rolling *spread bet*, only the initial opening of the betting contract and the final closure of the contract need to be reported. Openings and closings for technical purposes such as daily roll-over, which are intended to maintain a particular *spread bet* position, need not be reported. Final closings of a portion of a bet should be reported as required by *SUP 17.2.7R*.

17.2 Making transaction reports

Transaction reports made through third party agents

- 17.2.1 R A *firm* may rely on a third party acting on the firm's behalf to make a *transaction* report to the *FSA*.

[Note: article 25(5) of *MiFID*]

- 17.2.2 G The *FSA* will treat a *firm* as acting in accordance with *SUP* 17.2.1R in circumstances where the *firm* enters into a *transaction* with another *person* in the course of providing a service of *portfolio management* on behalf of one or more clients, provided it:
- (1) enters into the *transaction* in the exercise of a discretion conferred on it by an investment mandate or does so having specifically recommended the *transaction* to its *client*;
 - (2) has reasonable grounds to be satisfied that the other *person* will, in respect of the *transaction*, make a *transaction report* to the *FSA* (or to another *competent authority*) which, as to content, will include all such information as would have been contained in a *transaction report* by the *firm* (other than as to the identity of the *firm's client*).

Transaction reports made through trade matching or reporting systems, regulated markets or MTFs

- 17.2.3 R A *firm* is relieved of its obligation to make a *transaction report* if the *transaction* is instead reported directly to the *FSA* by a trade-matching or reporting system approved by the *FSA*, or by a *regulated market* or *MTF* through whose systems the *transaction* was completed.
- [Note: article 25(5) of *MiFID*]

Verifying that transaction reports will be made

- 17.2.4 G The *FSA* will expect a *firm* which seeks to rely upon the waiver in *SUP* 17.2.3R to take reasonable steps to verify that *transaction reports* will be made in accordance with the standards laid down in this chapter and in particular should ascertain and remain satisfied that:
- (1) the provider of the *transaction reporting facility* maintains an automated reporting system which the *firm* is able to access through the efficient inputting of *transactions* into the system;
 - (2) the terms of the agreement between itself and the relevant trade matching or reporting system, *regulated market* or *MTF*, make appropriate provision obliging the provider of the transaction reporting service to make *transaction reports* on its behalf;
 - (3) the arrangements provide for confirmation in each case that a *transaction report* has been made on its behalf.

Compliance by trade matching or reporting systems or MTFs with the provisions of this Chapter

- 17.2.5 R The operator of a trade-matching or reporting system approved by the *FSA*, or the operator of an *MTF* or a *market operator* through whose systems a reportable *transaction* is to be completed and which has, pursuant to *SUP* 17.2.3R, agreed to make *transaction reports* to the *FSA* on behalf of a *firm*, must:

- (1) make reports to the *FSA* in respect of each *transaction* to which the agreement relates; and
- (2) ensure such reports conform with the requirements of this chapter (both as to the time limits for making reports and as to content) as if it were the transacting *firm*.

- 17.2.6 G
- (1) A *transaction* report should distinguish each individual *transaction*, using the *firm's* identifying code.
 - (2) Reporting obligations under this chapter do not affect any obligation to report *transactions* under the rules of any market, trading system, matching or reporting system or exchange, whether or not that market, system or exchange is a *regulated market*.

Time period for making reports

- 17.2.7 R A *firm* must report the required details of the *transaction* to the *FSA* as quickly as possible and by not later than the close of the working day following the day upon which that *transaction* took place.

[Note: article 25(3) of *MiFID*]

17.3 Reporting channels

- 17.3.1 EU
- The reports of *transactions* in *financial instruments* shall be made in an electronic form except under exceptional circumstances, when they may be made in a medium which allows for the storing of the information in a way accessible for future reference by the competent authorities other than an electronic form, and the methods by which those reports are made shall satisfy the following conditions:
- (a) they ensure the safety and confidentiality of the data reported;
 - (b) they incorporate mechanisms for identifying and correcting errors in a *transaction* report;
 - (c) they incorporate mechanisms for authenticating the source of the *transaction* report;
 - (d) they include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;
 - (e) they are capable of reporting the information required under Article 13 of the *MiFID Regulation* in the format specified in *SUP* 17 Ann 1EU required by the *FSA* and in accordance with this paragraph, within the time-limits set out in *SUP* 17.2.7R.

[Note: article 12(1) of the *MiFID Regulation*]

Methods of a *firm* reporting *transactions* either directly or through a third party acting on its behalf

- 17.3.2 G A *firm* that proposes reporting to the *FSA* either directly or through a third party that is an *approved reporting mechanism*, should notify the *FSA* of its intention to do so, in order for the *FSA* to be able in particular to verify that the *firm's* or third party's technical arrangements for the submission of reports are consistent and compatible with the *FSA's* arrangements.

Approval and monitoring of trade matching and reporting systems

- | | |
|-----------|--|
| 17.3.3 EU | A trade matching or reporting system shall be approved by the <i>FSA</i> for the purposes of Article 25(5) of <i>MiFID</i> if the arrangements for reporting <i>transactions</i> established by that system comply with <i>SUP</i> 17.3.1EU and are subject to monitoring by a <i>competent authority</i> in respect of their continuing compliance. |
|-----------|--|

[Note: article 12(2) of the *MiFID Regulation*]

- 17.3.4 G The approved reporting trade matching or reporting systems that have been approved by the *FSA* are:

[Note: These systems will be listed following the approval of a trade matching or reporting system].

- 17.3.5 G Section 412A of the *Act* contains provisions which are concerned with the manner in which the *FSA* will carry out its approval and monitoring of trade matching or reporting systems.

Receipt of transaction reports by the *FSA*

- 17.3.6 G A report is made to the *FSA* when it is received by the *FSA*. The delivery of a report by a *MiFID investment firm* to a reporting *person*, channel or system by the close of the working day following the day of the *transaction* does not amount to the making of a report to the *FSA*.

17.4 Information in transaction reports

Information to appear in transaction reports

- | | |
|-----------|--|
| 17.4.1 EU | Reports of <i>transactions</i> made in accordance with Articles 25 (3) and (5) of <i>MiFID</i> shall contain the information specified in <i>SUP</i> 17 Ann1EU which is relevant to the type of <i>financial instrument</i> in question and which the <i>FSA</i> declares is not already in its possession or is not available to it by other means. |
|-----------|--|

[Note: article 13(1) of the *MiFID Regulation*.]

- 17.4.2 R The reports referred to in *SUP* 17.4.1EU shall, in particular include details of the names and the numbers of the instruments bought or sold, the quantity, the dates and times of execution and the *transaction* prices and means of identifying the *firms* concerned.

[Note: article 25(4) of *MiFID*]

Data retention

- 17.4.3 R A *firm* must keep at the disposal of the *FSA*, for at least five years, the relevant data relating to all *transactions* in *financial instruments* which it has carried out, whether on own account or on behalf of a *client*. In the case of *transactions* carried out on behalf of *clients*, the records shall contain all the information and details of the identity of the *client*, and the information required under the *money laundering directive*.

[Note: article 25(2) of *MiFID*]

Maintenance of information by firm

- 17.4.4 G The requirement to keep information at the disposal of the *FSA* means that a *firm* should maintain that information in such a form that it can readily be gathered and transmitted to the *FSA* upon request. Where more than one *firm* has given effect to a *transaction*, each *firm* should be considered to have carried out the *transaction* for the purposes of *SUP 17.4.3R* and should keep the records, even where only one *firm* makes a *transaction* report as contemplated in this Chapter.

SUP 17 Ann 1

EU SUP 17 Ann 1 EU: Minimum content of a transaction report

Table 1: List of fields for reporting purposes

[Note: This table includes information required under *MiFID* Article 25 (4) and contains additional *FSA* requirements permitted under Articles 13 (3) and (4) of the *MiFID Regulation*]

Firms should complete these fields in the formats described, or these formats must be contained in the fields that their *approved reporting mechanism* will use when sending a *transaction report* to the *FSA* on behalf of a *firm*.

Field Identifier	Description
1. Reporting Firm Identification	A unique code to identify the <i>firm</i> which executed the <i>transaction</i> . This code should be the <i>FSA</i> reference number of the <i>firm</i> or the Swift Bank Identifier Code (BIC).
2. Trading Day	The trading day on which the <i>transaction</i> was executed.
3. Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the <i>competent authority</i> to which the <i>transaction</i> will be reported and the basis in which the <i>transaction</i> is reported expressed as Coordinated Universal Time (UTC) +/- hours. The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.

4. Buy/Sell Indicator	Identifies whether the <i>transaction</i> was a buy or sell from the perspective of the reporting <i>MiFID investment firm</i> or, in the case of a report to a <i>client</i> , of the <i>client</i> .
5. Trading Capacity	Identifies whether the <i>firm</i> executed the <i>transaction</i>
	- on its own account (either on its own behalf or on behalf of a <i>client</i>) (that is as principal);
	- for the account and on behalf of a <i>client</i> (that is as agent);
	- in an agency cross capacity; (that is where the <i>firm</i> has acted as agent for both the selling and the buying counterparties and the single report made to the <i>FSA</i> represents both of these <i>transactions</i>);
	- in a principal cross capacity (that is where the <i>firm</i> has acted simultaneously for two counterparties as principal in a single product at the same price and quantity and the single report made to the <i>FSA</i> represents both of these <i>transactions</i>).
6. Instrument Identification	This shall consist in:
	- an ISO 6166 ISIN the <i>financial instrument</i> which is the subject of the <i>transaction</i> .
	- or, where a <i>financial instrument</i> which is an <i>OTC derivative</i> is the subject of the <i>transaction</i> , the name of the underlying <i>financial instrument</i> and the characteristics of the <i>financial instrument</i> in a separate description field.
7. Underlying Instrument Identification	<p>The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security included within article 4(1)(18)(c) of <i>MiFID</i>. An ISO 6166 ISIN should be used.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. Where the <i>financial instrument</i> is an <i>OTC derivative</i> this field will only be mandatory where the underlying is single equity or single debt.</p>
8 Instrument Type	<p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i> and must be used to indicate the instrument type of the underlying financial instrument, e.g.</p>

	equity, bond, index, or other.
9. Maturity Date	<p>The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i> where applicable.</p>
10. Derivative Type	<p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>, where applicable, and must indicate the derivative type, e.g. <i>option, future, contract for difference, warrant, spread bet, credit default swap</i> or other <i>swap</i>.</p>
11. Put/Call	<p>Specification whether an option or any other <i>financial instrument</i> is a put or call.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>.</p>
12. Strike Price	<p>The strike price of an option or other <i>financial instrument</i>.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>.</p>
13. Price Multiplier	<p>The number of units of the <i>financial instrument</i> in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>.</p>
14. Unit Price	<p>The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.</p>

15. Price Notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included. The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence). If the price is expressed as a percentage of nominal value then the ISO 4217 currency code of the nominal value must be used.
16. Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the <i>transaction</i> .
17. Counterparty	Identification of the counterparty to the <i>transaction</i> . That identification shall consist in:
	- where an <i>FSA</i> reference number or a Swift Bank Identification Code (BIC) exists one of these codes must be used, or in the case that a <i>firm</i> has neither an <i>FSA</i> reference number or a BIC, a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.
18. Venue Identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist in where the venue is a trading venue or an <i>MTF</i> the four character Swift Market Identifier Code ISO 10383 must be used. If the <i>transaction</i> is made off market or <i>over the counter</i> then this must be made clear.
19. Transaction Reference Number	A unique identification number for the <i>transaction</i> provided by the <i>MiFID investment firm</i> or a third party reporting on its behalf.
20. Cancellation Flag	An indication as to whether the <i>transaction</i> was cancelled.
21. Customer/ <i>Client</i> Identification	This field contains the identification of the <i>client</i> or customer on whose behalf the reporting <i>firm</i> was acting and should be completed as follows.
	- For agency <i>transactions</i> a customer/client identifier is required to identify the client on whose behalf the <i>transaction</i> has been conducted. Where an <i>FSA</i> reference number or a Swift Bank Identification Code (BIC) exists, one of these codes must be used, or in the case that a <i>firm</i> has neither an <i>FSA</i> reference number or a BIC, a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.

22. Any other fields	Any other mandatory fields required by the reporting system.
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Annex E

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

- 1.1.1A G The guidance in REC 6A applies to EEA market operators exercising passporting rights in the United Kingdom.
- ...
- 1.1.2 G (2) UK recognised bodies must satisfy recognition requirements prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. UK RIEs must also satisfy the MiFID implementing requirements in the MiFID Regulation. Overseas recognised bodies must satisfy recognition requirements laid down in section 292 of the Act (Overseas investment exchanges and overseas clearing houses).
- ...
- 1.1.3 G (1) The recognition requirements for UK recognised bodies and the MiFID implementing requirements are set out, with guidance, in REC 2.
- ...
- (5A) Guidance for EEA market operators exercising their passporting rights in the United Kingdom is set out in REC 6A.
- ...
- 1.2 Purpose, status and ~~statutory~~ quotations
- Purpose
- 1.2.1 G The purpose of the guidance (other than in REC 6A) in this sourcebook is to give information on ~~how the FSA interprets the recognition requirements, and~~ other obligations on recognised bodies in or under the Act and the MiFID implementing requirements. The purpose of the guidance in REC 6A is to give EEA market operators information about their passporting rights in the United Kingdom. Explanations of the purposes of the rules in this sourcebook are given in the chapters concerned.
- ...

Status

- 1.2.2 G (1) Most of the provisions in this sourcebook are marked with a G (to indicate *guidance*) or an R (to indicate a *rule*). Quotations from UK statute or statutory instruments are marked with the letters "UK" unless they form part of a piece of *guidance*. Quotations from the directly applicable MiFID Regulation are marked with the letters "EU". For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.
- (2) Where the *guidance* states that the *FSA* may have regard to any factor in assessing or determining whether a *recognition requirement* is satisfied, or ~~that~~whether there is compliance with another obligation under the *Act*, or whether a MiFID implementing requirement is satisfied, it means that the *FSA* will take that factor into account so far as it is relevant.
- (3) In determining whether a *recognised body* satisfies the *recognition requirements* or complies with other obligations in or under the *Act*, or a UK RIE satisfies the MiFID implementing requirements, the *FSA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.

Statutory Quotations

- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations* and the Companies Act 1989 and the *MiFID Regulation* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.
- ...
- (5) None of the editorial changes made by the *FSA* in these quotations can supersede or alter the meaning of the ~~statutory~~ provision concerned.
- ...

2.1.1 G This chapter contains the *recognition requirements* for *UK recognised bodies* and sets out *guidance* on those requirements. This chapter also contains the MiFID implementing requirements for UK RIEs. (The *recognition requirements* for *overseas recognised bodies* are set out in REC 6.)

2.1.2 G These *recognition requirements* must be satisfied by applicants for *recognised body* status before recognition is granted and by all *UK recognised bodies* at all times while they are recognised. In addition the MiFID implementing requirements must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. The same standards apply both on initial

recognition and throughout the period *recognised body* status is held. The terms *UK RIE* or *UK RCH* in the *guidance* should be taken, therefore, to refer also to an applicant when appropriate.

2.1.3 G (1) ...

(2) The table in *REC 2.1.4G* indicates in which section each of those paragraphs (and the associated *guidance*) can be found. ~~The *recognition requirement* is reproduced at the start of the section.~~

2.1.4 G Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2
...		
<u>Paragraphs 4(1) and 4(2)(aa)</u>	General safeguards for investors	2.6
...	...	
<u>Paragraph 4(3)</u>		
<u>Paragraph 4(2)(ea)</u>	<u>Conflicts</u>	<u>2.5</u>
...		
<u>Paragraph 4A</u>	<u>Provision of pre-trade information about share trading</u>	<u>2.6</u>
<u>Paragraph 4B</u>	<u>Provision of post-trade information about share trading</u>	<u>2.6</u>
...		
<u>Paragraph 7A</u>	<u>Admission of financial instruments to trading</u>	<u>2.12</u>
<u>Paragraphs 7B and 7C</u>	<u>Access to facilities</u>	<u>2.7</u>
<u>Paragraph 7D</u>	<u>Settlement</u>	<u>2.8</u>
<u>Paragraph 7E</u>	<u>Suspension and removal of financial instruments from trading</u>	<u>2.6</u>
...		
<u>Paragraph 9A</u>	<u>Operation of a multilateral trading facility</u>	<u>2.16A</u>

...		
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2.1.5 G Recitals and articles from the *MiFID Regulation* (and the associated guidance) relevant to market transparency are set out in *REC 2.6*. Articles from the *MiFID Regulation* relevant to admission to trading are set out in *REC 2.12*.

...

2.2.1 D ...
UK

...

2.3.1 D Schedule to the Recognition Requirements Regulations, Paragraph 1
UK

(2) In considering whether this requirement is satisfied, the [FSA] ~~may~~ must (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any *person*, and any activity carried on by the [UK RIE], whether or not it is an *exempt activity*.

2.3.2 D ...
UK

2.3.3 G In determining whether a *UK recognised body* has financial resources sufficient for the proper performance of its *relevant functions*, the *FSA* may have regard to:

(7) in relation to a UK RIE, the nature and extent of the transactions concluded on the UK RIE.

...

2.4.1 D Schedule to the Recognition Requirements Regulations, Paragraph 2
UK

(3) The persons who effectively direct the business and operations of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it.

(4) The persons who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

2.4.2 D ...
UK

...

2.4.6 G In assessing whether the *persons* who effectively direct the business and operations of the *UK RIE* are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets it, the *FSA* may have regard to the repute and experience of the *UK RIE*'s *key individuals*.

2.5 Systems and controls and conflicts

2.5.1 Ð Schedule to the Recognition Requirements Regulations, paragraph 3
UK

...

(2) Sub-paragraph (1) applies in particular to systems and controls concerning -

...

(b) the assessment, mitigation and management of risks to the performance of the [*UK RIE*'s *relevant functions*];

...

(ca) the technical operation of the [*UK RIE*], including contingency arrangements for disruption to its *facilities*;

...

2.5.1A UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)

Without prejudice to the generality of sub-paragraph [4(1)], the [*UK RIE*] must ensure that –

appropriate arrangements are made to -

(i) identify conflicts between the interests of the [*UK RIE*], its owners and operators and the interests of the *persons* who make use of its *facilities* or the interests of the financial markets operated by it; and

(ii) manage such conflicts so as to avoid adverse consequences for the operation of the financial markets operated by the [*UK RIE*] and for the *persons* who make use of its *facilities*.

2.5.2 Ð ...
UK

2.5.3 G In assessing whether the systems and controls used by a *UK recognised body* in the performance of its *relevant functions* are adequate and appropriate for the scale and nature of its business, the *FSA* may have regard to the *UK recognised body*'s:

...
(2) arrangements for the identification and management of conflicts of interest;
...

...

2.5.11 G The *FSA* recognises that a *UK recognised body* RCH has legitimate interests of its own and that its general business policy may properly be influenced by other *persons* (such as its owners). ...

...

2.6 General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading

2.6.1 ~~Ð~~ ...
UK

2.6.2 ~~Ð~~ Schedule to the Recognition Requirements Regulations, Paragraph 19(1)

~~The [*UK RCH*] must ensure that its *facilities* are such as to afford proper protection to investors.~~

UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)

Without prejudice to the generality of sub-paragraph [4(1)], the [*UK RIE*] must ensure that –

it has transparent and non-discretionary rules and procedures –

(i) to provide for fair and orderly trading, and

(ii) to establish objective criteria for the efficient execution of orders;

2.6.3 ~~G~~ In determining whether:

~~(1) business conducted by means of a *UK RIE's facilities* is conducted so;
or~~

~~(2) a *UK RCH's facilities* are such;~~

~~as to afford proper protection to investors, the *FSA* may, in addition to the matters dealt with in REC 2.7 to REC 2.12, have regard to all the arrangements made by the *UK recognised body* concerning the operation of its *facilities*.~~

UK Schedule to the Recognition Requirements Regulations, Paragraph 4A

(1) The [*UK RIE*] must make arrangements for—

- (a) current bid and offer prices for *shares*, and
- (b) the depth of trading interest in *shares* at the prices which are advertised through its systems,

to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7EU and REC 2.6.21EU to REC 2.6.24EU)].

(2) If [a UK RIE] decides to give *investment firms* and *credit institutions* required to publish their quotes in *shares*-

- (a) in accordance with Article 27 of [MiFID], or
- (b) by the [FSA],

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The [FSA] may waive the requirements of sub-paragraph (1) in the circumstances specified-

- (a) in the case of *shares* to be traded on a *multilateral trading facility* operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)]; or
- (b) in the case of *shares* to be traded on a *regulated market* operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)].

2.6.4 G ~~The FSA may also have regard to the extent to which the UK recognised body's rules, procedures and the arrangements for monitoring and overseeing the use of its facilities:~~

- ~~(1) include appropriate measures to prevent the use of its facilities for abusive or improper purposes;~~
- ~~(2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;~~
- ~~(3) provide appropriate information to enable users of its facilities to~~

monitor their use of the *facilities*;

- (4) ~~include appropriate arrangements to enable users of its *facilities* to raise queries about any use of those *facilities* which they are reported to have made;~~
- (5) ~~include appropriate arrangements to enable users of its *facilities* to comply with any relevant regulatory or legal requirements; and~~
- (6) ~~include appropriate arrangements to reduce the risk that those *facilities* will be used in ways which are incompatible with relevant regulatory or legal requirements;~~

~~and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the *UK recognised body's facilities*, the types of *persons* who will use the *facilities* and the use which they will make of those *facilities*.~~

UK Schedule to the Recognition Requirements Regulations, Paragraph 4B

- | |
|---|
| <p>(1) <u>The [UK RIE] must make arrangements for the price, volume and time of transactions executed in <i>shares</i> to be made available to the public as soon as possible after the time of the transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.16.15EU and REC 2.6.21EU to REC 2.6.24EU)].</u></p> <p>(2) <u>If [a UK RIE] decides to give <i>investment firms and credit institutions</i> required to make public details of their transactions in <i>shares</i>-</u></p> <ul style="list-style-type: none">(a) <u>in accordance with Article 28 of [MiFID], or</u>(b) <u>by the [FSA],</u> <p><u>access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non discriminatory basis.</u></p> <p>(3) <u>The [FSA] may permit [UK RIEs] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained—</u></p> <ul style="list-style-type: none">(a) <u>in the case of <i>shares</i> traded on a <i>multilateral trading facility</i> operated by [a UK RIE], in Article 30.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18EU)];</u>
<u>or</u> |
|---|

- (b) in the case of *shares* traded on *regulated market* operated by [a *UK RIE*], in Article 45.2 of [*MiFID*] and Chapter IV of the [*MiFID Regulation*] [(see *REC 2.6.18EU*)].
- (7) If the [*FSA*] permits [*UK RIEs*] to defer the publication required by sub-paragraph (1), those [*UK RIEs*] must ensure that the existence of and the terms of the permission are disclosed to users and members of their *facilities* and to investors.

2.6.5 G Orderly markets

In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FSA* may have regard to the extent to which the *UK RIE's* rules and procedures:

- (1) are consistent with the *Code of Market Conduct* (see *MAR 1*);
- (2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
- (3) prohibit or prevent:
 - (a) trades in which a party is improperly indemnified against losses;
 - (b) trades intended to create a false appearance of trading activity ("wash trades");
 - (c) cross trades executed for improper purposes;
 - (d) improperly prearranged or prenegotiated trades;
 - (e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and
 - (f) trades which one party does not intend to close out or settle.

G Articles 29.2 and 44.2 of *MiFID* provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of *MiFID* provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares.

2.6.6 G In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford

proper protection to investors), the *FSA* may have regard to whether the *UK RIE's* arrangements and practices:

- (1) ~~enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;~~
- (2) ensure:
 - (a) ~~sufficient pre-trade transparency in the *UK RIE's* markets taking account of the practices in those markets and the trading systems used; and~~
 - (b) ~~sufficient post-trade transparency in the *UK RIE's* markets taking into account the nature and liquidity of the *specified investments* traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for *members* and *clients* for whom they act, and the needs of different market participants for timely price information;~~
- (3) ~~include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and~~
- (4) if they include arrangements to support or encourage liquidity:
 - (a) ~~are transparent;~~
 - (b) ~~are not likely to encourage any *person* to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any *client* for whom he acts);~~
 - (c) ~~are consistent with a reliable, undistorted price formation process; and~~
 - (d) ~~alleviate dealing or other identified costs associated with trading on the *UK RIE's* markets and do not subsidise a market position of a user of its *facilities* or subsidise any margin payments (or the provision of collateral) which such a user would have to make.~~

UK Schedule to the Recognition Requirements Regulations, Paragraph 7E

The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a *regulated market* operated by it any *financial instrument* which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

- 2.6.7 G The *FSA* accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a *UK RIE*, subject to any necessary safeguards, where appropriate.

EU Article 17 of the MiFID Regulation

Pre-trade transparency obligations

1. A ... market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8EU)], make public the information set out in paragraphs 2 to 6.
2. Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.
3. Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.
The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.
In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
4. Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its normal trading hours the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
5. Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in

paragraph 1, as well as the level of trading interest in that share.

In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.

6 A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see REC 2.6.8EU)]

2.6.8 EU Table 1 of Annex II to the MiFID Regulation: Information to be made public in accordance with Article 17 (see REC 2.6.9EU)

<u>Type of system</u>	<u>Description of system</u>	<u>Summary of information to be made public, in accordance with Article 17</u>
<u>continuous auction order book trading system</u>	<u>a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis</u>	<u>the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels.</u>
<u>quote-driven trading system</u>	<u>a system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself</u>	<u>the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices</u>
<u>periodic auction trading system</u>	<u>a system that matches orders on the basis of a periodic auction and a trading algorithm</u>	<u>the price at which the auction trading system would best satisfy its trading algorithm and</u>

	<u>operated without human intervention</u>	<u>the volume that would potentially be executable at that price</u>
<u>trading system not covered by first three rows</u>	<u>A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by [the] first three rows</u>	<u>adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit</u>

2.6.9 EU Recital 14 to the MiFID Regulation

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [(see REC 2.6.3UK)] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

2.6.10 EU Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction

1. Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)] may be granted by the [FSA] for systems operated by an MTF or a regulated market, if those systems satisfy one of the following criteria:

(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;

(b) they formalise negotiated transactions [(see REC 2.6.11EU)], each of which meets one of the following criteria:

(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the regulated market or MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a

percentage and a reference price set in advance by the system operator;

- (ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12EU)].

For the purposes of point (b), the other conditions specified in the rules of the regulated market or MTF for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

2. Waivers in accordance with Articles 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the regulated market or the MTF pending their being disclosed to the market.

2.6.11 EU Article 19 of the MiFID Regulation

References to negotiated transaction

For the purpose of Article 18(1)(b) [(see REC 2.6.10EU)] a negotiated transaction shall mean a transaction involving members or participants of a regulated market or an MTF which is negotiated privately but executed within the regulated market or MTF and where that member or participant in doing so undertakes one of the following tasks:

- (a) dealing on own account with another member or participant who acts for the account of a client;
- (b) dealing with another member or participant, where both are executing orders on own account;
- (c) acting for the account of both the buyer and seller;
- (d) acting for the account of the buyer, where another member or participant acts for the account of the seller;
- (e) trading for own account against a client order.

2.6.12 EU Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

1. A transaction related to an individual share in a portfolio trade shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10EU)], as a transaction subject to conditions other than the current market price. ...
2. A volume weighted average price transaction shall be considered, for

the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10EU)], as a transaction subject to conditions other than the current market price ...

2.6.13 EU Article 20 of the MiFID Regulation

Waivers in relation to transactions which are large in scale

An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see REC 2.6.14EU)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

2.6.14 EU Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size

<u>Class in terms of average daily turnover (ADT)</u>	<u>ADT < €500 000</u>	<u>€500 000 ≤ ADT < €1 000 000</u>	<u>€1 000 000 ≤ ADT < €25 000 000</u>	<u>€25 000 000 ≤ ADT < €50 000 000</u>	<u>ADT ≥ €50 000 000</u>
<u>Minimum size of order qualifying as large in scale compared with normal market size</u>	<u>€50 000</u>	<u>€100 000</u>	<u>€250 000</u>	<u>€400 000</u>	<u>€500 000</u>

2.6.15 EU Article 27(1) of the MiFID Regulation

Post-trade transparency obligation

1. ...regulated markets, and ... market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded ... within their systems, make public the following details:

- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see REC 2.6.16EU)]
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17EU)];

- (c) an indication that the trade was a negotiated trade, where applicable;
- (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each *transaction* or in a form aggregating the volume and price of all *transactions* in the same share taking place at the same price at the same time.

2.6.16 EU Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation

2.	<u>Trading Day</u>	<u>The trading day on which the <i>transaction</i> was executed.</u>
3.	<u>Trading Time</u>	<u>The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.</u>
6.	<u>Instrument Identification</u>	<u>This shall consist in:</u> <ul style="list-style-type: none"> - <u>a unique code to be decided by the competent authority (if any) to which the report is made identifying the [share] which is the subject of the <i>transaction</i>;</u> - <u>if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...</u>
16.	<u>Unit Price</u>	<u>The price per [share] excluding commission and (where relevant) accrued interest. ...</u>
17.	<u>Price Notation</u>	<u>The currency in which the price is expressed ...</u>
18.	<u>Quantity</u>	<u>The number of units of the [shares].</u>
21.	<u>Venue identification</u>	<u>Identification of the venue where the <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF</i>'s] ... unique harmonised identification code;</u> ...

2.6.17 EU Article 3 of the MiFID Regulation

<u>Transactions related to an individual share in a portfolio trade and volume weighted average price transactions</u>	
1.	<u>A <i>transaction</i> related to an individual share in a <i>portfolio trade</i> ... shall ... be considered, for the purposes of Article 27(1)(b) [(see <i>REC</i></u>

2.6.15EU)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.

2 A volume weighted average price *transaction* ... shall ... be considered, for the purposes of Article 27(1)(b) [(see *REC 2.6.15EU*)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.

2.6.18 EU Article 28 of the MiFID Regulation

Deferred publication of large transactions

The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in Table 4 in Annex II [(see *REC 2.6.20EU*)] for the class of share and *transaction* concerned, provided the following criteria are satisfied:

- (a) the *transaction* is between [a *MiFID investment firm*] *dealing on own account* and a *client* of that firm;
- (b) the size of that *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II [(see *REC 2.6.20EU*)].

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

2.6.19 EU Article 29(3), second sentence of the MiFID Regulation

Each constituent *transaction* [of a *portfolio trade*] shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under Article 28 (see *REC 2.6.18EU*).

2.6.20 EU Table 4 in Annex II to the MiFID Regulation: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.

Class of shares in terms of average daily turnover (ADT)

<u>ADT < €100 000</u>	<u>€100 000 ≤ ADT ≤ €1 000 000</u>	<u>€1 000 000 ≤ ADT < €50 000 000</u>	<u>ADT ≥ €50 000 000</u>
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Minimum qualifying size of transaction for permitted

		<u>delay</u>			
<u>Permitted delay for publication</u>	<u>60 minutes</u>	<u>€10 000</u>	<u>Greater of 5% of ADT and €25 000</u>	<u>Lower of 10% of ADT and €3 500 000</u>	<u>Lower of 10% of ADT and €7 500 000</u>
	<u>180 minutes</u>	<u>€25 000</u>	<u>Greater of 15% of ADT and €75 000</u>	<u>Lower of 15% of ADT and €5 000 000</u>	<u>Lower of 20% of ADT and €15 000 000</u>
	<u>Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 12 hours of trading day)</u>	<u>€45 000</u>	<u>Greater of 25% of ADT and €100 000</u>	<u>Lower of 25% of ADT and €10 000 000</u>	<u>Lower of 30% of ADT and €30 000 000</u>
	<u>Until end of trading day next after trade</u>	<u>€60 000</u>	<u>Greater of 50% of ADT and €100 000</u>	<u>Greater of 50% of ADT and €1 000 000</u>	<u>100% of ADT</u>
	<u>Until end of second trading day next after trade</u>	<u>€80 000</u>	<u>100% of ADT</u>	<u>100% of ADT</u>	<u>250% of ADT</u>
	<u>Until end of third trading day next after trade</u>		<u>250% of ADT</u>	<u>250% of ADT</u>	

2.6.21 EU Article 29 of the MiFID Regulation

<u>Publication and availability of pre- and post-trade transparency data</u>	
1.	<u>A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF ... concerned, and remains available until it is updated.</u>
2.	<u>Pre-trade information, and post-trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in</u>

any case within three minutes of the relevant *transaction*.

3. Information relating to a *portfolio trade* shall be made available with respect to each constituent *transaction* as close to real time as possible, having regard to the need to allocate prices to particular shares. ...
 4. Post-trade information referring to *transactions* taking place on a [*regulated market* or *MTF*] but outside its *normal trading hours* shall be made public before the opening of the next trading day of the [*regulated market* or *MTF*] on which the *transaction* took place.
- ...

2.6.22 EU Recital 18 to the MiFID Regulation

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time

2.6.23 EU Article 30 of the MiFID Regulation

Public availability of pre- and post-trade information

... pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

2.6.24 EU Article 32 of the MiFID Regulation

Arrangements for making information public

Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see *REC 2.6.23EU*)] ..., shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other

sources;

(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

2.6.25 UK Schedule to the Recognition Requirements Regulations, Paragraph 19(1)

The [UK RCH] must ensure that its facilities are such as to afford proper protection to investors.

2.6.26 G In determining whether:

(1) business conducted by means of a UK RIE's facilities is conducted so; or

(2) a UK RCH's facilities are such;

as to afford proper protection to investors, the FSA may, in addition to the matters dealt with in REC 2.7 to REC 2.12, have regard to all the arrangements made by the UK recognised body concerning the operation of its facilities.

2.6.27 G The FSA may also have regard to the extent to which the UK recognised body's rules, procedures and the arrangements for monitoring and overseeing the use of its facilities:

(1) include appropriate measures to prevent the use of its facilities for abusive or improper purposes;

(2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;

(3) provide appropriate information to enable users of its facilities to monitor their use of the facilities;

(4) include appropriate arrangements to enable users of its facilities to raise queries about any use of those facilities which they are reported to have made;

(5) include appropriate arrangements to enable users of its facilities to comply with any relevant regulatory or legal requirements; and

(6) include appropriate arrangements to reduce the risk that those facilities will be used in ways which are incompatible with relevant regulatory or legal requirements;

and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the UK recognised body's facilities, the types of persons who will use the facilities and the use which they will make of those facilities.

2.6.28 G Orderly markets

In determining whether a UK RIE is ensuring that business conducted by means of its facilities is conducted in an orderly manner (and so as to afford proper protection to investors), the FSA may have regard to the extent to which the UK

RIE's rules and procedures:

- (1) are consistent with the *Code of Market Conduct* (see *MAR 1*);
- (2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
- (3) prohibit or prevent:
 - (a) trades in which a party is improperly indemnified against losses;
 - (b) trades intended to create a false appearance of trading activity ("wash trades");
 - (c) cross trades executed for improper purposes;
 - (d) improperly prearranged or prenegotiated trades;
 - (e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and
 - (f) trades which one party does not intend to close out or settle.

2.6.29 G In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FSA* may have regard to whether the *UK RIE's* arrangements and practices:

- (1) enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;
- (2) ensure:
 - (a) sufficient pre-trade transparency in the *UK RIE's* markets taking account of the practices in those markets and the trading systems used; and
 - (b) sufficient post-trade transparency in the *UK RIE's* markets taking into account the nature and liquidity of the *specified investments* traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for *members* and *clients* for whom they act, and the needs of different market participants for timely price information;
- (2A) (2) does not apply to a *UK RIE's* markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE's* markets for shares admitted to trading on a *regulated market*, see in particular *REC 2.6.3UK* and *REC 2.6.4UK* and *REC 2.6.7EU* to *REC 2.6.24EU*;
- (3) include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and

- (4) if they include arrangements to support or encourage liquidity:
- (a) are transparent;
 - (b) are not likely to encourage any *person* to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any *client* for whom he acts);
 - (c) are consistent with a reliable, undistorted price-formation process; and
 - (d) alleviate dealing or other identified costs associated with trading on the *UK RIE's* markets and do not subsidise a market position of a user of its *facilities* or subsidise any margin payments (or the provision of collateral) which such a user would have to make.

- 2.6.30 G (1) The *FSA* accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a *UK RIE*, subject to any necessary safeguards, where appropriate.
- (2) (1) does not apply to a *UK RIE's* markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE's* markets for shares admitted to trading on a *regulated market*, see in particular *REC 2.6.3UK* and *REC 2.6.4UK* and *REC 2.6.7EU* to *REC 2.6.24EU*.

Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements

- 2.6.31 G The *FSA* has exercised its power referred to in *REC 2.6.3UK(3)* to waive the pre-trade transparency requirements referred to in *REC 2.6.3UK(1)*. The waivers granted are those based on market model (see *REC 2.6.10EU1*), type of order (see *REC 2.6.10EU2*) and *transactions* which are large in scale (see *REC 2.6.13EU*). These waivers apply to all *regulated markets* and *MTFs* operated by *UK RIEs*.
- 2.6.32 G The *FSA* has exercised its power referred to in *REC 2.6.4UK(3)* to permit the deferral of the post-trade transparency requirements referred to in *REC 2.6.4UK(1)*. This permission is with respect to large *transactions* (see *REC 2.6.17EU*). This permission applies to all *regulated markets* and *MTFs* operated by *UK RIEs*.

...

- 2.7.1 D Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)
UK

Without prejudice to the generality of sub-paragraph [4(1)], the [*UK RIE*] must

ensure that -

access to the [*UK RIE's*] *facilities* is subject to criteria designed to protect the orderly functioning of the market and the interests of investors and is in accordance with paragraph 7B;

2.7.1A UK Schedule to the Recognition Requirements Regulations, Paragraph 7B

- (1) The [*UK RIE*] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its *facilities*.
- (2) In particular those rules must specify the obligations for users or members of its *facilities* arising from -
 - (a) the constitution and administration of the [*UK RIE*];
 - (b) rules relating to transactions on the market;
 - (c) its professional standards for staff of any *investment firm* or *credit institution* having access to or membership of a financial market operated by the [*UK RIE*];
 - (d) conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the [*UK RIE*] by persons other than *investment firms* or *credit institutions*; and
 - (e) the rules and procedures for clearing and settlement of transactions concluded on a financial market operated by the [*UK RIE*].
- (3) Rules of the [*UK RIE*] about access to, or membership of, a financial market operated by it must permit the [*UK RIE*] to give access to or admit to membership (as the case may be) only -
 - (a) an *investment firm*,
 - (b) a *credit institution*, or
 - (c) a *person* who -
 - (i) is fit and proper,
 - (ii) has a sufficient level of trading ability and competence,
 - (iii) where applicable, has adequate organisational arrangements, and
 - (iv) has sufficient resources for the role he is to perform, taking into account the [*UK RIE's*] arrangements under paragraph 4(2)(d).
- (4) Rules under this paragraph must enable –

- (a) an investment firm authorised under Article 5 of [MiFID], or
- (b) a credit institution authorised under the Banking Consolidation Directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have direct or remote access to or membership of, any financial market operated by the [UK RIE] on the same terms as a UK firm.

- (5) The [UK RIE] must make arrangements regularly to provide the [FSA] with a list of users or members of its facilities.
- (6) This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B UK Schedule to the Recognition Requirements Regulations, Paragraph 7C

- (1) This paragraph applies to [a UK RIE] which provides central counterparty, clearing or settlement facilities.
- (2) The [UK RIE] must make transparent and non-discriminatory rules based on objective criteria, governing access to those facilities.
- (3) The rules under sub-paragraph (2) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.
- (4) The [UK RIE] may refuse access to those facilities on legitimate commercial grounds.

2.7.2 D ...
UK

2.7.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 21A

- (1) The [UK RCH] must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement facilities provided by it.
- (2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(3) The [UK RCH] may refuse access to those facilities on legitimate commercial grounds.

...

2.7.3 G ...

(2) [deleted]

...

2.7.3A G REC 2.7.3G does not apply to a UK RIE's arrangements to grant access to investment firms or credit institutions.

...

2.8.1 Ð Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)
UK

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the [UK RIE] (being rights and liabilities in relation to those transactions);

2.8.1A UK Schedule to the Recognition Requirements Regulations, Paragraph 7D

(1) The rules of the [UK RIE] must permit a user or member of a regulated market operated by it to use whatever settlement facility he chooses for a transaction.

(2) Sub-paragraph (1) only applies where -

(a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and

(b) the [UK RIE] is satisfied that the smooth and orderly functioning of the financial markets will be maintained.

2.8.2 Ð ...
UK

...

2.9.1 Ð ...
UK

2.9.2 Ð ...

	<u>UK</u>	
...		
2.10.1	DK <u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(f)
		<p>Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-</p> <p>appropriate measures (<u>including the monitoring of transactions effected on the [UK RIE]</u>) are adopted to reduce the extent to which the [UK RIE's] <i>facilities</i> can be used for a purpose connected with <i>market abuse</i> or <i>financial crime</i>, and to facilitate their detection and monitor their incidence;</p>
2.10.2	DK <u>UK</u>	...
...		
2.11.1	DK <u>UK</u>	...
2.11.2	DK <u>UK</u>	...
...		
2.12		Proper markets and disclosure of <u>Availability of relevant information and admission of financial instruments to trading</u> (UK RIEs only)
2.12.1	DK <u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraphs 4(2)(b) and 4(2)(c)
		<p>...</p> <p>(b) dealings in [specified investments] on the [UK RIE] are limited to [specified investments] in which there is a proper market;</p> <p>...</p>
2.12.2	DK <u>UK</u>	...
2.12.2A	<u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraph 7A
		<p>(1) <u>The [UK RIE] must make clear and transparent rules concerning the admission of <i>financial instruments</i> to trading on any <i>financial market</i> operated by it.</u></p> <p>(2) <u>The rules must ensure that all <i>financial instruments</i> admitted to trading on any <i>regulated market</i> operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where</u></p>

applicable).

- (3) The rules must ensure that -
 - (a) all transferable securities admitted to trading on a regulated market operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and
 - (b) all contracts for derivatives admitted to trading on a regulated market operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.
- (4) The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a multilateral trading facility operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded.
- (5) The [UK RIE] must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations
- (6) The [UK RIE] must maintain arrangements to assist users of a regulated market operated by it to obtain access to information made public under the disclosure obligations.
- (7) The [UK RIE] must maintain arrangements regularly to review whether the financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.
- (8) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market, the [UK RIE] -
 - (a) must inform the issuer of that security as soon as is reasonably practicable; and
 - (b) may not require the issuer of that security to demonstrate compliance with the disclosure obligations.
- (9) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, it may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

...

(11) This paragraph is without prejudice to the generality of paragraph 4.

2.12.2B EU Article 35 of the MiFID Regulation

Transferable securities

1. *Transferable securities shall be considered freely negotiable for the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2AUK)] if they can be traded between the parties to a transaction, and subsequently transferred without restriction, and if all securities within the same class as the security in question are fungible.*
2. *Transferable securities which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.*
3. *Transferable securities that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.*
4. *When exercising its discretion whether to admit a share to trading, a regulated market shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:*
 - (a) *the distribution of those shares to the public; and*
 - (b) *such historical financial information, information about the issuer, and information providing a business overview as is required to be prepared under [the PD], or is or will be otherwise publicly available.*
5. *A transferable security that is officially listed in accordance with [CARD], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.*
6. *For the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2AEU)], when assessing whether a transferable security referred to Article 4(1)(18)(c) of [MiFID] is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:*
 - (a) *the terms of the security are clear and unambiguous and allow*

for a correlation between the price of the security and the price or other value measure of the underlying;

- (b) the price or other value measure of the underlying is reliable and publicly available;
- (c) there is sufficient information publicly available of a kind needed to value the security;
- (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;
- (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

2.12.2C EU Recital 19 to the MiFID Regulation

For the purposes of the provisions of [the *MiFID Regulation*] as to the admission to trading on a *regulated market* of a *transferable security* as defined in article 4(1)(18)(c) of [*MiFID*], [(see *REC 2.12.2BEU6(c)*)], in the case of a security within the meaning of [the *PD*], there should be considered to be sufficient information publicly available of a kind needed to value that *financial instrument*.

2.12.2D EU Article 36 of the MiFID Regulation

Units in collective investment undertakings

1. A *regulated market* shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the *UCITS Directive*], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the *regulated market*.
2. Without prejudice to [the *UCITS Directive*] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a *regulated market*.
3. When assessing whether units in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [*MiFID*] [(see *REC 2.12.2AUK*)], the *regulated market* shall take the

following aspects into account:

- (a) the distribution of those units to the public;
- (b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;
- (c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

4. When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2AUK)], the regulated market shall take the following aspects into account:

- (a) the distribution of those units to the public;
- (b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of net asset value.

2.12.2E EU Article 37 of the MiFID Regulation

Derivatives

1. When admitting to trading a financial instrument of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], regulated markets shall verify that the following conditions are satisfied:

- (a) the terms of the contract establishing the financial instrument must be clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;
- (b) the price or other value measure of the underlying must be reliable and publicly available;
- (c) sufficient information of a kind needed to value the derivative must be publicly available;
- (d) the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying;
- (e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant

information about that underlying, as well as adequate settlement and delivery procedures for the underlying.

2. Where the *financial instruments* concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [MiFID], point (b) of paragraph 1 shall not apply if the following conditions are satisfied:

- (a) the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
- (b) the *regulated market* must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such *financial instruments*;
- (c) the *regulated market* must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those *financial instruments*.

...

2.12.4 G [deleted]

2.12.5 G [deleted]

2.12.6 G [deleted]

2.12.7 G [deleted]

2.12.8 G [deleted]

2.12.9 G [deleted]

2.12.10 G [deleted]

...

Rules concerning the admission of financial instruments to trading on a multilateral trading facility

2.12.14 G In determining whether a *UK RIE* has clear and transparent rules concerning the admission of *financial instruments* to trading on any *multilateral trading facility* operated by it, the *FSA* considers that it is reasonable that the rules be based on criteria designed to promote fair and orderly trading (see *REC 2.6.2UK*). In determining whether the rules are based on such criteria, the *FSA* may have regard to:

- (1) whether there is a sufficient range of *persons* already holding the *financial instrument* (or, where relevant, the underlying asset) or interested in *dealing* in it to bring about adequate forces of supply and demand;

- (2) the extent to which there are any limitations on the persons who may hold or deal in the financial instrument, or the amounts of the financial instrument which may be held; and
- (3) whether the UK RIE has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that financial instrument.

...

2.13.1 ~~Ð~~ ...
 UK

2.13.2 ~~Ð~~ ...
 UK

...

2.14.1 ~~Ð~~ ...
 UK

2.14.2 ~~Ð~~ ...
 UK

...

2.15.1 ~~Ð~~ Schedule to the Recognition Requirements Regulations, Paragraph 8
 UK

(1) ~~The [UK RIE] must have effective arrangements for monitoring and enforcing compliance with -~~ The [UK RIE] must have -

- (a) ~~its rules (including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE]); and~~ effective arrangements (which include the monitoring of transactions effected on the [UK RIE]) for monitoring and enforcing compliance with its rules, including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE];
- (b) ~~the arrangements made by it as mentioned in paragraph 4(2)(d) ...~~ effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and
- (c) effective arrangements for monitoring transactions effected on the [UK RIE] in order to identify disorderly trading conditions.

...

2.15.2 ~~Ð~~ ...
 UK

...

2.16.1 D ...
UK

2.16.2 D ...
UK

...

2.16A Operation of a multilateral trading facility

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A

- | | |
|-----|---|
| (1) | <u>[A UK RIE] operating a <i>multilateral trading facility</i> must also operate a <i>regulated market</i>.</u> |
| (2) | <u>[A UK RIE] operating a <i>multilateral trading facility</i> must comply with those requirements of-</u>

(a) <u>Chapter I of Title II of [MiFID], and</u>

(b) <u>MiFID implementing Directive,</u>

<u>which are applicable to a <i>market operator</i>...operating such a <i>facility</i>.</u> |
| (3) | <u>The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the <i>Act</i> (requirements for overseas investment exchanges and overseas clearing houses).</u> |

2.16A.2 G In determining whether a UK RIE operating a *multilateral trading facility* complies with those requirements of Chapter I of Title II of *MiFID* and the *MiFID implementing Directive* which are applicable to a *market operator* operating such a *facility*, the *FSA* will have regard to the compliance of the UK RIE with equivalent *recognition requirements*.

...

2.17.2 D Schedule to the Recognition Requirements Regulations, Part II
UK

Paragraph 10 (Default rules in respect of market contracts)	
...	
(3)	The [<i>default rules</i>] must enable action to be taken in respect of all unsettled <i>market contracts</i> , other than those entered into by an <i>RCH</i> for the purposes of or in connection with the provision of clearing services for the [<i>UK RIE</i>].
...	

2.17.3 D ...
UK

...

3.4.2 R Where, in relation to a UK ~~recognised body~~ RCH, a person has been

appointed or elected, has resigned as, or has ceased to be, a *key individual*, that ~~UK recognised body~~*RCH* must immediately give notice of that event, and give the information specified for the purposes of this *rule* in *REC* 3.4.4R to the *FSA*.

3.4.2A R Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a *key individual*, that *UK RIE* must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this *rule* in *REC* 3.4.4AR to the *FSA*.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

3.4.2B R Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a *key individual*, that *UK RIE* must immediately give notice of that event, and give the name of the *person*.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

...

3.4.4A R The following information is specified for the purposes of *REC* 3.4.2AR:

- (1) that *person's* name;
- (2) his date of birth;
- (3) a description of the responsibilities which he will have in the post to which he is to be appointed or elected.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

...

3.14.2A R When a *UK RIE* removes a *financial instrument* from trading on a *regulated market*, it must immediately give the *FSA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of MiFID]

...

3.14A Operation of a regulated market or MTF

Purpose

3.14A.1 G The purpose of *REC* 3.14A is to ensure that the *FSA* is informed of planned changes to a *UK RIE's* markets and their regulatory status as either a *regulated market* or *MTF*.

Operation of a regulated market

3.14A.2 R Where a *UK RIE* proposes to operate a new *regulated market* or close an existing *regulated market* it must give the *FSA* notice of that event and the

information specified for the purposes of this rule in REC 3.14A.3R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14A.3 R The following information is specified for the purposes of REC 3.14A.2R:

(1) where the UK RIE proposes to operate a new regulated market:

(a) a description of the regulated market; and

(b) a description of the specified investments which will be admitted to trading on that regulated market.

(2) where the UK RIE proposes to close a regulated market, the name of that regulated market.

Operation of an MTF

3.14A.4 R Where a UK RIE proposes to operate a new MTF or close an existing MTF it must give the FSA notice of that event and the information specified for the purposes of this rule in REC 3.14A.5R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14A.5 R The following information is specified for the purposes of REC 3.14A.4R:

(1) where the UK RIE proposes to operate a new MTF:

(a) a description of the MTF; and

(b) a description of the specified investments which will be admitted to trading on that MTF.

(2) where the UK RIE proposes to close a MTF, the name of that MTF.

...

3.15.2A R When a UK RIE suspends trading on a regulated market in any financial instrument, it must immediately give the FSA notice of that event and relevant information including particulars of that financial instrument and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of MiFID]

...

3.24 Transfers of ownership

3.24.1 R When a UK RIE becomes aware of a transfer of ownership of the UK RIE which gives rise to a change in the persons who are in a position to exercise significant influence over the management of the UK RIE, whether directly or indirectly, it must immediately notify the FSA of that

event, and:

- (1) give the name of the *person(s)* concerned; and
- (2) give details of the transfer.

[Note: Article 38(2)(b) of MiFID]

3.24.2 G The *FSA* may regard a *person* who falls within any of the cases in section 301(B)(2) of the *Act* as being in a position to exercise significant influence.

3.25 Significant breaches of rules and disorderly trading conditions

3.25.1 R A *UK RIE* must immediately notify the *FSA* of:

- (1) significant breaches of its rules; or
- (2) disorderly trading conditions on any of its markets;

[Note: Article 43(2), first sentence (part) of MiFID. The rest of Article 43(2), first sentence of MiFID is implemented by REC 3.21.1R(2)]

...

4.1.3 G The *FSA's* general approach to supervision is intended to ensure that:

- (1) the *FSA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the *recognition requirements* and other obligations imposed by or under the *Act* and *UK RIEs* continue at all times to satisfy the *MiFID implementing requirements*; and

...

...

4.2.2 G *UK recognised bodies* are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the *recognition requirements*, the *MiFID implementing requirements* (in the case of a *UK RIE*) and other obligations in or under the *Act*.

4.2.3 G The *FSA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognition requirements*, the *MiFID implementing requirements* (in the case of a *UK RIE*) and other obligations in or under the *Act* when considering any changes to its business or operations.

4.2.4 G However, the *FSA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with its plans and operational initiatives, and will provide it with appropriate assurance that the *recognition requirements* and the *MiFID implementing requirements* (in the case of a *UK RIE*) will continue to be satisfied.

4.2A Publication of information by UK RIEs

4.2A.1 G Under subsections 292A(1) and (2) of the Act, a UK RIE must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the UK RIE, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the UK RIE, whether directly or indirectly, as the FSA may reasonably require.

4.2A.2 G Under subsections 292A(3) and (4) of the Act, a UK RIE must as soon as practicable after becoming aware of a transfer of ownership of the UK RIE which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the UK RIE, whether directly or indirectly, publish such particulars of any such transfer as the FSA may reasonably require.

4.2A.3 G Under subsection 292A(5) of the Act, a UK RIE must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it as the FSA may reasonably require.

4.2B Exercise of passport rights by a UK RIE

4.2B.1 G Under section 312C of the Act, if a UK RIE wishes to make arrangements in an *EEA State* other than the UK to facilitate access to or use of a *regulated market* or *multilateral trading facility* operated by it, it must give the FSA written notice of its intention to do so. The notice must:

(1) describe the arrangements; and

(2) identify the *EEA State* in which the UK RIE intends to make them.

4.2B.2 G The FSA must, within one *month* of receiving the UK RIE's notice, send a copy of it to the *Host State regulator*.

4.2B.3 G The UK RIE may not make the arrangements until the FSA has sent a copy of the notice to the *Host State regulator*.

4.2B.4 G The requirements that a UK RIE must give the FSA written notice and the UK RIE may not make the arrangements until the FSA has sent a copy of it to the *Host State regulator* do not apply to arrangements made by a UK RIE on or before 31 October 2007.

4.2C Control over a UK RIE

4.2C.1 G Chapter 1A of Part XVIII of the Act places an obligation on controllers and proposed controllers of UK RIEs to notify the FSA of acquisitions of or increases in control. Furthermore, those *persons* are required to obtain the FSA's approval before becoming a controller or increasing the level of control held (in certain circumstances).

4.2C.2 G The FSA will approve an acquisition of control if it is satisfied that the

acquisition of control by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE*.

- 4.2C.3 G If a proposed controller or controller has complied with the obligation to notify, the procedure the *FSA* will follow if it approves or does not approve of that *person* becoming a controller or increasing the level of control held is set out in section 301C of the *Act*.
- 4.2C.4 G If a controller or proposed controller has not complied with the duty to notify, the procedure the *FSA* will follow if it approves or does not approve of that *person* becoming a controller or increasing the level of control held is set out in section 301D of the *Act*.
- 4.2C.5 G If the *FSA* becomes aware of matters as a result of which it is satisfied that the criterion set out in *REC 4.2C.2G* is not met, the procedure it will follow is set out in section 301D of the *Act*.
- 4.2C.6 G The *FSA*'s internal arrangements provide for any decisions to refuse to approve a change of control of object to an existing control to be taken at an appropriately senior level.
- 4.2C.7 G If the *FSA* refuses to approve a change of control or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal*. More information on the process for referrals to the *Tribunal* is set out in *DEC 5.1*.
- 4.2C.8 G The powers the *FSA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FSA*'s refusal to approve the acquisition of control or the *FSA*'s objection to the exercise of control are set out in section 301E of the *Act*.
- 4.2C.9 G The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section 301F of the *Act*.

4.2D Suspension and removal of financial instruments from trading

- 4.2D.1 G (1) Under section 313A of the *Act*, the *FSA* may for the purpose of protecting:
- (a) the interests of investors; or
- (b) the orderly functioning of the financial markets;
- require a *UK RIE* to suspend or remove a *financial instrument* from trading.
- (2) If the *FSA* exercises this power, the *UK RIE* concerned may refer the matter to the *Tribunal*.
- 4.2D.2 G The procedure the *FSA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading is set out in

section 313B of the Act. The FSA's internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the FSA exercises this power, the UK RIE concerned and the issuer (if any) of the relevant financial instrument may refer the matter to the Tribunal. More information on the process for referrals to the Tribunal is set out in DEC 5.1.

4.2D.3 G Under section 313C(1) of the Act, if the FSA exercises its power to require a UK RIE to suspend or remove a financial instrument from trading, it must as soon as reasonably practicable:

(a) publish its decision in such manner as it considers appropriate; and

(b) inform the competent authorities of all other EEA States of its decision.

4.2D.4 G Under section 313C(2) of the Act, if the FSA receives notice from a UK RIE that the UK RIE has suspended or removed a financial instrument from trading on a regulated market operated by it, the FSA must inform the competent authorities of all other EEA States of the action taken by the UK RIE.

4.2D.5 G Under sections 313C(3) and (4) of the Act, if the FSA receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of MiFID has required the suspension of a financial instrument from trading, the FSA must require each UK RIE to suspend the instrument from trading on any regulated market or multilateral trading facility operated by the UK RIE.

4.2D.6 G Under sections 313C(3) and (5) of the Act, if the FSA receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of MiFID has required the removal of a financial instrument from trading, the FSA must require each UK RIE to remove the instrument from trading on any regulated market or multilateral trading facility operated by the UK RIE.

4.2E Information: compliance of UK RIEs with the MiFID Regulation

4.2E.1 G Under section 293A of the Act, the FSA may require a UK RIE to give such information as it reasonably requires in order to satisfy itself that the UK RIE is complying with the MiFID Regulation.

...

4.6.1 G Under section 296 of the Act (FSA's power to give directions), the FSA has the power to give directions to a recognised body to take specified steps in order to secure its compliance with the recognition requirements or other obligations in or under the Act or, in the case of a UK RIE, the MiFID implementing requirements. In the case of a UK RIE those steps may include granting the FSA access to the UK RIE's premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any regulated activity by the UK RIE for the period specified in the direction.

...

- 4.6.3 G The *FSA* is likely to exercise its power under section 296 of the *Act* if it considers that:
- (1) there has been, or was likely to be, a failure to satisfy the *recognition requirements* or there has been a failure to comply with any other obligation in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements which has serious consequences;
 - (2) compliance with the direction would ensure that the *recognition requirements*, or other obligation in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements, were satisfied; and

...

- 4.6.4 G Under section 298(7) of the *Act* (Directions and revocation: procedure), the *FSA* need not follow the consultation procedure set out in the rest of section 298 (see *REC* 4.8), or may cut short that procedure, if it considers it essential to do so. The *FSA* is likely to consider it essential to cut short the procedure if, in the absence of immediate action, there would be:
- (1) a serious risk of substantial losses to investors, particularly ~~private customers~~ retail clients; or

...

...

- 4.7.3 G The *FSA* will usually consider revoking a *recognition order* if:
- (1) the *recognised body* is failing or has failed to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements and that failure has or will have serious consequences; or
- ...
- (3) for some other reason, it would not be appropriate for the *FSA* to give a direction under section 296; or
 - (4) in the case of a UK RIE, it has not carried on the business of an investment exchange during the 12 months beginning with the day on which the recognition order took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six months ending with the day the recognition order is revoked.

- 4.7.4 G The *FSA* would be likely to consider the conditions in *REC* 4.7.3G(2) or *REC* 4.7.3G(3) to be ~~satisfied~~ triggered in the following circumstances:
- (1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements;

or

- (2) the *recognised body* does not appear to be willing to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements;
or

...

- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies the *recognition requirements* or, in the case of a UK RIE, the MiFID implementing requirements in respect of the *regulated activities* for which *recognised body* status is relevant.

4.7.5 G In addition to the relevant factors set out in *REC 4.7.4G*, ...

...

4.8.3 G In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act*, the *FSA* will have regard to all relevant information and factors including:

...

- (3) the extent to which the failure or likely failure to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements may affect the *regulatory objectives*.

...

5.2.1 G An applicant for *recognised body* status needs to demonstrate to the *FSA* that it is able to meet the *recognition requirements* and in the case of a UK RIE, the MiFID implementing requirements before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognition requirements* and in the case of a UK RIE, the MiFID implementing requirements at all times. (*Guidance on the recognition requirements* applicable to *UK recognised bodies* (and applicants) is given in *REC 2*).

...

5.2.3 G An application should:

...

- (2) be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the Act information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see *REC 5.2.3AG*) (the material specifically prescribed in section 287 or section 288);
- (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the *recognition requirements* and in the case of a UK RIE, the MiFID implementing requirements will

be met; and

...

5.2.3A G The information required pursuant to sub-sections 287(c), (d) and (e) of the Act is:

- (1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;
- (2) particulars of the persons who effectively direct the business and operations of the exchange; and
- (3) particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

...

5.2.6A G In the case of an application to become a UK RIE, under subsection 290(1B) of the Act, the application must be determined by the FSA before the end of the period of six months beginning with the date on which it receives the completed application.

...

5.2.10 G Where the FSA considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a UK RIE, the *MiFID implementing requirements*, ...

...

5.2.14 G Information and supporting documentation (see REC 5.2.4G).

(1)	Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i>) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (<u>if not contained in the information listed in REC 5.2.3AG</u>).
(2)	Details of all business to be conducted by the applicant, whether or not a <i>regulated activity</i> (<u>if not contained in the information listed in REC 5.2.3AG</u>).
...	
(5)	Details of its business plan for the first three years of operation as a <i>UK recognised body</i> (<u>if not contained in the information listed in REC 5.2.3AG</u>).
(6)	A full organisation chart and a list of the posts to be held by <i>key individuals</i> (with details of the duties and responsibilities) and the names of the <i>persons</i> proposed for these appointments when these

names are available (if not contained in the information listed in <i>REC 5.2.3AG</i>).
--

...

...

6.1.1 G The Act prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* or *overseas clearing house* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

...

(3) (in the case of an *EEA market operator*) obtain *exempt person* status by ~~being a *regulated market* under the *Investment Services Directive* exercising its passport rights under Articles 31(5) and 31(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or Article 42(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or~~

...

...

6.3.2 D ...
UK

...

6A EEA market operators in the United Kingdom

6A.1 Exercise of passport rights by EEA market operator

6A.1.1 G Under section 312A of the Act, an *EEA market operator* may make arrangements in the *United Kingdom* to facilitate access to, or use of, a *regulated market* or *multilateral trading facility* operated by it if:

(1) the operator has given its *Home State regulator* notice of its intention to make such arrangements; and

(2) the *Home State regulator* has given the *FSA* notice of the operator's intention.

6A.1.2 G In making these arrangements, the operator has *exempt person* status as respects any *regulated activity*, which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of that business.

6A.1.3 G An *EEA market operator* has *exempt person* status as respects any *regulated activity* which is carried on as a part of its business of operating a *regulated market* or *multilateral trading facility* if the operator made arrangements in the *United Kingdom* on or before 31 October 2007 to facilitate access to, or use of, that *regulated market* or *multilateral trading facility*.

6A.2 Removal of passport rights from EEA market operator

6A.2.1 G Under section 312B of the Act, the FSA may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, to facilitate access to, or use of, a regulated market, or multilateral trading facility, operated by the operator if:

- (1) the FSA has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
- (2) the FSA has first complied with sections 312B(3) to (9) of the Act.

6A.2.2 G A requirement is relevant if it is imposed:

- (1) by the operator’s Home State regulator in the implementation of MiFID or any Community legislation made under MiFID;
- (2) by provision implementing MiFID, or any Community legislation made under it, in the operator’s Home State; or
- (3) by any directly applicable Community regulation made under MiFID.

6A.2.3 G The procedure the FSA will follow if it is to exercise this prohibition power is set out in sections 313B(3) to (9) of the Act.

6A.2.4 G If the FSA exercises this prohibition power it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.

6A.2.5 G The operator’s exempt person status ceases to apply if the FSA exercises this prohibition power.

6A.2.6 G The operator’s right to make arrangements in the United Kingdom, to facilitate access to, or use of, a regulated market, or multilateral trading facility, operated by the operator may be reinstated (together with its exempt person status) if the FSA is satisfied that the contravention which led the FSA to exercise its prohibition power has been remedied.

...

Sch 2.2	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...						
<i>Notification rules for UK recognised bodies (see Notification rules for UK recognised bodies)</i>						
		REC 3.4	Key individuals and internal	Details of change	Change in key individual or standing	Immediately See REC 3.4

	organisatio n		eommittee See <u>REC</u> <u>3.4</u>	
...				
<u>REC 3.14</u>	Products, services and normal hours of operation	Proposals to change products, services or normal hours of operation See <u>REC 3.14</u>	Communica tion of proposal to members or shareholders See <u>REC</u> <u>3.14</u>	Immediately
<u>REC</u> <u>3.14A</u>	<u>Operation</u> <u>of a</u> <u>regulated</u> <u>market or</u> <u>MTF</u>	<u>Details of</u> <u>proposal to</u> <u>operate a new</u> <u>regulated</u> <u>market or MTF</u> <u>or close an</u> <u>existing</u> <u>regulated</u> <u>market or MTF</u>	<u>Communica</u> <u>tion of</u> <u>proposal to</u> <u>members or</u> <u>shareholders</u>	<u>Immediately</u>
...				
<u>REC 3.24</u>	<u>Transfers</u> <u>of</u> <u>ownership</u>	<u>Details of</u> <u>transfer of</u> <u>ownership</u>	<u>When the</u> <u>UK RIE</u> <u>becomes</u> <u>aware of the</u> <u>transfer of</u> <u>ownership</u>	<u>Immediately</u>
<u>REC 3.25</u>	<u>Significant</u> <u>breaches</u> <u>of rules</u> <u>and</u> <u>disorderly</u> <u>trading</u> <u>conditions</u>	<u>Significant</u> <u>breaches of</u> <u>rules and</u> <u>disorderly</u> <u>trading</u> <u>conditions</u>	<u>Significant</u> <u>breaches of</u> <u>rules and</u> <u>disorderly</u> <u>trading</u> <u>conditions</u>	<u>Immediately</u>
...				

Annex F

Amendments to the Decision Making manual (DEC)

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

DEC 2 Annex 1 Statutory notice procedure: Warning notice and decision notice procedure

G List of warning notices and decision notices under the Act and certain other enactments

Section of the Act	Description	Handbook reference	Decision maker
...			
280(1)/(2)	...		
<u>301C(5)/(7)</u>	<u>when the FSA is proposing/deciding to object to a change in control of a UK RIE following receipt of a notice of control</u>	<u>REC 4.2C</u>	<u>Executive procedures</u>
<u>301D(1)/(3) and (4)</u>	<u>When the FSA is proposing/deciding to object to a person who has failed to submit a notice of a UK RIE or a notice on acquiring, or increasing control, or to object to an existing controller of a UK RIE</u>	<u>REC 4.2C</u>	<u>Executive procedures</u>
<u>313B(10)/(11)</u>	<u>when the FSA has required a UK RIE to suspend or remove a financial instrument from trading and is proposing/deciding to refuse an application by the UK RIE or the issuer (if any) of that financial instrument to revoke that requirement</u>	<u>REC 4.2.4</u>	<u>Executive procedures</u>

**APPROVED PERSONS REGIME (MERCING THE CUSTOMER FUNCTIONS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 138 (General rule-making power);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA’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
Fees manual (FEES)	Annex B
Training and Competence sourcebook (TC)	Annex C
Supervision manual (SUP)	Annex D

Citation

- E. This instrument may be cited as the Approved Persons Regime (Merging the Customer Functions) Instrument 2007.

By order of the Board
22 February 2007

Annex A

Amendments to the Glossary of definitions

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

customer function ~~any of the controlled functions 21 to 27 in the table of controlled functions~~ the controlled function 30 in the table of controlled functions, described more fully in SUP 10.10.7AR.

investment adviser function ~~controlled function CF21 in the table of controlled functions~~, described more fully in SUP 10.10.7 R.

investment adviser (trainee) function ~~controlled function CF22 in the table of controlled functions~~, described more fully in SUP 10.10.11 R.

corporate finance adviser function ~~controlled function CF23 in the table of controlled functions~~, described more fully in SUP 10.10.13 R.

pension transfer specialist function ~~controlled function CF24 in the table of controlled functions~~, described more fully in SUP 10.10.14 R.

adviser on syndicate participation at Lloyd's function ~~controlled function CF25 in the table of controlled functions~~, described more fully in SUP 10.10.15 R.

customer trading function ~~controlled function CF26 in the table of controlled functions~~, described more fully in SUP 10.10.16 R.

investment management function ~~controlled function CF27 in the table of controlled functions~~, described more fully in SUP 10.10.20 R.

Annex B

Amendments to the Fees manual (FEES)

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

FEES 4 Annex 1R Activity groups, tariff bases and valuation dates applicable									
R	Part 1 ...								
	...								
	Part 2								
	...								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Activity group</th> <th style="width: 80%;">Tariff-base</th> </tr> </thead> <tbody> <tr> <td>...</td> <td>.</td> </tr> <tr> <td>A.12</td> <td> <p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions: (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p> </td> </tr> <tr> <td>A.13</td> <td> <p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p> </td> </tr> </tbody> </table>	Activity group	Tariff-base	A.12	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions: (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p>	A.13	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake one, or more, of the following customer functions (CF 30), but excluding those persons solely acting in the capacity of an investment manager or solely advising clients in connection with corporate finance business or performing functions related to these.</p> <p><u>CF21Investment adviser function;</u> <u>CF22Investment adviser (trainee) function;</u> <u>CF24Pension transfer specialist function;</u> <u>CF25Adviser on syndicate participation at Lloyd's function;</u> or <u>CF26Customer trading function.</u></p>
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		A.14	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to perform undertake the <i>customer function (CF 30)</i> who advise <i>clients in connection with corporate finance business</i> or perform related functions. following (controlled function: CF23Corporate finance adviser function.</p>
		...	

Annex C

Amendments to the Training and Competence sourcebook (TC)

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

TC 2.5 Appropriate examinations

...

2.5.5 R Time limits

- (1) ...
- (2) ...
- (3) Paragraphs (1)(b) and (c) do not apply for an *employee* who would be performing the functions in SUP 10.10.7AR (1), (2) and (6) under the customer function:
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]but for the 30-day rule, unless the individual is advising ~~private customers~~ retail clients on *packaged products* or is a *broker fund adviser*.
- (4) In (3), the '30-day rule' means the provisions of: SUP 10.10.7BR.
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]~~as appropriate.~~

Annex D

Amendments to the Supervision manual (SUP)

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

Where an entire section of the text is being deleted, the place where the change will be made is indicated and the text is not struck through.

Overseas firms: UK establishments

10.1.7 R Only the following *controlled functions* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:

- (1) ...
- (2) ...
- (3) ...
- (4) [deleted]
- (5) The customer functions.

...

Incoming EEA firms: passported activities from a branch

10.1.13 R Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) [deleted]
- (6) ~~the customer functions other than the adviser on syndicate participation at Lloyd's function~~ the customer function other than where this relates to the function in SUP 10.10.7AR (4)

Incoming EEA firms etc with top-up permission activities from a UK branch

10.1.14 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *controlled functions* apply:

- (1) ...
- (2) ...
- (3) [deleted]
- (4) the customer functions.

...

Appointed representatives

10.1.16 R The descriptions of the following *controlled functions* apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to a *firm*:

- (1) ...
- (2) the customer functions other than in the investment management function. in relation to acting in the capacity of an investment manager (see SUP 10.10.7AR (6))

...

...

10.4.5 R Controlled functions

...

<i>Customer functions</i>	21	<i>Investment adviser function</i> <u>[deleted]</u>
	22	<i>Investment adviser (trainee) function</i> <u>[deleted]</u>
	23	<i>Corporate finance adviser function</i> <u>[deleted]</u>
	24	<i>Pension transfer specialist function</i> <u>[deleted]</u>
	25	<i>Adviser on syndicate participation at Lloyd's function</i> <u>[deleted]</u>
	26	<i>Customer trading function</i> <u>[deleted]</u>
	27	<i>Investment management function</i> <u>[deleted]</u>
	<u>30</u>	<u><i>Customer function</i></u>

...

10.6.3 G The effect of SUP 10.6.2 R is that a *person* who is *approved* to perform a *governing function* (other than the *non-executive function*) will not have to be specifically approved to perform the *systems and controls function* or the *significant management function*. A *person* who is *approved* to perform a

governing function will have to be additionally approved before he can perform any of the *required functions* or the customer functions.

10.10 Customer functions

10.10.1 R *SUP 10.10 (Customer functions)* applies with respect to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.

10.10.2 G Without *SUP 10.10.1 R* the descriptions of the *customer functions* would extend to this functions wherever ~~they are~~ it was performed. The effect of *SUP 10.10.1 R* is that the descriptions ~~are~~ is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.

10.10.3 G The *customer functions* ~~have~~ has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; ~~they have~~ it has no application to banking business such as deposit taking and lending, nor to *general insurance business*.

...

The customer conditions (the second and third conditions)

10.10.4 R ~~Each~~ The *customer function* is one which will involve the *person* performing it in dealing with ~~customers, (and for the corporate finance adviser function, clients)~~ *clients*, or dealing with property of ~~customers~~ *clients*, of a *firm* in a manner substantially connected with the carrying on of a *regulated activity* of the *firm*.

10.10.5 G *SUP 10.10.4 R* gives effect to sub-sections (6) and (7) of section 59 of the *Act* (referred to in that section as the second and third conditions). ~~Customer~~ is given the meaning in the Glossary (which is not the same as the definition given in section 59 (11) of the *Act*).

...

~~Investment adviser function (CF21)~~

10.10.7 R (1) ~~The investment adviser function is the function of:~~

(a) ~~advising on investments other than a non-investment insurance contract; and~~

(b) ~~performing functions within the customer trading function in connection with advising on investments other than non-investment insurance contracts.~~

(2) ~~This function does not include:~~

- (a) ~~The *investment adviser (trainee) function*;~~
 - (b) ~~The *pension transfer specialist function*; and~~
 - (c) ~~*advising on investments in the course of carrying on the activity of providing basic advice on a stakeholder product.*~~
- (3) ~~This function does not extend to an individual who is based overseas and who, in a 12 *month* period, spends no more than 30 *days* in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function. [deleted]~~

Customer function (CF 30)

10.10.7A R The *customer function* is the function of:

- (1) *advising on investments other than a non-investment insurance contract (but not where this is advising on investments in the course of carrying on the activity of providing basic advice on a stakeholder product) and performing other functions related to this such as dealing and arranging;*
- (2) *giving advice to clients solely in connection with corporate finance business and performing other functions related to this;*
- (3) *giving advice or performing related activities in connection with pension transfers or opt-outs for retail clients;*
- (4) *giving advice to a person to become, or continue or cease to be, a member of a particular Lloyd's syndicate;*
- (5) *dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with or for, or in connection with customers where the dealing or arranging deals is governed by COB 7 (Dealing and managing);*
- (6) *acting in the capacity of an investment manager and carrying on functions connected to this.*

10.10.7B R The *customer function* does not extend to an individual who is performing the functions in SUP 10.10.7AR (1) to (2) or SUP 10.10.7AR (5) to (6) and who is based overseas and who, in a 12 *month* period, spends no more than 30 *days* in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

10.10.7C G The *FSA* would expect an individual from overseas to be accompanied on a visit to a *customer*. TC 2.5.5R (1) provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of TC 2.5.5R (1) are disapplied in these circumstances (except for an individual who gives advice to *retail clients on packaged products* or is a *broker fund adviser*). The effect of this is that such individuals need not

pass the relevant regulatory module of an appropriate examination (see TC 2.5.5R (3) and TC 2.5.5R (4)).

10.10.7D G The *customer function* in SUP 10.10.7AR (5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's* instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a firm or distributing advertisements.

10.10.7E G An individual may *advise on investments* if he or she has not yet been assessed as competent in accordance with the *rules* in the Training and Competence sourcebook (TC). Once that individual has been assessed as competent, the *firm* should record when that person became competent and no longer required supervision.

10.10.8 G [deleted]

10.10.9 G [deleted]

10.10.10 G [deleted]

10.10.11 R [deleted]

10.10.12 G [deleted]

10.10.13 R [deleted]

10.10.13A G [deleted]

10.10.14 R [deleted]

10.10.15 R [deleted]

10.10.16 R [deleted]

10.10.17 G [deleted]

10.10.18 G [deleted]

10.10.19 G [deleted]

10.10.20 R [deleted]

10.10.21 G [deleted]

10.10.22 G [deleted]

10.11 Procedures relating to approved persons

10.11.6 G Copies of Forms A, B, C, D and E may be obtained from the *FSA* website

or from the ~~Authorisation and Approvals Department~~ Individuals, CIS and Mutuels Department. To contact the ~~Authorisation and Approvals Department~~ Individuals, CIS and Mutuels Department for general enquiries:

(1) telephone 020 7066 0019; or

(2) fax 020 7066 0017; or

(3) write to:

~~Authorisation and Approvals Department~~ Individuals, CIS and Mutuels Department,

The Financial Services Authority

25 The North Colonnade

Canary Wharf

LONDON E14 5HS; or

(4) e-mail iva@fsa.gov.uk

10.14 Further Questions

10.14.2 G If the *firm* or its advisers have further questions, they should contact the FSA's ~~Individual Vetting and Approval department~~ Individuals, CIS and Mutuels Department (see SUP 10.11.6 G).

Frequently asked questions

10 Ann 1
10 Ann
1G:

	Question	Answer
	Requirements of the regime	
1	...	
2	What are the procedures for 'emergency situations'?	Individuals may perform the <i>significant influence function</i> for up to 12 weeks in any consecutive 12 <i>month</i> period without requiring approval. When it becomes clear that a <i>person</i> will be performing the function on a permanent basis, then an application for approval should be made. However, there is no provision for individuals to perform the <i>customer functions</i> on a continuing basis without approval. See SUP 10.5.5 R.

8	What should a <i>firm</i> do if it is unsure whether an individual needs approval?	The <i>firm</i> should contact the Authorisation and Approvals Department <u>Individuals, CIS and Mutuals Department</u> . See <i>SUP</i> 10.11.6 G.
16	How can we get a supply of application forms (Form A)?	These can either be ordered through the Authorisation and Approvals Department <u>Individuals, CIS and Mutuals Department</u> or obtained from the <i>FSA</i> website at www.fsa.gov.uk . There is no charge for an application form.
	...	

Activity	Paragraph 1 of the table in <i>TC</i> 2.1.4R	Controlled Function	<i>SUP</i>	
Advising and dealing, Managing, Advising (without dealing)	(a) - (c), (d) and (e), (f) - (o)	<i>investment adviser function</i> (CF21) <i>investment adviser (trainee) function</i> (CF22) <i>customer function</i> (CF 30)	10.10.7R 10.10.11R 10.10.4R	
	(d) and (e)	<i>investment management function</i> (CF27)	10.10.20R	
	(f) - (h)		<i>investment adviser function</i> (CF21)	10.10.7R
		<i>investment adviser (trainee) function</i> (CF22)	10.10.11R	
(i)		<i>corporate finance adviser function</i> (CF23)	10.10.13R	
(j) - (m)			<i>investment adviser function</i> (CF21)	10.10.7R
			<i>investment adviser (trainee) function</i> (CF22)	10.10.11R
(n)	<i>adviser on syndicate participation at Lloyd's function</i> (CF25)	10.10.15R		

	(e)	pension transfer specialist function (CF24)	10.10.14R
--	-----	--	-----------

12.2.14 G (1) ...

- (2) If a firm appoints an appointed representative who is an individual in (1), that appointed representative will also be a representative. The individual may need to be approved to perform the ~~investment adviser function or the customer trading function or both~~ customer function, (see SUP 12.6.8 G and SUP 12.6.9 G). In these circumstances, in addition to complying with the requirements of SUP 12 and other regulatory requirements, the firm should ensure that the rules for representatives in COB 5 (Advising and selling) are complied with.

...

Obligations of firms under the approved persons regime

12.6.8 G (1) Some of the *controlled functions*, as set out in SUP 10.4.1 R, apply to an appointed representative of a firm, other than an *introducer appointed representative*, just as they apply to a firm (see SUP 10.1.16 R). These are the *governing functions* and the *customer functions* ~~(other than the investment management function)~~ such as, for example, CF 21, the *investment adviser function*. As explained in SUP 10.1.16A R, ~~SUP 10.1.17G (3)~~ and SUP 10.3.2 G respectively:

(a) ...

- (b) although the ~~customer functions (other than the investment manager function)~~ apply ~~applies~~ to an appointed representative, the descriptions of the functions themselves do not extend to ~~mortgage mediation activity~~ mortgage mediation activity or *insurance mediation activity*; and

(c) ...

- (2) The *approved persons* regime applies differently to an appointed representative whose scope of appointment includes *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one person performing one of the *governing functions*. This means that only one director (or equivalent) of these appointed representatives must be approved under section 59 of the Act for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see SUP 10.1.16AR and ~~SUP 10.1.17G (3)~~).

12.7 Notification Requirements

12.7.5 R To contact the ~~Authorisation and Approvals Department (Authorisation teams)~~ Individuals, CIS and Mutuels Department:

(1) telephone on 020 7066 1000; fax on 020 7066 1099; or

(2) write to: ~~Authorisation and Approvals Department (Authorisation teams)~~ Individuals, CIS and Mutuels Department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or

(3) email appreps@fsa.gov.uk.

Part 1:

Transitional provisions applying to the Supervision manual only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
8A	SUP 10.4.1R	R	(1) ...		
			<p><i>(4) The <u>controlled functions</u> CF 21 (<u>investment adviser function</u>), CF 22 (<u>investment adviser (trainee) function</u>), CF 23 (<u>corporate finance adviser function</u>), CF 24 (<u>pension transfer specialist function</u>), CF 25 (<u>adviser on syndicate participation at Lloyd's function</u>), CF 26 (<u>customer trading function</u>) and CF 27 (<u>investment management function</u>) are subsumed in the new <u>controlled function</u> CF 30 (<u>customer function</u>) to the extent that they fall within the description of the <u>customer function</u>.</i></p>	<p><u>On 1 November 2007</u></p>	<p><u>On 1 November 2007</u></p>
8B		G	(1) ...		

			<p><u>(3) The effect of TP 8AR is that if immediately prior to 1 November 2007 a <i>person</i> was an <i>approved person</i> in relation to any of the <i>controlled functions</i> to be subsumed into the <i>customer function</i> the original grant of approval by the FSA will remain valid in relation to the <i>customer function</i> and no new approval to perform controlled function will be required.</u></p>		
...					

**NEW COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(AMENDMENT) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157 (1) (Guidance); and
 - (d) section 247 (Trust scheme rules); and
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The New Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Amendments to FSA Instruments

- F. The Annex to the Glossary (MiFID) Instrument 2007 (FSA 2007/1) is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the New Collective Investment Schemes Sourcebook (Amendment) Instrument 2007.

By order of the Board
22 February 2007

Annex A

Amendments to the Glossary of definitions

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

Amend the following definition as shown:

accumulation unit a *unit* in respect of which income is credited periodically to ~~capital under CIS 9.2.4R (Annual allocation to accumulation shares or accumulation units) or CIS 9.2.6R (Interim allocations of income).~~ capital property under COLL 6.8.3R (Income allocation and distribution).

geared scheme ~~a regulated collective investment scheme where the policies which the operator adopts or proposes to adopt mean that as a result of investment in warrants or derivatives, or through borrowing that is not temporary in nature, movements in prices of units are likely to be amplified significantly.~~

higher volatility fund ~~a regulated collective investment scheme which is:~~
(a) ~~a geared futures and options scheme, a geared scheme, or a warrant scheme;~~
(b) ~~a fund of funds scheme of which one or more of the schemes to which it is dedicated falls within (a); or~~
(c) ~~an umbrella scheme, a sub-fund of which, if it were a separate fund, would fall within (a).~~

- (a) a regulated collective investment scheme which is:
- (i) a scheme where the investment policies which the operator adopts, or proposes to adopt, mean that, as a result of making investments in warrants or derivatives, or through borrowing that is not temporary in nature, movements in the price of units are likely to be significantly amplified; or
 - (ii) an umbrella with a sub-fund that would fall within (i) if that sub-fund were a separate scheme; or
- (b) an authorised fund dedicated to units in:
- (i) a number of regulated collective investment schemes; or
 - (ii) sub-funds of one or more umbrellas that are regulated collective investment schemes;
- any one of which falls within (a).

qualifying money market fund (1) (in COLL and CASS 7) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which satisfies the following conditions:

- (a) its primary investment objective must be to maintain the net

asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;

- (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
- (c) it must provide liquidity through same day or next day settlement.

(2) For the purposes of (1)(b), a money market instrument is to be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality.

(3) For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD.

[Note: article 18(2) of the *MiFID implementing Directive*]

*permitted
immovable*

any ~~immovable~~ interest in land or buildings which falls within ~~CIS 5A.8.4R (Permitted immovable)~~ COLL 5.6.18R(2) and (6) (Investment in property) and which, being a leasehold interest or its equivalent, has an unexpired term of at least 20 years, but (excluding, in relation to an ICVC, immovable property that is necessary for the direct pursuit of its business).

sell

(in accordance with article 3(1) of the *Regulated Activities Order (Interpretation)*) (in relation to any *investment*) sell in any way, including disposing of the *investment* for valuable consideration; in this definition, "disposing" includes:

- (a) (in relation to an *investment* consisting of rights under a contract):
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;
- (b) (in relation to an *investment* consisting of rights under other arrangements) assuming the corresponding liabilities under the arrangements; and
- (c) (except in ~~CIS COLL~~) (in relation to any other *investment*) issuing or creating the *investment* or granting the rights or interests of which it consists.

- share* (1) (except in ~~CIS~~, COLL, *LR* and *DR*) the *investment*, specified in article 76 of the *Regulated Activities Order* (Shares etc), which is in summary: a share or stock in the share capital of:
- (a) any *body corporate* (wherever incorporated);
 - (b) any unincorporated body constituted under the law of a country or territory outside the *United Kingdom*.
- (2) (in ~~CIS~~ COLL):
- (a) in relation to an *ICVC*) a *share* in the *ICVC* (including both *smaller denomination shares* and *larger denomination shares*);
 - (b) (otherwise) an *investment* within (1).
- ...
- sub-fund* (a) (in relation to an *authorised fund* that is an *umbrella scheme*) a separate part of the *scheme property* of that *scheme* that is pooled separately;
- (b) (in relation to a *collective investment scheme* that is not an *authorised fund*) any part of that *scheme* that is equivalent to ~~a *sub-fund* of an *umbrella scheme*~~(a).
- UCITS scheme* ~~an *authorised fund*:~~
- (a) an *authorised fund* whose *instrument constituting the scheme* contains a statement that it is:
- (i) a *UCITS scheme*; or
 - (ii) ~~a *UCITS scheme* that complies with CIS 5;~~
 - (iii) ~~a *securities scheme*; or~~
 - (iv) ~~a *warrants scheme*; or~~
- (b) ~~which is an *umbrella scheme*~~ that is a *UCITS scheme* each of whose *sub-funds* would be a *UCITS scheme*, ~~*securities scheme* or *warrants scheme*~~ if it had a separate *authorisation order*;
- unless:
- (c) the *scheme* raises capital without promoting the *sale* of its *units* to the public within the *EEA* or any part of it; or
 - (d) the *scheme's units* under its *trust deed* or its *instrument constituting the scheme*, may be sold only to the public in non-EEA States
- warrant* (1) (except in ~~CIS~~ COLL) the *investment*, specified in article 79 of the *Regulated Activities Order* (Instruments giving entitlements to investments), which is in summary: a warrant or other instrument

entitling the holder to subscribe for a *share, debenture or government and public security*.

- (2) (in ~~€IS-COLL~~) an *investment* in (1) and any other *transferable security* (not being a nil paid or partly paid *security*) which is:
 - (i) *listed* on an *eligible securities* market; and
 - (ii) akin to an *investment* within (1) in that it involves a down payment by the then holder and a right later to surrender the instrument and to pay more *money* in return for a further *transferable security*.

Annex B

Amendments to the New Collective Investment Schemes sourcebook (COLL)

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

...

Rights of unit classes

3.3.5 R ...

- (2) For an *authorised fund* which is not an *umbrella*, the *instrument constituting the scheme* must not provide for any *class of units* in respect of which:
 - (a) the extent of the rights to participate in the *capital property*, *income property* or *distribution account* would be determined differently from the extent of the corresponding rights for any other *class of units*; or
 - (b) payments or accumulation of income or capital would differ in source or form from those of any other *class of units*.
- (3) For a scheme which is an *umbrella*, the provisions in (2)(a) apply to *classes of units* in respect of each *sub-fund* as if each *sub-fund* were a separate *scheme*.
- (4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one *class of units* and to another *class of units* that relates solely to:

...

- (c) the currency in which *prices* or values are expressed or payments made; ~~or~~
- (d) the use of *derivatives* and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a *currency class unit* and either the *base currency* of the *scheme* or any currency in which all or part of the *scheme property* is denominated or valued (in this section referred to as a “*currency class hedging transaction*”).

Hedging of currency class units

3.3.5A R A currency class hedging transaction must:

- (1) be undertaken in accordance with the requirements of *COLL 5*

(Investment and borrowing powers); and

- (2) (for the purposes of valuing *scheme property* and calculating the *price of units* in accordance with *COLL 6.3* (Valuation and pricing)) be attributed only to the *currency class units* for which it is undertaken.

Guidance on hedging of currency classes

3.3.5B G (1) Before undertaking a currency class hedging transaction for a *class of units*, the *authorised fund manager* should:

(a) ensure that the relevant *prospectus* clearly:

(i) states that such a transaction may be undertaken for the relevant *class of currency class units*; and

(ii) explains the nature of the risks that such a transaction may pose to investors in all *classes*;

(b) consult the *depository* about the adequacy of the systems and controls it uses to ensure compliance with *COLL 3.3.5AR* (Hedging of currency class units); and

(c) consult the *scheme* auditor and, where appropriate, *depository* to determine how:

(i) the transaction will be treated in the *scheme's* accounts; and

(ii) any consequential tax liability will be met;

(in each case) without prejudice to *unitholders* of *classes* other than the relevant *currency class*.

- (2) Currency class hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a *currency class unit*. The *authorised fund manager* should ensure that the total value of the hedged position does not exceed the value of the relevant *currency class units* unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the *currency class units* should not be so large as to be speculative or to constitute an investment strategy.

...

Application

5.4.1 R This section applies to an *ICVC*, the *depository* of an *authorised fund* and an *authorised fund manager* in any case where the *authorised fund* is a *UCITS*

scheme or a non-UCITS retail scheme.

- (1) ~~This section applies to a *depository* of an *authorised fund* which is a *UCITS scheme* or a *non-UCITS retail scheme*.~~
- (2) ~~*COLL 5.4.3R* (Stock lending: general) also applies to:~~
 - (a) ~~an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme*; and~~
 - (b) ~~a *manager* of an *AUT* which is a *UCITS scheme* or a *non-UCITS retail scheme*.~~
- (3) ~~*COLL 5.4.4R* (Stock lending: requirements) also applies to an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme*.~~

Permitted stock lending

- 5.4.3 R ~~The *stock lending* permitted by this section may be exercised by an An authorised fund when may only enter into a stock lending arrangement or repo contract in accordance with the rules in this section if it reasonably appears to the *ICVC* or ~~to the manager~~ to be appropriate to do so with a view to generating additional income for the *authorised fund* with an acceptable degree of risk.~~

...

Stock lending requirements

- 5.4.4 R (1) An *ICVC*, or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, may enter into a repo contract, or a stock lending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:

...

- (b) the counterparty is:
 - (i) an authorised person; or
 - (ii) a person authorised by a Home State regulator; and or
 - (iii) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
 - (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to OTC derivatives by at least one of the following federal banking supervisory authorities of the United States of

America:

(A) the Office of the Comptroller of the Currency;

(B) the Federal Deposit Insurance Corporation;

(C) the Board of Governors of the Federal Reserve System; and

(D) the Office of Thrift Supervision; and

(c) *collateral* is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the *collateral* is:

(i) acceptable to the *depository*;

(ii) adequate ~~within COLL 5.4.6 R (1);~~ and

(iii) sufficiently immediate ~~within COLL 5.4.6 R (2).~~

(2) ...

(3) (1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

...

Treatment of collateral

5.4.6 R (1) *Collateral* is adequate for the purposes of this section only if it is:

...

(c) in the form of one or more of:

...

(ii) ~~*government and public securities;*~~ or [deleted]

...

(v) *a readily realisable security;* or

(vi) *commercial paper with no embedded derivative content;* or

(vii) *a qualifying money market fund.*

(1A) Where the *collateral* is invested in *units* in a *qualifying money market fund* managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the *investing scheme* or an

associate of that authorised fund manager, the conditions in COLL 5.2.16R (Investment in other group schemes) must be complied with whether or not the investing scheme is a UCITS scheme or a non-UCITS retail scheme.

5.4.7 R There is no limit on the value of the *scheme property* which may be the subject of repo contracts or stock lending transactions within this section.

...

6.2.6 R ...

Issue and cancellation of units in multiple classes

6.2.6A R If an authorised fund has two or more classes of unit in issue, the authorised fund manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by reference to a particular valuation point, if:

(1) the depositary gives its prior agreement; and

(2) the relevant classes:

(a) have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the scheme property; or

(b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the units in each class is calculated by reference to undivided shares in the scheme property.

...

Permitted stock lending

8.4.9 R (1) The ICVC, or the *depositary* at the request of the ICVC, or the *trustee* at the request of the *manager*, may enter into a repo contract or a stock lending arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).

...

Issues and cancellations of units

8.5.10 R ...

Issue and cancellation of units in multiple classes

8.5.10A R If a qualified investor scheme has two or more classes of unit in issue, the authorised fund manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by

reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant classes:
 - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
 - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

Annex C

Amendments to the Glossary (MiFID) Instrument 2007 (FSA 2007/1)

In this Annex, striking through indicates deleted text.

...

- qualifying money market fund (1) (in CASS 7) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which satisfies the following conditions:
- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
 - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
 - (c) it must provide liquidity through same day or next day settlement.
- (2) For the purposes of (1)(b), a money market instrument is to be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality.
- (3) For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD.

[Note: article 18(2) of the MiFID implementing Directive]

...

**GLOSSARY AMENDMENT (DEFINITION OF INCOME PROPERTY)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 23 March 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Glossary Amendment (Definition of Income Property) Instrument 2007.

By order of the Board
22 March 2007

Annex

Amendments to the Glossary of definitions

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

income property

all sums considered by an *ICVC* or by a *manager*, ~~in each case~~ after consultation with the auditor, to be in the nature of income received or receivable for the account of ~~and in respect of the property of an *authorised fund*, but excluding~~ an *authorised fund*. Income property includes income from *debt securities* calculated on a *coupon* basis or an effective yield basis if, in either case, the *coupon* figure is at least equal to the effective yield figure, but it does not include any amount for the time being standing to the credit of the *distribution account*.

FEES PROVISIONS (2007/2008) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 72 (The competent authority);
 - (2) section 74(4) (The official list);
 - (3) section 99(1) (Fees);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 138 (General rule making power);
 - (6) section 156 (General supplementary powers);
 - (7) section 157(1) and (4) (Guidance);
 - (8) section 213 (The compensation scheme);
 - (9) section 223 (Management expenses);
 - (10) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (11) paragraph 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2007.

Amendments to the Handbook

- D. The modules of the FSA’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
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Fees Provisions (2007/2008) Instrument 2007.

By order of the Board
22 March 2007

Annex A

Amendments to the Glossary of definitions

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

...

- participant firm*
- (1) (except in FEES 1 and FEES 6) a *firm* or a *member* other than:
 - (a) ...
 - ...
 - (2) (in FEES 1 and FEES 6) a *firm* specified in paragraph (1) above that is not a *member*.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where text is being replaced completely, this is explained and the new text is not underlined.

...

2.2.1 R If a *person* does not pay the total amount of a periodic fee (including fees relating to *reportable transactions* to the FSA using the ~~FSA's Direct Reporting System~~ or FSA's Transaction Reporting System (see SUP 17)), FOS levy or case fee, or share of the FSCS levy, ~~before~~ on the end of the date on which it is due, under the relevant provisions in FEES 4, 5 or 6, that *person* must pay an additional amount as follows:

- (1) if the fee was not paid in full before the end of the due date, an administrative fee of £250; plus
- (2) ~~if the fee was not paid in full before the end of 15 days after the due date,~~ interest on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

2.2.2 G The FSA, (for periodic fees, FOS and FSCS levies), and FOS Ltd (for FOS case fees), expect to issue invoices at least 30 *days* before the date on which the relevant amounts fall due. FOS case fees are invoiced on a monthly basis. Accordingly it will generally be the case that a *person* will have at least 30 *days* from the issue of the invoice before an administrative fee becomes payable, ~~and at least 45 days before any interest becomes payable.~~

...

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...
(l) Under the <i>listing rules</i> , an <i>issuer</i> involved in specific events or transactions during the year where documentation is subject to a transaction vetting.	FEES 3 Annex 5R, part 1, unless the transaction would come within the definition of significant transaction under category (q) in this table, in which case the fee payable under that category.	On or before the date that relevant documentation is first submitted to the FSA.
(m) Under the <i>prospectus rules</i> , an <i>issuer</i> or <i>person</i>	FEES 3 Annex 5R, part 2, unless the transaction	On or before the date that relevant documentation

<p>requesting approval or vetting of the documents arising in relation to specific events or transactions that it might be involved in during the year.</p>	<p>would come within the <u>definition of significant transaction under category (q) in this table, in which case the fee payable under that category.</u></p>	<p>is first submitted to the <i>FSA</i>.</p>
<p>...</p>	<p>...</p>	<p>...</p>
<p>(o) <u>In connection with rules (or future rules) implementing the <i>Capital Requirements Regulations 2006</i> (including any amendments):</u> (i) <u>A firm applying to the <i>FSA</i> for a waiver or concession (or guidance on the availability of either) in connection with rules (or future rules) implementing the revised Basel Capital Accord (including any amendments); or</u> (ii) <u>a firm's <i>EEA</i> parent applying to its <i>Home State</i> regulator for the use of the Internal Ratings Based approach and the <i>Home State</i> regulator requesting the <i>FSA</i>'s assistance in accordance with the <i>Capital Requirements Regulations 2006</i>.</u></p>	<p><u>If the firm is applying to the <i>FSA</i>:</u></p> <p>(1) Unless (2) applies, <i>FEES 3 Annex 6R</i>; (2) (a) Unless (b) applies a firm submitting a second application for a waiver or concession or guidance described in column (1) within 12 months of the first application (where the fee was paid in accordance with (1)) must pay 50% of the fee applicable to it under <i>FEES 3 Annex 6R</i>, but only in respect of that second application. (b) No fee is payable by a firm in relation to a successful application for a waiver or a concession based on a minded to grant decision in respect of the same matter following a complete application for guidance in accordance with prescribed submission requirements. (c) No fee is payable by a firm applying to its <i>Home State</i> regulator where the <i>Home State</i> regulator has requested the assistance of the <i>FSA</i> and the firm falls within Group 4 of Part 1 of</p>	<p><u>Where the firm has made an application directly to the <i>FSA</i>, On or before the date the application is made, otherwise within 30 days after the <i>FSA</i> notifies the firm that its <i>EEA</i> parent's <i>Home State</i> regulator has requested the <i>FSA</i>'s assistance.</u></p>

	<u>FEES 3 Annex 6R.</u>	
...
<p><u>(q) A significant transaction, being one where:</u></p> <p><u>(i) the issuer has a market capitalisation in excess of £1.5 billion and it is a new applicant for a primary listing under the listing rules, or involved in a reverse or hostile takeover or a significant restructuring; or</u></p> <p><u>(ii) the issuer has a market capitalisation in excess of £5 billion and is involved in a class 1 transaction or a transaction requiring vetting of an equity prospectus or equivalent document; or</u></p> <p><u>(iii) the issuer is proposing a Depositary Receipt issue intended to raise more than £5 billion.</u></p>	<u>£50,000</u>	<u>On or before the date the application is made.</u>
<p><u>(r) Providers of reporting or trade matching systems applying for recognition under MiFID as an Approved Reporting Mechanism.</u></p>	<u>£20,000</u>	<u>On or before the date the application is made.</u>

...

FEES 3 Annex 4R

Application ~~and tranche~~ fees in relation to listing rules

Part 1

Fee type	Fee amount
Application Fees	
Application for <i>listing</i>	£225 plus £100 per each additional issue of securities with its own International Securities Identification Number <u>unless the fee in Category 8 of FEES 3 Annex 5R Part 2 applies.</u>
Tranches from debt issuance programmes and securitised derivative tranches	£100

Part 2

Sponsor Application Fees	
Fee type	Fee amount
Application for approval as <i>sponsor</i>	£4,000

FEES 3 Annex 5R

Document vetting and approval fees in relation to listing and prospectus rules

Part 1

Fee type		Fee amount
Transaction vetting fees Transaction vetting fees relate to specific events or transactions that an <i>issuer</i> might be involved in during the year.		
Eligibility	New applicants	£1,300
Category 1	<i>Class 1 transactions</i> <u>Listing particulars for Depository Receipts</u>	£5,700
Category 2	<u>Listing particulars for <i>specialist security issuers</i></u>	£2,500

	<i>issuers of specialist securities (including depositary receipts)</i>	
Category 3	All other vetting only transactions	£2,500
Category 4	<i>Supplementary listing particulars</i>	£500

Part 2

These fees relate to approval or vetting of the documents referred to in the second column of this table arising in relation to specific events or transactions that an *issuer, offeror* or *person* requesting admission might be involved in during the year.

Category 1	Equity <i>prospectus</i> Equivalent document referred to in <i>PR 1.2.2R(2)</i> or (3) or <i>PR 1.2.3R(3)</i> or (4) <u>Depositary Receipt prospectus</u>	£5,700
Category 2	Equity <i>registration document</i>	£4,000
Category 3	Equity <i>securities note and summary</i> Summary document referred to in <i>PR 1.2.3R(8)</i>	£2,500
Category 4	Non-equity <i>prospectus</i> or <i>base prospectus</i> (excluding <u>drawdown prospectus</u> or <u>base prospectus</u>) Equivalent document referred to in <i>PR 1.2.2R(2)</i> or (3) or <i>PR 1.2.3R(3)</i> or (4)	£2,500
Category 5	Non-equity <i>registration document</i>	£1,750
Category 6	Non-equity <i>securities note and summary</i> Summary document referred to in <i>PR 1.2.3R(8)</i>	£1,000 <u>£600</u>
Category 7	<i>Supplementary prospectus</i>	£500
Category 8	<u>Drawdown prospectus</u> or <u>base prospectus</u>	<u>£600</u>

For the purposes of categories 1-3 of this fee schedule, equity does not include convertible securities or depositary receipts. These are treated as non-equity.

Where a fee in category 8 of this fee schedule is payable, the listing application fee under FEES 3 Annex 4R Part 1 does not apply.

Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.

Certain transactions may come within the category of significant transactions and thus attract a higher fee, as set out in FEES 3.2.7R(q).

Delete FEES 3 Annex 6R and replace with the following:

FEES 3 Annex 6R

Fees payable for a waiver (or concession) or guidance on the availability of either in connection with rules implementing Basel Capital Accord

Part 1

Fees payable other than for applications for a waiver (or concession) or guidance on the availability of either to allow a firm to use the counterparty credit risk internal model method.

For *firms* falling into a group (Group 1) in which five or more significant overseas entities are applying for *guidance* on the availability of a *waiver* or concession in connection with future *rules* implementing the revised Basel Capital Accord (including any amendments), the fees in Table 1 are applicable.

Where a request for assistance regarding an Advanced or Foundation IRB application under the *Capital Requirements Regulations 2006* has been made to the *FSA* as detailed in *FEES 3.2.7R (o)*, the fees in Table 1 and Table 2 are applicable if:

- (i) the *firm* is a subsidiary of the applicant in the *United Kingdom* and has permission to accept deposits; and
- (ii) the *firm* does not fall within Group 4 of Table 2.

Table 1

Application group	Description of group	Application fee 2007/08		
		Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
Group 1	Five or more significant overseas entities applying for <i>guidance</i> on the availability of a <i>waiver</i> or concession in connection with future <i>rules</i> implementing the revised Basel Capital Accord (including any	257	222	174

	amendments)			
--	-------------	--	--	--

For all other firms the fees in Table 2 are applicable

Table 2

Application group	Description of group		Application fee 2007/08		
	Modified eligible liabilities (£m)	Number of traders as at 31 December 2006	Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
Group 2	>40,000	>200	222	190	140
Group 3	>5,000 - 40,000	26 - 200	90	69	49
Group 4	0 - 5,000	0 - 25	40	29	23

(1)	Advanced and Foundation IRB applications are applications for <i>guidance</i> regarding the Internal Ratings Based approach for credit risk. AMA applications are applications for guidance regarding the Advanced Measurement Approach for operational risk.
(2)	For the purposes of Table 2, a <i>firm's</i> A.1 or A10 tariff data for the relevant period will be used to provide the value of modified eligible liabilities or number of traders.

Part 2

Fees payable for applications for a waiver (or concession) or guidance on the availability of either to allow a firm to use the counterparty credit risk internal model method.

£52,000

...

4.1.4 G (1) ...

- (2) The provision of the ~~Direct Reporting System~~ and Transaction Reporting System facilities for *firms* reporting transactions under *SUP* 17 incurs costs to the *FSA*. ...

...

FEES 4 Annex 1R

Activity groups, tariff bases and valuation dates applicable

...

Part 2

...

Activity group	Tariff base
...	...
A.3	<p>GROSS PREMIUM INCOME AND GROSS TECHNICAL LIABILITIES</p> <p>For <i>insurers</i>:</p> <p>The amount of <i>premium</i> receivable which must be included in the documents required to be deposited under <i>IPRU(INS)</i> 9.6 in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</p>
	<p>less, <i>premiums</i> relating to <i>pension fund management</i> <u><i>pension fund management</i></u> business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk;</p>
	<p>AND the amount of gross technical liabilities (<i>IPRU(INS)</i> Appendix 9.1 - Form 15, line 19) which must be included in the documents required to be deposited under <i>IPRU(INS)</i> 9.6R in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</p> <p>less,</p> <p>the amount of gross technical liabilities relating to <i>pension</i></p>

	<i>fund management</i> pension fund management business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk.
	...
A.4	<p>ADJUSTED GROSS PREMIUM INCOME AND MATHEMATICAL RESERVES</p> <p>Except for <i>UK ISPVs</i>:</p> <p>Amount of new regular <i>premium</i> business (yearly <i>premiums</i> including reassurances ceded but excluding cancellations and reassurances accepted), times ten;</p> <p>Plus</p> <p>amounts of new single <i>premium</i> business (total including reassurances ceded but excluding cancellations and reassurances accepted). Group protection business (life and private health insurance) must be included;</p> <p>Less</p> <p><i>premiums</i> relating to pension fund management business where the <i>firm</i> owns the <i>investments</i> and there is no transfer of risk.</p> <p>For each of the above, business transacted through independent practitioners or tied agents (either single or multi-tie) will be divided by two in calculating the adjusted gross premium income;</p>
	<p>AND</p> <p>the amount of mathematical reserves (<i>IPRU(INS)</i> Appendix 9.1R Form 9 <u>14</u>, Line 23 <u>11</u>) which must be included in the documents required to be deposited under <i>IPRU(INS)</i> 9.6R in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a <i>waiver</i> or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to <i>IPRU(INS)</i> under transitional provisions relating to written concessions in <i>SUP</i>;</p> <p>Less</p> <p>mathematical reserves relating to <i>pension fund management</i> <u>pension fund management</u> business where the <i>firm</i> owns the <i>investment</i> and there is no transfer of risk.</p> <p>...</p>

...

FEES 4 Annex 2R

Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April ~~2006~~ 2007 to 31 March ~~2007~~ 2008

Part 1

...

Activity group	Fee payable	
A.1	Minimum fee (£)	150
	£ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELS)

	For a <i>firm</i> in A.1 which has a limitation on its <i>permission</i> to the effect that it may <i>accept deposits</i> from <i>wholesale depositors</i> only, the fee is calculated as above less 30%. In addition, the fee specified below is payable by UK banks and building societies. The wholesale depositors discount and permitted deductions in Part 2 of FEES 4 Annex 2R do not apply to this fee.	
...		

...

Delete existing text in FEES 4 Annex 2R Part 3 and insert new text as follows:

FEES 4 Annex 2R Part 3

Part 3		
This table shows the modifications to fee tariffs that apply to <i>incoming EEA firms</i> and <i>incoming Treaty firms</i> .		
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the firm	Minimum amount payable
A.1	80% (except for a <i>firm</i> operating on a cross-border services basis only)	£100 (except for a <i>firm</i> operating on a cross-border services basis only)
	For a <i>firm</i> operating on a cross-border services basis only, 100%	For a <i>firm</i> operating on cross-border services basis only, nil
A.3	100%	nil
A.4	25%	£100
A.7	5%	£100
A.9	5%	£100
A.10	10%	£100

A.12	10%	£100
A.13	10%	£100
A.19	10%	£100

The modifications to fee tariffs payable by an *incoming EEA firm* or an *incoming Treaty firm* apply only in relation to the relevant *regulated activities* of the *firm* which are *passported activities* or *Treaty activities* and which are carried on in the *UK*.

...

FEES 4 Annex 3R

Transaction reporting fees

Transaction reporting fees for the period from 1 April ~~2006~~ 2007 to 31 March ~~2007~~ 2008

This table shows the fees payable for ~~transaction reporting firms~~ firms using the FSA's Transaction Reporting System.

Fee type	Fee amount (including VAT)
...	
Firms using the Direct Reporting System software or the Transaction Reporting System will be additionally invoiced for:	
(a)	an initial software licence fee of £587.50 (including VAT) for users of the Direct Reporting System; [deleted]
(b)	an annual enrolment fees of £235 (including VAT) per licencee held on 1 April each year for users of the Direct Reporting System; and [deleted]
(c)	an annual enrolment fee of £235 (including VAT) per registration held on 1 April each year for using the <u>FSA's</u> Transaction Reporting System.

...

FEES 4 Annex 5R

Periodic fees for designated professional bodies payable in relation to the period 1 April ~~2006~~ 2007 to 31 March ~~2007~~ 2008

Table. Fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date

The Law Society of England & Wales	£62,860	30 April 2006
	£38,500	1 September 2006
	£50,680	30 April 2007
	[to be determined]	1 September 2007

...

...

FEES 4 Annex 6R

Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2006 2007 to 31 March 2007 2008

...

Part 1 - Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
CRESTCo Limited	£282,500	30 April 2006
	£229,000	<u>2007</u>

The International Petroleum Exchange of London Limited <u>ICE Futures Ltd</u>	£162,500	30 April 2006
	£148,500	<u>2007</u>

LIFFE Administration and Management	£400,000	30 April 2006
	£252,500	<u>2007</u>

LCH.Clearnet Limited	£352,500	30 April 2006
	£290,500	<u>2007</u>

The London Metal Exchange Limited	£230,000	30 April 2006
	£166,500	<u>2007</u>

London Stock Exchange plc	£367,500	30 April 2006
	£332,000	<u>2007</u>

virt-x Exchange Ltd	£105,000	30 April 2006
	£40,000	<u>2007</u>

EDX London Ltd	£80,000	30 April 2006
	£32,000	<u>2007</u>

NYMEX Europe Limited	£75,000	30 April 2006
	£67,500	<u>2007</u>

...
-----	-----	-----

...

5.1.4 R A firm which is exempt under *DISP* 1.1.7R is also exempt from *FEES* 5.1 to *FEES* ~~5.7~~5.6.

5.1.4A R A firm will only be exempt from *FEES* 5.7 for any given financial year if it met the conditions in *DISP* 1.1.7R on 31 March of the immediately preceding financial year.

...

6.2.8 R For the purposes of *FEES* 6.2.1R a participant firm will only be exempt from a specific costs levy or compensation costs levy for any given financial year if it met the conditions in *FEES* 6.2.1R on 31 March of the immediately preceding financial year.

...

6.5.9 R The contribution groups and tariff bases for the investment business sub-scheme (see *FEES* 6.5.7R(2)). (The contribution groups, legal bases for activity and tariff bases are the same as the correspondingly numbered activity groups and tariff bases set out in ~~part~~ Part 1 and ~~part~~ Part 2 of *FEES* 4 Ann 1R, to the extent that they are covered by the scope of the *FSCS*.)

...

FEES 6 Annex 1R

Financial Services Compensation Scheme - Management Expenses Levy Limit

This table belongs to FEES 6.4.2 R

Period	Limit on total of all management expenses levies attributable to that period (£)
1 December 2001 to 1 April 2002	£4,209,000
1 April 2002 to 31 March 2003	£13,228,000
1 April 2003 to 31 March 2004	£13,319,000
1 April 2004 to 31 March 2005	£17,590,000
1 April 2005 to 31 March 2006	£27,030,000
1 April 2006 to 31 March 2007	£37,060,000
<u>1 April 2007 to 31 March 2008</u>	<u>£37,520,000</u>

Annex C

Amendments to the Supervision manual (SUP)

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

In those rules in the Supervision manual which are listed below, the Table in each rule is amended as follows:

RMAR (...E, ~~and~~ F and J)

MLAR (... and J)

The rules referred to above are:

- SUP 16.7.8R;
- SUP 16.7.10R;
- SUP 16.7.17R;
- SUP 16.7.25R;
- SUP 16.7.27R;
- SUP 16.7.29R;
- SUP 16.7.36R;
- SUP 16.7.63R;
- SUP 16.7.66R; and
- SUP 16.7.75R.

Amend the table in each of the following rules with this new text:

RMAR (...E, ~~and~~ F and J)

MLAR (excluding J)

- SUP 16.7.12R; and
- SUP 16.7.58R;

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 23)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 141 (Insurance business rules);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 April 2007.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COB) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 23) Instrument 2007.

By order of the Board
22 March 2007

Annex

Amendments to the Conduct of Business sourcebook (COB)

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

...

Conditions relevant to distributions

- 6.12.48 R A *firm* must:
- (1) not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*; ~~and~~
 - (2) ensure that the amount distributed to *policyholders* from a *with-profits fund* is not less than the required percentage of the total amount distributed (see COB 6.12.56R); and
 - (3) if it adjusts the amounts distributed to *policyholders*, apply a proportionate adjustment to amounts distributed to shareholders so that the distribution to *policyholders* will not be less than the required percentage.

...

- 6.12.51 R ~~Subject to COB 6.12.53 R, and for the purposes of COB 6.12.48R (2), a *firm* must determine the amount to be distributed:~~
- (1) ~~in the case of a distribution, all or part of which is in the form of a transfer of assets out of the *with-profits fund*, by determining the fair *market value* of the assets that will be transferred; and~~
 - (2) ~~in the case of a distribution, all or part of which is in the form of an increase in the *regulatory value of liabilities* of the *with-profits fund*, by determining the amount by which the *regulatory value of liabilities* of the *long-term insurance fund* would increase as a result of the distribution, if (for these purposes only) the *mathematical reserves* were calculated using the long-term gilt yield, net of tax (if that is appropriate), instead of the rate of interest prescribed by INSPRU 1.2.33 R. [deleted]~~
- 6.12.52 G ~~COB 6.12.51R (2) applies, in particular, to distributions that take the form of a reversionary bonus addition to conventional *with-profits policies*. [deleted]~~
- 6.12.53 R ~~Notwithstanding COB 6.12.51 R, a *firm* may determine the amount to be distributed in a different way, if:~~

- (1) ~~it can show that that is consistent with its established practice; and~~
- (2) ~~that established practice is explained in its *PPFM*. [deleted]~~

...

6.12.56 R The required percentage referred to in *COB* 6.12.48R ~~(2)~~ is, for each *with-profits fund*:

- (1) ...

...

...

HANDBOOK ADMINISTRATION (NO 5) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force as follows:
- (1) the amendments in Annexes A (Part 1), C (Part 2), E (Part 2) and G come into force on 23 March 2007;
 - (2) the amendments in Annex M (Part 1) come into force on 1 April 2007;
 - (3) subject to (5), the amendments in Annexes A (Part 2), B, C (Parts 1 and 3), D, E (Parts 1, 3 and 4), F, H, I, J, L, M (Part 2), N, P and Q come into force on 6 April 2007;
 - (4) the amendments in Annexes A (Part 3), K and O come into force on 1 November 2007; and
 - (5) the amendments to BIPRU 4.4.53 R and BIPRU 6.5.5 R, as set out in Annex D, come into force on 1 January 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
General Prudential sourcebook (GENPRU)	Annex C
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex D
Prudential sourcebook for Insurers (INSPRU)	Annex E
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex F
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex G
Conduct of Business sourcebook (COB)	Annex H
Insurance: Conduct of Business sourcebook (ICOB)	Annex I
Mortgages: Conduct of Business sourcebook (MCOB)	Annex J
Market Conduct sourcebook (MAR)	Annex K
Training and Competence sourcebook (TC)	Annex L
Supervision manual (SUP)	Annex M
Enforcement manual (ENF)	Annex N
Recognised Investment Exchange and Recognised Clearing Houses sourcebook (REC)	Annex O

Listing Rules (LR)	Annex P
Disclosure and Transparency Rules (DTR)	Annex Q

Notes

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

Citation

- F. This instrument may be cited as the Handbook Administration (No 5) Instrument 2007.

By order of the Board
22 March 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. In Part 1, where new definitions are being inserted, the text is not underlined.

The changes detailed in Part 1 of this Annex take effect on 23 March 2007, the changes detailed in Part 2 take effect on 6 April 2007 and the changes detailed in Part 3 take effect on 1 November 2007.

Part 1

financial instrument [Delete the definitions of *financial instrument* currently in force and as made by FSA 2007/1, and replace with the following new text.]

- (1) (other than in (2) and (3)) instruments specified in Section C of Annex I of *MiFID*, that is:
 - (a) *transferable securities*;
 - (b) *money-market instruments*;
 - (c) units in collective investment undertakings;
 - (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
 - (e) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
 - (f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a *regulated market* and/or an *MTF*;
 - (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and not being for commercial purposes, which have the characteristics of other derivative financial

instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the *MiFID Regulation*);

- (h) derivative instruments for the transfer of credit risk;
- (i) financial contracts for differences; and
- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to
 - (i) climatic variables;
 - (ii) freight rates;
 - (iii) emission allowances;
 - (iv) inflation rates or other official economic statistics;
 - (v) telecommunications bandwidth;
 - (vi) commodity storage capacity;
 - (vii) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;
 - (viii) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
 - (ix) a geological, environmental or other physical variable;
 - (x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
 - (xi) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

where the conditions in Articles 38(3) and (4) of the *MiFID Regulation* are met.

[Note: article 4(1)(17) and section C of Annex I to *MiFID* and

articles 38 and 39 of the *MiFID Regulation*]

- (2) (for the purposes of *BIPRU* and *GENPRU*) an instrument listed in Section B of the Annex to the *ISD*.
- (3) (in *MAR* 1 and 2, *DTR* 1, 2 and 3 and otherwise where used in relation to the *Market Abuse Directive*) (as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):
 - (a) transferable securities as defined in the *ISD*;
 - (b) units in collective investment undertakings;
 - (c) money-market instruments;
 - (d) financial-futures contracts, including equivalent cash-settled instruments;
 - (e) forward interest-rate agreements;
 - (f) interest-rate, currency and equity swaps;
 - (g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;
 - (h) derivatives on commodities; and
 - (i) any other instrument admitted to trading on a *regulated market* in an *EEA State* or for which a request for admission to trading on such a market has been made.

market maker

[Delete the definitions of *market maker* currently in force and as made by FSA 2007/1, and replace with the following new text.]

- (1) (except in *COBS*) (in relation to an *investment*) a *person* who (otherwise than in his capacity as the *operator* of a *regulated collective investment scheme*) holds himself out as able and willing to enter into transactions of sale and purchase in *investments* of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.
- (2) (in *COBS*) a *person* who holds himself out on the financial

markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against his proprietary capital at prices defined by him.

[**Note:** article 4 (1)(8) of *MiFID*]

market operator

[Delete the definitions of *market operator* as made by FSA 2006/70 and 2007/1, and replace with the following new text.]

a *person* who manages and/or operates the business of a *regulated market*. The *market operator* may be the *regulated market* itself.

[**Note:** article 4(1)(13) of *MiFID*]

Part 2

controlled undertaking

means ...

credit quality assessment scale

the credit quality assessment scale:

(1) ...

(2) ...

(a) (in relation to an *eligible ECAI* whose recognition is for *risk weighting* purposes other than those in (2)(b)) with which of the *credit quality steps* set out in *BIPRU 3.4* (Risk weights under the standardised approach to credit risk) the relevant credit assessments of an ~~an~~ *recognised eligible ECAI* are to be associated; or

(b) (in relation to an *eligible ECAI* whose recognition is for *securitisation risk-weighting* purposes) with which of the *credit quality steps* set out in *BIPRU 9* (Securitisation) the relevant credit assessments of the ~~an~~ *recognised eligible ECAI* are to be associated.

free-standing additional voluntary contribution

an *additional voluntary contribution* to a private *pension policy* or *pension contract*, where the policy or contract is separate from, but associated with, an occupational pension scheme which is an approved arrangement under section 591(2)(h) of the Income and Corporation Taxes Act 1988 a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.

<i>funds under management</i>	(in <i>UPRU</i> and <i>GENPRU</i>) ...
<i>Home Member State</i>	(in DTR; PR and LR) ...
<i>Home State</i>	...
	(9) ...
	(a) ... <i>shares</i> ;
	(i) ...
	(ii) ...
	The definition of 'home' Member State <i>Home State</i> shall be applicable to ...
	(b) for an <i>issuer</i> not covered by (i) (a) ...
<i>IFA pensions review claim</i>	a claim arising from the sale of a personal pension scheme by a former member of <i>PIA</i> which was an independent financial adviser; in this definition:
	(a) a "personal pension scheme" includes:
	(i) a personal pension scheme <u>that was approved under Chapter IV Part XIV of ICTA 88 (when that Chapter was in force)</u> ;
	(ii) a 'section 32' buy-out policy <u>policy that was approved under Section 32 of the Finance Act 1981 (now incorporated in Chapter I Part XIV of ICTA 88)(when that Act was in force)</u> ; and
	(iii) in relation to opt-outs and non-joiners, a retirement annuity contracts <u>that was approved under Chapter III Part XIV of ICTA 88 (when sections 618 to 628 of that Chapter were in force)</u> ; and
	(b) "ICTA 88" means the Income and Corporation Taxes Act 1988.
<i>individual pension contract</i>	a <i>pension policy</i> or <i>pension contract</i> under which contributions are paid to:
	(a) a <i>personal pension scheme</i> ; or
	(b) a retirement benefits scheme, approved under section 591(2)(g) of the Income and Corporation Taxes Act

1988 for the provision of relevant benefits by means of an annuity contract made with an insurance company of the employee's choice where that contract:

- (i) was approved under section 591(2)(g) of the Income and Corporation Taxes Act 1988 (when that section was in force); or
- (ii) is a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.

issuer

...

(2B) ...

(b) ... ~~Great Britain~~ United Kingdom ...

...

linked long-term

(in relation to a ~~class of contract of insurance~~) ~~the class of contract of insurance specified in paragraph III of Part II of Schedule 1 to the Regulated Activities Order (Contracts of long term insurance), on human life or contracts to pay annuities on human life~~ a long-term insurance contract where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

parent institution in a Member State

(in accordance with Article 4(14) of the *Banking Consolidation Directive* and Article ~~2~~ 3 of the *Capital Adequacy Directive* (Definitions)) an *institution* which has an *institution* or a *financial institution* as a *subsidiary undertaking* or which holds a *participation* in such an *institution*, and which is not itself a *subsidiary undertaking* of another *institution* authorised in the same *EEA State*, or of a *financial holding company* set up in the same *EEA State*.

pension buy-out contract

~~an annuity contract which complies with paragraph (g) of section 591(2) of the Income and Corporation Taxes Act 1988.~~

a pension policy bought from an insurer using funds from:

- (a) a scheme that was approved under Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 when that chapter was in force; or
- (b) a scheme that is a registered pension scheme under

Chapter 2 of Part 4 of the Finance Act 2004.

<i>personal recommendation</i>	a recommendation which is <u>advice on investments, or advice on a home finance transaction</u> , given to a specific person.
<i>PRA</i>	<u>Position Risk Adjustment</u> : a percentage applied to a <i>position</i> as part of the process of calculating the <i>PRR</i> in relation to that <i>position</i> as set out in the tables in <i>BIPRU 7.2.44R</i> (Specific risk PRAs), <i>BIPRU 7.2.57R</i> (General market risk PRAs), <i>BIPRU 7.3.30R</i> (Simplified equity method PRAs), <i>BIPRU 7.3.34R</i> (PRAs for specific risk under the standard equity method) and <i>BIPRU 7.6.8R</i> (The appropriate PRA) and also as set out in <i>BIPRU 7.2.46R</i> to <i>BIPRU 7.2.47R</i> .
<i>retirement annuity</i>	an individual <i>pension policy</i> effected <u>before 1 July 1988</u> by a self-employed <i>person</i> or a <i>person</i> in non-pensionable employment before 1 July 1998 and which is <u>was approved</u> under Chapter III, Part XIV of the Income and Corporation Taxes Act 1988 (<u>when sections 618 to 628 of that Chapter were in force</u>).
<i>sovereign, institutional and corporate IRB exposure class</i>	...
<i>UK consolidation group</i>	[delete existing definition and replace with the following] <u>has the meaning in <i>BIPRU 8.2.4R</i> (Definition of UK consolidation group), which is in summary the group that is identified as a <i>UK consolidation group</i> in accordance with the decision tree in <i>BIPRU 8 Annex 1R</i> (Decision tree identifying a UK consolidation group); in each case only persons included under <i>BIPRU 8.5</i> (Basis of consolidation) are included in the <i>UK consolidation group</i>.</u>

Part 3

<i>personal recommendation</i>	a recommendation that is <u>advice on investments, or advice on a home finance transaction</u> , and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person. A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public. [Note: article 52 of the <i>MiFID implementing Directive</i>]
<i>trading day</i>	[Delete definition of <i>trading day</i> as made by FSA 2007/1, and amend the existing definition as shown]

(1) (in MAR 7 (Disclosure of information on certain trades undertaken outside a regulated market or MTF) and SUP 17 (Transaction reporting)) in relation to post-trade information to be made public about a share under MAR 7.2.10EU, any day of normal trading in a share on a *trading venue* in the *relevant liquid market* for this share.

[Note: article 4(2) of the *MiFID Regulation*]

(2) other than in (1), a day included in the calendar of trading days published by *FSA* at www.fsa.gov.uk;

Annex B

Amendments to Senior Management Arrangements, Systems and Controls (SYSC)

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

...

6.1 Compliance

6.1.1 R A *common platform firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* with its obligations under the *regulatory system*: and for countering the risk that the *firm* might be used to further *financial crime*.

[Note: article 13(2) of MiFID]

...

17.1.34 G ...

17.1.34 G A *firm* should analyse regularly the full effect of all its *reinsurance agreements and other risk transfer agreements (both current and proposed), including any related agreements or side-letters, on both its current and potential future financial position, and ensure that:*

- (1) all significant risks related to these agreements, and the residual risks borne by the *firm*, have been identified; and
- (2) appropriate risk mitigation techniques have been applied to manage and control the risks.

...

SYSC Appendix 1

...

App 1.1.2 G ...

- (3) for a *BCD credit institution*, the *FSA*, as *Host State regulator*, is jointly responsible with the *Home State regulator* under article ~~27~~ 41 of the *Banking Consolidation Directive* for supervision of the liquidity of a *branch* in the *United Kingdom*;

...

...

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

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

The changes detailed in Part 2 of this Annex take effect on 23 March 2007, and the changes detailed in Parts 1 and 3 take effect on 6 April 2007.

Part 1

...

2.1 Calculation of capital resources requirements

...

2.1.27 G The *MCR* gives effect to the EC Directive minimum requirements. For *general insurance business*, the EC Directive minimum is the higher of the *general insurance capital requirement* and the relevant *base capital resources requirement*. For *long-term insurance business*, the EC Directive minimum is the higher of the *long-term insurance capital requirement* and the *base capital resources requirement*. For *pure reinsurers* and *captive reinsurers* carrying on both *general insurance business* and *long-term insurance business*, however, the *base capital resources requirement* is the EC Directive required minimum only when it is higher than the sum of the *general insurance capital requirement* and the *long-term insurance capital requirement*. The *base capital resources requirement* is the minimum guarantee fund for the purposes of article 29(2) of the *Consolidated Life Directive (2002/83/EC)*(2002/83/EC), article 17(2) of the *First Non-Life Directive (1973/239/EEC)*(1973/239/EEC) as amended and article 40(2) of the *Reinsurance Directive (2005/68/EC)*. The *resilience capital requirement* is an *FSA minimum* requirement for *long-term insurance business* for *regulatory basis only life firms* that is additional to the EC minimum requirement for *long-term insurance business*.

...

2.1.46 R When a ~~A~~-UCITS investment firm ~~must only~~ calculates the *credit risk capital requirement* and the *market risk capital requirement* for the purpose of calculating the variable capital requirement under GENPRU 2.1.40R, it must do so only in respect of *designated investment business*. For this purpose *scheme management activity* is excluded from *designated investment business*.

...

2.1.48 R Table: Base capital resources requirement for a BIPRU firm

This table belongs to GENPRU 2.1.47R

<i>Firm category</i>	Amount: currency equivalent of
----------------------	--------------------------------

...	
<i>UCITS investment firm</i>	The amount specified in <i>UPRU 2.1.2R(1)</i> (Financial resources requirement). However the capital that a <i>firm</i> must hold in respect of that requirement is as defined by <i>GENPRU</i> and not as specified in that <i>rule</i> . The reference in that <i>rule</i> to initial capital does not therefore apply. <u>€125,000 plus, if the funds under management exceed €250,000,000, 0.02% of the excess, subject to a maximum of €10,000,000.</u>

...

Part 2

2.2 Capital resources

...

Simple capital issuers

2.2.7 G Parts of this section are irrelevant to a *BIPRU firm* whose *capital resources* consist of straightforward *capital instruments*. Therefore the *FSA's* Personal handbooks facility available on its website allows a *BIPRU firm* to screen out those parts of this section that are not relevant to a *simple capital issuer*. *A simple capital issuer is a BIPRU firm that meets the following conditions:*

- (1) it does not raise capital through a special purpose vehicle;
- (2) it only includes *capital instruments* in its *tier one capital resources* consisting of ordinary *shares*, *PIBS* (relevant to *building societies* only), perpetual non-cumulative preference *shares* or partnership or *limited liability partnership* capital accounts (relevant to partnerships or *limited liability partnership* only);
- (3) it only includes non-redeemable and non-convertible *capital instruments* in its *tier one capital resources*; and
- (4) (if it includes *capital instruments* in its *tier one capital resources* on which *coupons* are payable) such *coupons* are non-cumulative, non-mandatory, in cash and not subject to a *step-up*.

...

Redemption of tier one instruments

2.2.70 R A *firm* may not include a *capital instrument* in its *tier one capital resources*, unless its contractual terms are such that:

- (1) ...

- (2) ...
- ...
- (c) unless at the time of exercise of that right it complies with GENPRU 2.1.13R (the main capital adequacy rule for insurers) or the *main BIPRU firm Pillar 1 rules* and will continue to do so after redemption.

...

Core tier one capital: partnership capital account (BIPRU firm only)

2.2.93 R *Eligible partnership capital* means a partners' account:

- (1) ...
- (2) from which under the terms of the partnership agreement an amount representing capital may be withdrawn by a partner only if:
 - (a) he ceases to be partner and an equal amount is transferred to another such account by his former partners or any *person* replacing him as their partner; or
 - (b) the partnership is wound up or otherwise dissolved; ~~or wound up and either the BIPRU firm has ceased to be authorised or no longer has a Part IV permission.~~
 - (c) the BIPRU firm has ceased to be authorised or no longer has a Part IV permission.

Core tier one capital: Eligible LLP members' capital (BIPRU firm only)

2.2.94 R *Eligible LLP members' capital* means a members' account:

- (1) ...
- (2) from which under the terms of the *limited liability partnership* agreement an amount representing capital may be withdrawn by a member only if:
 - (a) he ceases to be a member and an equal amount is transferred to another such account by his former fellow members or any *person* replacing him as a member; or
 - (b) the *limited liability partnership* is wound up or otherwise dissolved; ~~or wound up and either the BIPRU firm has ceased to be authorised or no longer has a Part IV permission.~~
 - (c) the BIPRU firm has ceased to be authorised or no longer has a Part IV permission.

...

2.2.236 R A BIPRU firm calculating risk weighted exposure amounts under the IRB approach must deduct:

- (1) ...
- (2) any expected loss ~~amounts~~ amounts calculated in accordance with BIPRU 4.7.12R (Expected loss amounts under the simple risk weight approach to calculating risk weighted exposure amounts for exposures belonging to the equity exposure IRB exposure class) or BIPRU 4.7.17R (Expected loss amounts under the PD/LGD approach).

...

GENPRU 2 Annex 2R

Capital resources table for a bank

...
Deductions from the totals of tier one and two		(M)
...
...
Investments in <i>subsidiary undertakings</i> and <i>participations</i> which are not <u>excluding any amount which is already deducted as <i>Material holdings</i> or <i>Qualifying holdings</i></u>	None	(Part 2 of stage M)
...
...

...

GENPRU 2 Annex 3R

Capital resources table for a building society

...
Deductions from the totals of tier one and two		(M)
...
Investments in <i>subsidiary undertakings</i> and <i>participations</i> which are not <u>excluding any amount which is already deducted as</u>	None	

<i>Material holdings or Qualifying holdings</i>		
...

...

Part 3

TP Transitional provisions

...

TP 7 Pillar 3 capital resources

...

7.4 R *A firm may elect not to apply GENPRU 2.2.239R(2) to (4) (50:50 split between deductions from tier one capital and tier two capital) to material insurance holdings acquired before ~~1 January 2007~~ 20 July 2006. If a firm elects not to apply GENPRU 2.2.239R(2) to (4), the firm must deduct such material insurance holdings from the total of tier one capital and tier two capital.*

...

TP Transitional provisions

...

TP 8 Miscellaneous capital resources definitions for BIPRU firms

...

8.9 R Upper tier 2 instruments: Deferral of interest

A bank or BIPRU investment firm may treat a capital instrument as eligible for inclusion within stage G of the capital resources table (Upper tier two capital) if it would not otherwise be eligible if:

(1) ...

...

(5) the only reason that it does not meet GENPRU 2.2.177R(2) is because a mandatory cash coupon is payable; and

(6) the firm has the right not to pay the cash coupon if it is in breach of any of the main BIPRU firm Pillar 1 rules or to the extent that paying such coupon would result in a breach of any of those rules; and

~~(7) any amount not paid under (6) does not accumulate.~~

...

Annex D

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

- ...
3 Standardised credit risk
- ...
3.4 Risk weights under the standardised approach to credit risk
- ...
Exposures to administrative bodies and non-commercial undertakings
- 3.4.20 R *BIPRU 3.4.21R to ~~BIPRU 3.4.26~~ 3.4.26R set out the provisions applying to exposures to administrative bodies and non-commercial undertakings.*
- ...
3.4.43 G *BIPRU 3 Annex ~~2~~ 4G contains a flow diagram guide to determining the risk weight to be applied to short-term exposures to institutions according to whether a short-term credit assessment is available.*
- ...
3.4.80 R The value of the collateral must be the market value or mortgage lending value reduced as appropriate to reflect the results of the monitoring required under *BIPRU ~~3.4.64~~ 3.4.60R(4)(b) and BIPRU 3.4.66R and to take account of any prior claims on the property.*
- [Note: BCD Annex VIII Part 3 point 65]
- ...
3.5 Simplified method of calculating risk weights
- ...
3.5.5 G Table: Simplified method of calculating risk weights
- This table belongs to *BIPRU 3.5.4G*.

Exposure class	Exposure sub-class	Risk weights	Comments
...
<i>Institutions</i>	...	...	...
	<i>Exposures to an EEA institution with a head office in another EEA</i>	50%	

	<i>State</i> in the currency of that state with original effective maturity of over <u>three</u> months		
	<i>Exposures</i> to an <i>EEA institution</i> with a head office in another <i>EEA State</i> in the currency of another <i>EEA State</i> with original effective maturity of over <u>three</u> months	50%	See Notes 2 and 3.
	<i>Exposures</i> to <i>institution</i> with a head office in a country outside the <i>EEA</i> in the currency of that country with original effective maturity of over <u>three</u> months	50%	See Note 1.

...

...

4 The IRB approach

...

4.2 The IRB approach: High level material

...

4.2.3 R Where an ~~EU~~ EEA parent ~~credit~~ institution and its subsidiary undertakings or an ~~EU~~ EEA parent financial holding company and its subsidiary undertakings use the IRB approach on a unified basis, the question whether the minimum IRB standards are met is answered by considering the parent undertaking and its subsidiary undertakings together unless the firm's IRB permission specifies otherwise.

[Note: BCD Article 84(2) (part)]

4.2.10 G To the extent that a firm uses LGD estimates in its internal risk management processes that differ from the downturn LGDs used in the calculation of risk weighted ~~assets~~ assets (see BIPRU 4.3.103R), the reasons for the difference

should be documented in accordance with *BIPRU* 4.3.109R.

...

- 4.2.18 R To the extent that a *firm's IRB permission* permits this, implementation may be carried out sequentially across the different *IRB exposure classes* within the same business unit, across different business units in the same group or for the use of own estimates of *LGDs* or *conversion factors* for the calculation of *risk weights* for the *sovereign, institutional and corporate IRB exposure class*.

...

Combined use of methodologies: Basic provisions

- 4.2.26 R (1) To the extent that its *IRB permission* permits this, a *firm* permitted to use the *IRB approach* in the calculation of *risk weighted exposure amounts* and *expected loss amounts* ~~amounts~~ amounts for one or more *IRB exposure classes* may apply the *standardised approach* in accordance with this *rule*.

...

...

4.3 The IRB approach: Provisions common to different exposure classes

...

- 4.3.77 G Where a *firm* is able to demonstrate that the effect is immaterial in accordance with *BIPRU* 4.1.25R (Compliance), it may estimate average *LGDs* and *conversion factors* under the *historical average rules* in a way that does not strictly comply with *BIPRU* 4.3.94R (Default weighted average), provided the final estimates of *LGD* and *conversion factors* following the adjustments to averages of historical experience are made on the basis of *default weighted averages* for the *facility grade* or ~~pool~~ pool in question.

...

- 4.3.92 R If a *firm* uses data that is pooled across *institutions* it must be able to demonstrate to the *FSA* that:

(1) ...

...

(3) the pooled data is used consistently over time by the *firm* for its permanent estimates; ~~and~~

[**Note:** *BCD* Annex VII Part 4 point 57]

...

4.4 The IRB approach: Exposures to corporates, institutions and sovereigns

...

4.4.35 R Until 31 December 2010, *covered bonds* as set out in *BIPRU 3.4.107R* to *BIPRU 3.4.110R* may be assigned an *LGD* value of 11.25% if:

- (1) assets as set out in *BIPRU 3.4.107R*(1)(a) to (c) collateralising the *covered bonds* all qualify for *credit quality assessment step ~~one~~ one* as set out in *BIPRU 3*;

...

...

4.4.53 R Advanced IRB approach: Data maintenance

As well as complying with *BIPRU 4.3.54R* and *BIPRU 4.4.21R* (Data maintenance), a *firm* using own estimates of *LGDs* and/or *conversion factors* under the *advanced IRB approach* must collect and store:

- (1) complete histories of data on the facility ratings and *LGD* and *conversion factor* estimates associated with each ~~*rating scale*~~ *rating scale*;

...

...

4.4.62 R Table: Formulae for the calculation of *expected loss* amounts
This table belongs to *BIPRU 4.4.61R*

...

...

4.4.83 R An *institution*, an *insurance undertaking* (including an *insurance undertaking* that carries out *reinsurance*) or an export credit agency which fulfils the following conditions may be recognised as an eligible provider of *unfunded credit protection* which qualifies for the treatment set out in *BIPRU 4.4.79R*:

- (1) ...
- (2) the protection provider is regulated in a manner equivalent to the rules laid down in the *Banking Consolidation Directive* or had, at the time the credit protection was provided, a credit assessment by an ~~*recognised*~~ *eligible ECAI* which is associated with *credit quality step 3* or above under the *rules* for the *risk weighting* of *exposures* to

corporates under the standardised approach;

...

...

4.5 The IRB approach: Specialised lending exposures

...

4.5.9 R Table: Risk weights for specialised lending
This table belongs to BIPRU 4.5.98R

...

...

4.6 The IRB approach: Retail exposures

...

4.6.27 R If a *firm* derives long run average estimates of *PD* and *LGD* for *retail exposures* from an estimate of total *losses*, and an appropriate estimate of *PD* or *LGD*, the process for estimating total *losses* must meet the ~~*IRB*~~ *minimum IRB standards* for estimation of *PD* and *LGD*, and the outcome must be consistent with the concept of *LGD* as set out in BIPRU 4.3.99R (Default weighted average).

...

4.7 The IRB approach: Equity exposures

...

4.7.12 R The *expected loss ~~amounts~~ amounts* for *equity exposures* must be calculated according to the following formula:

...

...

4.7.24 R The *risk weighted exposure amount* is the potential *loss* on the *firm's equity exposures* as derived using internal value-at-risk models subject to the 99th percentile, one-tailed confidence interval of the difference between quarterly returns and an appropriate risk-free rate computed over a long-term sample period, multiplied by 12.5. The *risk weighted exposure* amounts at the individual *exposure* level must not be less than the sum of minimum *risk weighted exposure* amounts required under the *PD/LGD approach* and the corresponding *expected loss ~~amounts~~ amounts* multiplied by 12.5 and calculated on the basis of the *PD* values set out in BIPRU 4.7.18(1)R and the corresponding *LGD* values set out BIPRU 4.7.20R and BIPRU 4.7.21R.

...

4.8 The IRB approach: Purchased receivables

...

4.8.8 R If a *firm* derives long run average estimates of *PDs* and *LGDs* for *corporate exposure* purchased receivables from an estimate of *EL*, and an appropriate estimate of *PD* or *LGD*, the process for estimating total *losses* must meet the overall standards for estimation of *PD* and *LGD* set out in the ~~*IRB*~~ *minimum IRB standards*, and the outcome must be consistent with the concept of *LGD* as set out in *BIPRU* 4.3.99R.

[Note: *BCD* Annex VII Part 4 point 61]

...

4.8.20 R For hybrid pools of purchased *retail exposure* receivables where the purchasing *firm* cannot separate *exposures* secured by real estate collateral and *qualifying revolving retail exposures* from other *retail exposures*, the ~~*retail*~~ *retail risk weight* function producing the highest capital requirements for those *exposures* must apply.

[Note: *BCD* Annex VII Part 1 point 16]

...

4.10 The IRB approach: Credit risk mitigation

...

4.10.28 R Table: Minimum LGD for secured portion of exposures
This table belongs to *BIPRU* 4.10.24R - *BIPRU* 4.10.27R

...

...

4.10.36 R (1) This *rule* sets out the calculation of ~~risk weighted exposure amounts~~ *risk weighted exposure amounts* and ~~expected loss~~ *expected loss* amounts under the ~~financial collateral comprehensive method~~ *financial collateral comprehensive method* for a *firm* using the *IRB approach*.

...

...

4.10.40 R Unfunded credit protection: Minimum requirements for assessing the effect of guarantees and credit derivatives: Introduction

BIPRU 4.10.41R to BIPRU 4.10.48R set out the minimum requirements:

- (1) assessing the effect of guarantees and credit derivatives for:
 - (a) *exposures in the sovereign, institutional and corporate IRB exposure class where the advanced IRB approach is being used to calculate LGDs; and*
 - (b) ...

...

...

...

5 Credit risk mitigation

...

5.4 Financial collateral

...

5.4.35 R This table belongs to *BIPRU 5.4.34R*

<i>Credit quality step with which the credit assessment of the debt security is associated</i>	<i>Residual Maturity</i>	<i>Volatility adjustments for debt securities issued by entities described in BIPRU 5.4.2R(2)</i>	<i>Volatility adjustments for debt securities issued by entities described in BIPRU 5.4.2R(3) and (4)</i>
	
1	≤ 1 year	...	...
	≤ 1 ≤ 5 years	...	...
...

...

6 Operational risk

...

6.3 Operational risk: Basic indicator approach

...

General risk management standards

6.3.16 G In common with all *BIPRU firms*, a *firm* calculating its *ORCR* using the *basic indicator approach* is required to meet the general risk management standards set out in *SYSC 4.1.1R to SYSC 4.1.2R* and *SYSC ~~7.1.15R~~ 7.1.16R*.

6.4 Operational risk: Standardised approach

Eligibility

6.4.1 R (1) To be eligible for the *standardised approach*, a *firm* must meet the qualifying criteria set out in this *rule*, in addition to the general risk management standards set out in *SYSC 4.1.1G to SYSC 4.1.2R* and *SYSC ~~7.1.15R~~ 7.1.16R*.

...

...

6.4.17 R Eligibility for the alternative standardised approach

To be eligible to use the *alternative standardised approach*, a *firm* must meet the following conditions, in addition to the general risk management standards set out in *SYSC 4.1.1G to SYSC 4.1.2R* and *SYSC ~~7.1.15R~~ 7.1.16R*:

...

...

6.5 Operational risk: Advanced measurement approaches

...

6.5.5 Minimum standards

R A *firm* must be able to satisfy the *FSA* that it meets:

(1) the general risk management standards in *SYSC 4.1.1R to SYSC 4.1.2R* and *SYSC ~~7.1.15R~~ 7.1.16R*;

...

...

7 Market risk

7.1 Application, purpose, general provisions and non-standard transactions

...

- 7.1.12 R A *firm* may calculate the *PRR* for a *position* falling into *BIPRU 7.1.9R* by applying by analogy the *rules* relating to the calculation of the *interest rate PRR*, the *equity PRR*, the *commodity PRR*, the *foreign ~~exchange~~ currency PRR*, the *option PRR* or the *collective investment undertaking PRR* if doing so is appropriate and if the *position* and *PRR item* are sufficiently similar to those that are covered by those *rules*.
- ...
- 7.2 Interest rate PRR
- ...
- 7.2.23 G For a *foreign currency swap*, the two notional *zero-specific-risk securities* would be denominated in different currencies. A *foreign currency swap* is also included in the *foreign ~~exchange~~ currency PRR* calculation.
- ...
- 7.2.47 R A *securitisation exposures* that would be subject to a deduction treatment under the treatment set out in *GENPRU 2.2* (Capital resources) or *risk weighted* at 1250% as set out in *BIPRU 9* (Securitisation) is subject to a capital charge that is no less than that set out under those treatments. ~~Unrated~~ Unrated liquidity facilities are subject to a capital charge that is no less than that set out in *BIPRU 9*.
- ...
- 7.3 Equity PRR and basic interest rate PRR for equity derivatives
- ...
- 7.3.34 R Table: PRAs for specific risk under the standard equity method
This table belongs to *BIPRU 7.3.33R*(~~4~~)
- ...
- ...
- 7.4 Commodity PRR
- ...
- 7.4.15 G (1) ...
- ...
- (4) Step 2: if the *firm* uses the *commodity simplified ~~method~~ approach*, nothing more need be done to arrive at the notional *position*. In this case the *firm* uses the *commodity maturity ladder approach* and so subdivides each *position* in each metal into three because the level of the index is based on the prevailing one, two and three month

forward prices. Since the *future* will be settled in three months' time at the prevailing level of the index, the three *positions* for each metal will have maturities of four, five and six months respectively.

...

7.4.31 R A *firm* may use the *commodity extended maturity ladder approach* to calculate the *commodity PRR* for a particular *commodity* provided the *firm*:

(1) ...

...

(4) at least twenty *business days* before the date the *firm* uses that approach notifies the *FSA* in writing of:

(a) its intention to use the *commodity extended maturity ladder method approach*; and

(b) ...

...

7.5 Foreign currency PRR

...

7.5.18 R (1) ...

(2) The actual *foreign currency positions* of a *CIU* must be included in a *firm's foreign currency PRR* calculation under *BIPRU 7.5.2G 7.5.1R*.

...

...

7.6 Option PRR

...

7.6.7 R (1) ...

...

(3) If a *firm* does not have *commodity positions* treated under *BIPRU 7.4* or does not have *positions* in the *commodity* in question treated under *BIPRU 7.4* the restrictions in *BIPRU 7.4* that regulate when a *firm* can and cannot use a particular method of calculating the *commodity PRR* apply for the purpose of establishing the *appropriate PRR PRA* for the purposes of *BIPRU 7.6*.

...		
...		
7.7		Position risk requirements for collective investment undertakings
...		
7.7.5	R	Without prejudice to other provisions in <i>BIPRU 7.7</i> , a <i>position</i> in a <i>CIU</i> is subject to a <i>collective investment undertaking PRR</i> (<i>general market risk</i> and <i>specific risk</i>) of 32%. Without prejudice to provisions in <i>BIPRU 7.5.18R</i> (<i>Foreign currency PRR</i> for <i>CIUs</i>) or, if the <i>firm</i> has a <i>VaR model permission</i> , <i>BIPRU 7.10.44R</i> (<i>Commodity risks</i> and <i>VaR models</i>) taken together with <i>BIPRU 7.5.18R</i> , where the modified gold treatment set out in those <i>rules</i> is used, a <i>position</i> in a <i>CIU</i> is subject to a <i>securities PRR</i> requirement for <i>position risk</i> (<i>general market risk</i> and <i>specific risk</i>) and a <i>foreign-exchange <u>currency</u> PRR</i> of no more than 40%.
...		
7.10		Use of a Value at Risk Model
...		
7.10.135	R	To the extent that a <i>position</i> does not fall within the scope of a <i>firm's VaR model permission</i> the <i>firm</i> must calculate the <i>PRR</i> under the <i>standard market risk PRR rules</i> or, as applicable, those provisions as modified by the <i>firm's CAD 1 waiver</i> .
...		
7.11		Credit derivatives in the trading book
...		
7.11.16	R	(1) ...
		(2) ...
		(3) The second situation referred to in (1) is that the <i>position</i> falls under <i>BIPRU 7.11.14R(2)(a)</i> or <i>BIPRU 7.11.15</i> but there is a currency or maturity mismatch between the credit protection and the underlying asset (currency mismatches must be included in the normal reporting with respect to the <i>foreign <u>exchange</u> <u>currency</u> PRR</i>).
...		
...		
8		Group risk - consolidation
...		

8.2 Scope and basic consolidation requirements for UK consolidation groups

...

Definition of UK consolidation group

8.2.4 R *A firm's UK consolidation group means ~~the~~ a group that is identified as a UK consolidation group in accordance with the decision tree in BIPRU 8 Annex 1R (Decision tree identifying a UK consolidation group); the members of that group are:*

(a) where either Test 1A or Test 1B in BIPRU 8 Ann 1R apply, the members of the consolidation group made up of the sub-group of the parent institution in a Member State identified in BIPRU 8 Ann 1R together with any other person who is a member of that consolidation group because of a consolidation Article 12(1) relationship or an Article 134 relationship; or

(b) where either Test 1C or Test 1D in BIPRU 8 Ann 1R apply, the members of the consolidation group made up of the sub-group of the parent financial holding company in a Member State identified in BIPRU 8 Ann 1R together with any other person who is a member of that consolidation group because of a consolidation Article 12(1) relationship or an Article 134 relationship;

in each case only persons included under BIPRU 8.5 (Basis of consolidation) are included in the UK consolidation group.

...

8.9 Consolidated concentration risk requirements

...

8.9.5 R Intra-group securities financing transactions

A firm may only treat an exposure as exempt under BIPRU 10.7.4R (Intra-group securities financing transactions) as applied on a consolidated basis if the exposure is or (if that rule applied to the undertaking in question) would be exempt under BIPRU 10.7.4R on a solo basis. BIPRU 10.7.6R (Abuse of the exemption) continues to apply. The exemption is not available if the firm uses the CCR internal models method for securities financing transactions for the purpose of this chapter.

...

BIPRU 8 Ann 1R – Decision tree identifying a UK consolidation group

...

BIPRU 8 Ann 2G – Examples of how to identify a UK consolidation group

Example 1
(example of Article 125 (1))

...

BIPRU 8 Ann 3G – Examples of how to identify a non-EEA sub-group

Example 1
(example refers to BIPRU 8.3.11)

...

9 Securitisation

...

9.12 Calculation of risk-weighted exposure amounts under the IRB approach

...

9.12.22 R ...

$$(3) \quad S[x] = \begin{cases} x & \text{when } x \leq \underline{K}_{IRBR} \\ K_{IRBR} + K[x] - K[\underline{K}_{IRBR}] + (d \cdot K_{IRBR} \omega) (1 - e^{\omega(K_{IRBR} - x)/K_{IRBR}}) & \text{when } K_{IRBR} < x \end{cases}$$

...

...

10 Concentration risk requirements

...

10.5 Limits on exposures and large exposures

...

10.5.16 G A firm's CNCOM should be calculated as part of its *credit risk capital requirement* (~~CRCR~~)(CRCR) in accordance with GENPRU 2.1 (Calculation of capital resources requirements).

10.5.24 G Example of a CNCOM calculation (all numbers £000s)

This table belongs to BIPRU 10.5.23G

...
-----	-----	-----

(5)	The 'headroom' between the non-securities exposure and 25% of the amended <i>capital resources</i> is calculated.	

	Non-securities exposure <u>Non-trading book exposure</u>	200

(8)	If the excess <i>exposure</i> has been outstanding for more than 10 days, the 25% limit (£275) is taken up by £200 counterparty <i>exposure</i> and £75 securities <i>exposure</i> within the limit. These two items, when added to the items in bold below, total £460. £460 is the total net <i>large exposures</i> position as set out in (2) above.	
	(a)	...
		£130 110 x 4.00% x 200%
	(b)	...
	Additional capital requirement [(a) + (b)]	
		13.885 12.285

...

10.6 Exemptions

...

10.6.9 R Exemptions for firms using the financial collateral simple method under the standardised approach

A firm which uses the financial collateral simple method under the standardised approach may treat the following exposures as exempt from the limits described in BIPRU 10.5 (Limits on exposures and large exposures), provided that the exposures are to counterparties which are not connected counterparties:

...

10.6.14 R Exemptions for firms using the financial collateral comprehensive method

A firm which uses the financial collateral comprehensive method under the standardised approach or the IRB approach (but not the advanced IRB approach) may calculate the value of its exposures to a counterparty or to a group of connected clients (but not connected counterparties) or to connected counterparties as being the fully-adjusted value of the exposures to the counterparty or group of connected clients calculated in accordance with the financial collateral comprehensive method under BIPRU 5 (Credit risk mitigation) and, if relevant, BIPRU 4.10 (The IRB approach: Credit risk mitigation), taking into account the credit risk mitigation, volatility

adjustments and any maturity mismatch (E*) in accordance with those *rules*.

...

Exemptions for firms using own estimates of LGDs and conversion factors under the IRB approach

10.6.17 R A *firm* that uses own estimates of *LGDs* and *conversion factors* under the *IRB approach* for an *IRB exposure class* may recognise the effects described in (1) in calculating the value of its *exposures* to a *counterparty* or to a *group of connected clients* (~~but, subject to the firm's IRB permission, not connected counterparties~~) or to *connected counterparties* for the purposes of *BIPRU 10.5* (Limits on exposures and large exposures) if:

...

...

10.7 Treasury concessions and intra-group securities financing transactions

...

10.7.4 R ...

(4) (whether or not the *firm* uses the *financial collateral comprehensive approach method*) the collateral is eligible under the *financial collateral comprehensive approach method* and the *firm* meets the other minimum requirements under *BIPRU 5* (Credit risk mitigation) in relation to that collateral.

10.7.5 R The level of collateralisation referred to in *BIPRU 10.7.4R(3)* must be measured by reference to the gross amount of the *exposure* without taking into account the effects of netting and without applying volatility adjustments or adjustments for maturity mismatches under the *financial collateral comprehensive approach method*.

...

10.8 UK integrated groups

...

10.8.11 R A *firm* may only treat an *exposure* as exempt under *BIPRU 10.7.4R* (Intra-group securities financing transactions) as applied under this section if the *exposure* is or (if that *rule* applied to the *undertaking* in question) would be exempt under *BIPRU 10.7.4R* on a solo basis. *BIPRU 10.7.6R* (Abuse of the exemption) continues to apply. The exemption is not available if the *firm* uses the *CCR internal models method* for *securities financing transactions* for the purpose of this chapter.

...

BIPRU 10 Annex 1G Treatment of exposures under the integrated groups regime for concentration risk

...		
3	UKIG <i>firm</i> to an <i>undertaking</i> within its <i>residual block</i> (no WIG in place)}	<p>...</p> <ul style="list-style-type: none"> ▪ ... ▪ ... ▪ <i>BIPRU 10.5.12 R</i> (500% limit for <u>excess trading book</u> excess exposures) with the deletion of the time limit set out in <i>BIPRU 10.5.12R</i>; and ▪ ... <p>...</p>

...

11 Disclosure (Pillar 3)

...

11.3 Disclosures: Information to be disclosed; Frequency, media and location of disclosures; Verification

...

11.3.2 R (1) ...

(2) ...

(3) A *firm* using the *advanced measurement approach* for the calculation of its *operational risk capital requirement* must publicly disclose the information laid down in *BIPRU 11.6.6R*.

[**Note:** *BCD Article 145(2), CAD Article 39*]

...

11.4 Technical criteria on disclosure: General criteria

...

11.4.5 R A *firm* which is a significant subsidiary of:

- (1) an *EEA parent institution*; or
- (2) an *EEA parent financial holding company*;

must disclose the information specified in *BIPRU 11.5.3R* to *BIPRU 11.5.4R* on an individual or sub-consolidated basis.

[**Note:** *BCD Annex XII Part 1 point 5*]

...

11.5 Technical criteria on disclosure: General requirements

...

11.5.4 R A *firm* must disclose the following information regarding compliance with *BIPRU 3*, *BIPRU 4*, *BIPRU 6*, *BIPRU 7*, *BIPRU 10* and the *overall Pillar 2 rule*:

(1) ...

...

(4) the *firm's* minimum capital requirements for the following:

(a) in respect of its *trading-book* business, its:

(i) ...

(ii) *equity ~~rate~~ PRR*;

...

(b) in respect of all of its business activities, its:

(i) ...

(ii) *foreign ~~exchange~~ currency PRR*;

(5) ...

...

11.5.12 R A *firm* must disclose its *capital resources requirements* separately for each risk referred to in (1) and (2).

(1) in respect of its *trading-book* business, its:

(a) ...

(b) *equity ~~rate~~ PRR*;

- ...
- (2) in respect of all of its business activities, its:
- (a) ...
- (b) *foreign ~~exchange~~ currency PRR.*
- ...
- ...
- 11.5.14 R The following information must be disclosed by a *firm* on *operational risk*:
- (1) the approaches for the assessment of the *operational risk capital requirement* that the *firm* qualifies for; and
- ...
- ...
- 11.6 Qualifying requirements for the use of particular instruments or methodologies
- ...
- 11.6.3 R For the purposes of *BIPRU* 11.6.1R(4), where a *firm* uses its own estimates of *LGDs* or *conversion factors* for the calculation of *risk weighted exposure amounts* for *exposures* falling into the *sovereign, institutional and corporate IRB exposure class*, the *firm* must disclose those *exposures* separately from *exposures* for which it does not use such estimates.
- [**Note:** *BCD* Annex XII Part 3 point 1 (part)]
- ...
- 11.6.6 R A *firm* using the *advanced measurement approach* for the calculation of its *operational risk capital requirement* must disclose a description of the use of insurance for the purpose of mitigating the risk.
- [**Note:** *BCD* Annex XII Part 3 point 3]
- ...
13. The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions
- ...
- 13.6 CCR internal model method
- 13.6.12 R Notwithstanding *BIPRU* ~~13.3.9R~~ 13.3.10R (Combined use), a *firm* may choose not to apply the *CCR internal model method* to *exposures* that are

immaterial in size and risk.

[Note: BCD Annex III Part 6 point 1 third sentence]

...

13.6.27 R For the purposes of *BIPRU* ~~13.6.26R~~ ~~[above rule]~~ 13.6.25R:

(1) ...

(2) if all contracts in the *netting set* mature within less than one year, *effective EPE* is the average of *effective EE* until all contracts in the *netting set* mature.

...

14 Capital requirements for settlement and counterparty risk

...

14.2.18 R Treatment of expected loss amounts under the IRB approach

...

(2) unless the *firm's IRB permission* does not permit it, if the credit risk of the counterparty is adequately taken into account in the valuation of a position included in the *trading book* the *expected loss* amount for the counterparty ~~risk~~ risk exposure must be zero.

[Note: CAD Article 17(1)]

...

TP Transitional provisions

...

TP 3 Pre CRD capital requirements applying on a solo basis during 2007

...

3.18 R ...

(1) *BIPRU* 10.6.14R to *BIPRU* 10.6.26 R (Exemptions for firms using the financial collateral comprehensive ~~approach~~ method, Exemptions for firms using own estimates of LGDs and conversion factors under the IRB approach and Stress testing of credit risk concentrations) apply;

...

TP 12 Operational risk transitionals: small trading book

...

Minimum consolidated capital requirement

- 12.13 R If a *firm* applies *BIPRU* TP 12.12R to its *UK consolidation group* or *non-EEA sub-group* it must apply *BIPRU* TP 12.11R to that group in accordance with *BIPRU* TP 2.31R to *BIPRU* TP 2.33G (Consolidated capital floors for a *firm* using the *IRB approach* or *AMA* (*advanced measurement approach*)).

...

TP 22 Solo consolidation

...

- 22.6 R A *firm* with a deemed *solo consolidation waiver* under *BIPRU* TP 22.3R may not apply the treatment in *BIPRU* 2.1 (Solo consolidation) to the *subsidiary undertaking* concerned unless the conditions in *BIPRU* 2.1.4220R and to *BIPRU* 2.1.4324R (Solo consolidation – Minimum standards) are met with respect to that *subsidiary undertaking*.

...

Annex E

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

The changes detailed in Part 1, Part 3 and Part 4 to this Annex take effect on 6 April 2007 and those detailed in Part 2 take effect on 23 March 2007.

Part 1

Amend INSPRU 1.1 as follows:

...

1.1 Application

...

1.1.78 R In *INSPRU* 1.1.77R references to *technical provisions* comprise:

(1) ...

...

(3) provisions for incurred but not enough reported (~~IBNER~~ IBNER)
claims;

...

...

1.1.94 R The following *rules* and *guidance* apply to *managing agents* in accordance with *INSPRU* 8.1.4R:

(1) *INSPRU* 1.1.13G to *INSPRU* 1.1.20R (except *INSPRU*
1.1.1312R(1));

...

Part 2

Amend INSPRU 1.2 as follows:

...

1.2.5 G *Firms* to which *GENPRU* 2.1.18 R applies are required to calculate a *with-profits insurance capital component* (see *GENPRU* 2.1.38 R). In order to calculate its *with-profits insurance capital component*, such a *firm* is required to carry out additional calculations of its liabilities on a realistic basis (see *INSPRU* 1.3), which it is required to report to the *FSA* (see Forms

18,19). A *firm* that reports its liabilities on a realistic basis is referred to in *PRU GENPRU* and *INSPRU* as a *realistic basis life firm*. Such *firms* are subject to different *rules* relating to the calculation of *mathematical reserves* (see *INSPRU* 1.2.46 R and *INSPRU* 1.2.76 R) compared with those that apply to *firms* that report on a regulatory basis only (*regulatory basis only life firms*).

...

1.2.29 R For the purpose of *INSPRU* 1.2.28R(1)(c), benefits payable include:

...

1.2.30 G All cash flows are to be valued using prudent assumptions in accordance with generally accepted actuarial practice. Cash flows may be omitted from the valuation calculations provided the reserves obtained as a result of leaving those cash flows out of the calculation are not less than would have resulted had all cash flows been included (see *INSPRU* 1.2.22R (2)(b)). Provision for future expenses in respect of *with-profits insurance contracts* (excluding *accumulating with-profits policies*) may be made implicitly, using the *net premium* method of valuation (see *INSPRU* 1.2.43 R below). For the purposes of *INSPRU* 1.2.28R(2)(1)(b), any charges included in expenses should be determined in accordance with the *firm's* regulatory duty to treat its *customers* fairly.

...

1.2.78 G The prospective valuation of future cash flows to determine the amount of the *mathematical reserves* includes amounts to be received or paid under contracts of *reinsurance* in respect of *long-term insurance business* (see *INSPRU* 1.2.28R(4)(1)(d)). This applies even where those cash flows cannot be identified as related to particular *long-term insurance contracts* (see *INSPRU* 1.2.22R (3)).

Part 3

Amend *INSPRU* 3.1 as follows:

...

3.1 Market risk in insurance

...

3.1.65 R Currency risk: matching of assets and liabilities

For the purposes of *INSPRU* 3.1.53R, a *managing agent* must ensure that:

(1) *syndicate* liabilities are covered by matching *syndicate assets* as

required by ~~INSPRU 3.2.53~~ 3.1.53R; or that

(2) ...

...

Part 4

Amend *INSPRU* 6.1 as follows:

6.1 Group risk: Insurance Groups

...

6.1.34 R For the purposes of *INSPRU* 6.1, an *individual capital resources requirement* is:

(1) ...

...

(12) in respect of an *EEA ISPV*, the solo capital resources requirement that applies to the *ISPV* under the *sectoral rules* for the *insurance sector* of the ~~Member State~~ member State of the *competent authority* that authorised the *ISPV*.

...

Annex F

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

APPENDIX 3

PERMITTED LINKS

Part I - Descriptions of property by reference to which benefits may be determined

...

5. Units or other beneficial interests in -
 - (a) a scheme falling within the *UCITS Directive* or an authorised fund which is a non-UCITS retail scheme;
 - (b) a *collective investment fund* which satisfies the following conditions-
 - (i) the property of the fund comprises property of any of the descriptions in 1 to 10;
 - (ii) the units are *readily realisable* at a price which represents the net value per unit of the assets and liabilities of the fund; and
 - (iii) the price at which the units may be bought and sold is published regularly.

Annex G

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

...

VOLUME ONE

...

Chapter 1

APPLICATION RULE

The Society of Lloyd's²

...

~~²LLD applies to the Society~~

...

VOLUME TWO

Appendices to the Rules

...

Appendix 9.1

...

Instructions for completion of Form 2

...

9. The *base capital resources requirement* at line 33 must be taken from *GENPRU 2.1.2630R*. ...

9A. The individual *minimum capital requirement* at line 34 is calculated in accordance with *GENPRU 2.1.24AR* or *GENPRU 2.1.25R* and is the greater of line 33 and the sum of lines 31 and 32.

...

12. The *with-profits insurance capital component* at line 39 must be the total of the amounts shown at line ~~64~~6 on Forms 18, calculated in accordance with the *rules* in *INSPRU* 1.3.

...

Instructions for completion of Forms 11 and 12

...

5. Lines 14 and 24 of Form 11 and line 27 of Form 12 must be left blank for a *pure reinsurer* ~~that does not have permission under the Act to effect contracts of insurance.~~ which became a firm in run-off before 31 December 2006 and whose Part IV permission has not subsequently been varied to add back the regulated activity of effecting contracts of insurance.

...

Instructions for completion of Form 15

...

4. The amount shown in line 12 may only be discounted or reduced to take account of investment income:
 - (a) for *Class* 1 or 2 business; or
 - (b) in respect of annuities; or
 - (c) if the *insurer* is a *pure reinsurer* which ~~does not have permission under the Act to effect contracts of reinsurance.~~ became a firm in run-off before 31 December 2006 and whose Part IV permission has not subsequently been varied to add back the regulated activity of effecting contracts of insurance.

...

Instructions for completion of Form 40

...

12. Transfers of contracts from or to other funds or from or to another insurer must be included at line 31 or 32, with details specified in a supplementary note [Code 4004]. Where there are subfunds, inter-subfund transfer must be excluded from the total Form 40.
13. If any of the brought forward amounts differs from the corresponding carried forward amounts in the previous *return*; and the difference is not due solely to the use of a

different rate to express other currencies in sterling then the reason must be stated in a supplementary note as specified in paragraph 7 of Appendix 9.1 [Code 4001].

...

Instructions for completion of Form 41

1. Single and regular premiums must include that part of the premium which was or will be recoverable from ~~the Inland Revenue~~ H.M. Revenue and Customs.

...

Instructions for completion of Form 45

...

2. If any of the brought forward amounts differs from the corresponding carried forward amounts in the previous *return*, and the difference is not due solely to the use of a different rate to express other currencies in sterling then the reason for the difference must be stated in a supplementary note as specified in paragraph 7 of Appendix 9.1 [Code 4501].

...

Annex H

Amendments to the Conduct of Business sourcebook (COB)

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

- ...
- 6.7.23 R (1) After an increase in regular or single *premiums* or payments (including a *pension transfer*) to a *life policy*, *personal pension scheme* or *stakeholder pension scheme*, a *retail customer* has a right to cancel (see *COB 6.7.7R (4)*) in the following circumstances, unless (2) or (2A) apply ~~applies~~:
- (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
- (2) Paragraph (1) does not apply if:
- ...
(c) the variation is in respect of a *life policy* held within a *CTF*;
~~or~~
 - ~~(d) the variation is in respect of a *SIPP* that is itself a *life policy*.~~
- (2A) Paragraphs (1)(a), (b) and (d) do not apply if the variation is in respect of a *SIPP*.

...

...
COB 12 Lloyd's

12.1 Application

- ...
12.1.4 G The *Society* is itself also required to comply with the requirements of *INSPRU* which contains *rules* and *guidance* in respect of areas where *COB* provisions also have relevance. In particular *INSPRU 8.4.3R* places a requirement on the *Society* to make appropriate *byelaws* governing conduct in the *capacity transfer market*. ~~*LLD* also imposes at *LLD 9.2.3 R* a requirement on the *Society* to comply with the standards of due care and diligence set out in *CASS* in relation to the *custody* of assets that constitute *members' funds*.~~

...

Annex I

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

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

...

ICOB 1 Annex 2G

Summary of Handbook provisions for insurance intermediaries

...

	Module	Application
...		
Business Standards	...	...
	<i>INSPRU</i>	Applies in respect of (1) where the <i>insurance intermediary</i> is also an <i>insurer</i> . <u>Some requirements are relevant to an <i>insurance intermediary</i> doing (1) or (2) where it is also an <i>underwriting agent</i>.</u>
...
Specialist sourcebooks	...	...

	Lloyd's sourcebook, <i>LLD</i>	Applies only to the <i>Society</i> but some requirements are relevant to an <i>insurance intermediary</i> doing (1) or (2) where it is also an <i>underwriting agent</i>.
...

Annex J

Amendments to the Mortgages: Conduct of Business sourcebook (MCOB)

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

- 3.1.6 R ~~This chapter does not apply to a firm in relation to the communication or approval of a financial promotion of a home reversion plan to an unauthorised reversion provider.~~ [deleted]
- ...
- 9.9 Disclosure after sale: instalment home reversion plans
Provision of statements: instalment reversion plans
- ...
- Annual statement for instalment reversion plans: content
- ...
- Annual statement for instalment reversion plans: additional content if tariff of charges has changed
- ...
- Event-driven information for instalment reversion plans: material changes
- ...
- Responsibilities of reversion providers and administrators: instalment reversion plans
- ...
- Further releases: all home reversion plans
- ...

Annex K

Amendments to the Market Conduct sourcebook (MAR)

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

Insert new heading for MAR 6, as follows:

6 Systematic Internalisers

Annex L

Amendments to the Training and Competence sourcebook (TC)

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

...

2.1.4 R Activities to which TC 2 applies

	Activity	Extent of Application
...
2. <i>Employees overseeing on a day-to-day basis:</i>	<p>...</p> <p>(g) the sales to <i>customers of equity release transactions<u>lifetime mortgages</u></i> which do not involve <i>personal recommendations</i>;</p> <p>(h) the sales to <i>customers of <u>home reversion plans</u></i> which do not involve <i><u>personal recommendations</u></i>.</p>	Whole of <i>TC 2</i> applies except <i>TC 2.7</i> (Supervising).

..

2.5.1A R The time limits to which *TC 2.5.1R* applies

Activity in <i>TC 2.1.4R</i>		Examination must be passed:
...
2.	...	...
	<u>(h)</u>	<u>no time limit</u>

...

Annex M

Amendment to the Supervision manual (SUP)

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

The changes detailed in Part 1 come into effect on 1 April 2007 and those detailed in Part 2 come into effect on 6 April 2007.

Part 1

Amend SUP 16.7 as follows:

...
16.7.68 R Financial reports from a UCITS management company (see SUP 16.7.67R)

Report	<u>Return</u>	Frequency	Due date
...			
If the <i>firm's</i> ultimate parent is a <i>mixed-activity holding company</i> , the annual accounts of the <i>mixed-activity holding company</i> (Only for <i>UCITS investment firms</i>)		Annually	As soon as available after year-end
<u>Adequate information relating to the following activities:</u> <u>(1) insurance mediation activity;</u> <u>(2) mortgage mediation activity;</u> <u>(3) retail investment activity.</u>	<u>RMAR</u> <u>(excluding sections A, B, C, D, E) (Note 4)</u>	<u>Half yearly</u>	<u>For half yearly report:</u> <u>30 business days after period end</u>
<u>Adequate information relating to mortgage lending and mortgage administration.</u>	<u>MLAR</u> <u>(excluding A1, A2 and B1)</u> <u>(Note 4)</u>	<u>Quarterly</u>	<u>20 business days after quarter end</u>

Note 1: ...

...

Note 4: When given the report required, a firm must use the return indicated. The RMAR and MLAR are located at SUP 16 Annex 18AR and SUP 16 Annex 19AR respectively and have the status of rules.

Part 2

Amend SUP Schedule 4 as follows:

...

SUP Schedule 4 Powers exercised

4.1 G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>SUP</i> :		
(1)	...	
...		
(14A)	<u>Section 318(1) (Exercise of powers through Council)</u>	
...		

...

Annex N

Amendments to the Enforcement manual (ENF)

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

...

13 Discipline: Financial penalties

...

13.5 Financial penalties for late submission of reports

13.5.1 G This section sets out the *FSA's* policy and procedures in relation to financial penalties for late submission of reports. It applies to reporting by *firms* required under all *rules* (not including the *Part 6 rules*) which require *firms* to report to the *FSA* on a periodic basis. It also applies to periodic reporting by *firms* required by the provisions specified in (6) and (7). The following is a list of the main periodic reporting *rules* (the list may not be comprehensive) and those other provisions:

(1) ...

...

(5) *IPRU(INS)* 9.61 (1) to *IPRU(INS)* 9.61 (2) (The Central Fund), and *IPRU(INS)* 9.62 (1) and *IPRU(INS)* 9.62(2) (Capacity transfer market) and the *rules* set out in *IPRU(INS)* 9.48(1) and ~~LLD 15.10.2 R (Reporting by the Society)~~;

...

...

Annex O

Amendments to the Recognised Investment Exchange and Recognised Clearing Houses sourcebook (REC)

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

2.6.4 UK (1) ... subject to the requirements contained in Chapter IV of the [*MiFID Regulation*] [(see ~~REC 2.16.15EU~~ 2.6.15EU and ...)].

Annex P

Amendments to the Listing Rules (LR)

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

LR TP 1

(1)	(2) Material to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: Dates in force	(6) Handbook provision: Coming into force
1.	<p>All of the <u>Amendments to LR set out in this Annex B of the Transparency Obligations Directive (Disclosure and Transparency Rules) Instrument 2006, relating to:</u></p> <p><u>(i) DTR 4 and periodic financial reporting; and</u></p> <p><u>(ii) DTR 6 in so far as they may relate to, or are required to give effect to, amendments in (i).</u></p>		<p>All of the <u>The amendments to LR set out in this Annex described in column 2 shall have effect as follows:</u></p>	...	

9.3.9 R Where a *listed company* has taken a power in its *constitution* to impose sanctions on a shareholder who is in default in complying with a notice served under section ~~212~~ 793 of the Companies Act ~~1985~~ (Company investigations) 2006 (Notice by company requiring information about interests in its shares):

- (1) ...
- (2) ...

- (3) ...
- (4) ...
- (b) ... section ~~212~~ 793.

...

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

- (1) ...
- (2) ...
 - (a) ... sections 198 to 208 of the Companies Act 1985 (Disclosure of certain major interests in the share capital of a *company*) or DTR 5; or
 - (b) ...

...

LR 9
Annex 1

R This code imposes restrictions on dealing in the *securities* of a *listed company* beyond those imposed by law. Its purpose is to ensure that *persons discharging managerial responsibilities* and employee insiders do not abuse, and do not place themselves under suspicion of abusing, *inside information* that they may be thought to have, especially in periods leading up to an announcement of the *company's* results.

Nothing in this code sanctions a breach of section 118 of the *Act* (Market abuse), the insider dealing provisions of the Criminal Justice Act or any other relevant legal or regulatory requirements.

Definitions

- (1) In this code the following definitions, in addition to those contained in the *listing rules*, apply unless the context requires otherwise:
 - (a) ...
 - (i) the period of 60 days immediately preceding a preliminary announcement of the *listed company's* annual results or, if shorter, the period from the end of the relevant financial year up to and including the time of announcement; ~~and~~ or
 - (ii) the period of 60 days immediately preceding the publication of its annual financial report or if shorter the period from the end of the relevant financial year up to and including the time of such publication; and
 - (iii) ...
 - (iv) if the *listed company* reports on a quarterly basis (~~or publishes interim management statements~~) the period of 30 days immediately preceding the announcement of the quarterly results (~~or interim management statement~~) or, if

shorter ...

...

18.4 Continuing obligations

...

- 18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:
- (1) the requirements of this section;
 - (2) the continuing obligations set out in *LR 14.3* (Continuing obligations) and *LR 18.4.3A*; and
 - (3) ...

Annual accounts continuing obligations

- 18.4.3A R
- (1) An issuer within LR 18.4.3 R must publish its annual report and annual accounts as soon as possible after they have been approved.
 - (2) An issuer within LR 18.4.3 R must approve and publish its annual report and accounts within six months of the end of the financial period to which they relate.
 - (3) The annual report and accounts must:
 - (a) have been prepared in accordance with the issuer's national law and, in all material respects, with national accounting standards or IAS; and
 - (b) have been independently audited and reported on, in accordance with:
 - (i) the auditing standards applicable in an EEA State; or
 - (ii) an equivalent auditing standard.

Annex Q

Amendments to the Disclosure and Transparency Rules (DTR)

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

...

- 5.1.1 R (1) references to an "issuer", in relation to *shares* admitted to trading on a *regulated market*, are to an *issuer* whose *Home State* is the *United Kingdom*; ~~and~~
- (2) references to a "non-UK issuer" are to an *issuer* whose *shares* are admitted to trading on a *regulated market* and whose *Home State* is the United Kingdom other than:
- (a) ...
- (b) a company which is otherwise incorporated in, and whose principal place of business is in, the *UK* ;
- (3) references to "*shares*" are to *shares* which are:
- (a) already issued and carry rights to vote which are exercisable in all circumstances at general meetings of the *issuer* including *shares* (such as preference *shares*) which, following the exercise of an option for their conversion, event of default or otherwise, have become fully enfranchised for voting purposes; and
- (b) to trading on a *regulated* or *prescribed market* ;

- 5.1.2 R Subject to the exemption for certain third country *issuers* (DTR 5.11.6 R), a *person* must notify the *issuer* of the percentage of its voting rights ~~if the percentage of voting rights which~~ he holds as *shareholder* or through his direct or indirect holding of *financial instruments* falling within ~~DTR 5.1.3~~ 5.3.1R (or a combination of such holdings) if the percentage of those voting rights:
- (1) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100% (or in the case of a non-UK *issuer* on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) as a result of an acquisition or disposal of *shares* or *financial instruments* falling within DTR 5.3.1 R); or
- (2) ...
- and in the case of an issuer which is not incorporated in an ~~EEA state~~ EEA State a notification under (2) must be made on the basis of equivalent events and disclosed information.

...

...

5.2.1 R A *person* is an indirect holder of *shares* for the purpose of the applicable definition of *shareholder* to the extent that he is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

Case	
...	...
(e)	voting rights which are held, or may be exercised within the meaning of points (a) to (d) or, in cases (f) and (h) by a firm <u>person</u> undertaking investment management, or by a <i>management company</i> , by an undertaking controlled by that <i>person</i> ;
...	...

...

5.4.4 R A *parent undertaking* which wishes to make use of the exemption in relation to *issuers* subject to this chapter whose *shares* ~~which~~ are admitted to trading on a *regulated market* must without delay, notify the following to the *FSA*:

- (1) ...
- (2) a statement that, in the case of each such *management company* or *investment firm*, the *parent undertaking* complies with the conditions laid down in *DTR 5.4.3R*.

...

5.4.6 R A *parent undertaking* of a *management company* or of an *investment firm* must in relation to *issuers* subject to this chapter whose *shares* ~~which~~ are admitted to trading on a *regulated market* be able to demonstrate to the *FSA* on request that:

- (1) ...

...

5.4.11 R A *parent undertaking* of a third country undertaking must comply with the notification requirements in *DTR 5.4.4R* (1) and *DTR 5.4.5R* and in addition:

- (1) ...
- (2) ~~M~~must be able to demonstrate to the *FSA* ...

...

5.5.1 R An *issuer* of *shares* must, if it acquires or disposes of its own *shares*, either itself or through a *person* acting in his own name but on the *issuer's* behalf, make public the percentage of voting rights attributable to those *shares* it holds as a result of the transaction as a whole, as soon as possible, but not later than four *trading days* following such acquisition or disposal where that percentage reaches, exceeds or falls below the thresholds of 5% or 10%

of the voting rights.

...

...

5.8.9 G The FSA ~~maintains and publishes~~ provides a link to ~~on its website at www.fsa.gov.uk~~ a calendar of *trading days* through its website at www.fsa.gov.uk which applies in the *United Kingdom* for the purposes of this chapter.

...

...

5.11 Non EEA ~~s~~State issuers

...

DTR TP 1 Transitional provisions

(1)	(2) Material to which transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: Dates in force	(6) Handbook Provision: Coming into force
3	...				
3A	<u>4.1.6 and 4.2.4</u>	R	<u>An issuer whose registered office is in a third country is exempt from the requirement to prepare its consolidated accounts in accordance with IFRS or IAS prior to financial years starting on or after 1 January 2009, provided that it prepares its annual consolidated financial statements and half yearly consolidated financial statements in accordance the accounting standards of a third country and provided that one of the following conditions is met:</u> <u>(a) the notes to the financial statements contain an explicit and unreserved statement that they comply with International Financial Reporting Standards in accordance with IAS 1 Presentation of Financial Statements;</u> <u>(b) the financial statements are prepared in accordance with the Generally Accepted Accounting Principles of either Canada, Japan or the United States of America;</u> <u>(c) the financial statements are</u>	<u>6 April 2007 – issuer's financial year starting on or after 1 January 2009</u>	<u>20 January 2007</u>

			<p><u>prepared in accordance with the Generally Accepted Accounting Principles of a third country other than Canada, Japan or the United States and the following conditions are satisfied:</u></p> <p><u>(i) the third country authority responsible for the national accounting standards in question has made a public commitment, before the start of the financial year to which the financial statements relate, to converge those standards with International Financial Reporting Standards;</u></p> <p><u>(ii) that authority has established a work programme which demonstrates the intention to progress towards convergence before 31 December 2008; and</u></p> <p><u>(iii) the issuer provides evidence that satisfies the competent authority that the conditions in (i) and (ii) are met.</u></p> <p><u>[Note: article 1 of Commission Decision of 4 December 2006 (2006/891/EC)]</u></p>		
...					
8	5.8.11 <u>5.8.12</u>	R	Notwithstanding DTR 5.8.11 <u>5.8.12R</u> ...	From 20 January 2007	

**PERIMETER GUIDANCE (MiFID AND RECAST CAD SCOPE)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 1 November 2007.

Amendments to the Perimeter Guidance manual (PERG)

- C. PERG is amended in accordance with the Annex to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Perimeter Guidance (MiFID and Recast CAD Scope) Instrument 2007.

By order of the Board
22 March 2007

Annex

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, except where otherwise indicated.

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
PERG 13: Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive {to be issued}	<u>Any UK person who needs to know whether <i>MiFID</i> or the recast CAD as implemented in the UK apply to him.</u>	<u>the scope of <i>MiFID</i> and the recast CAD</u>

After PERG 12 insert the following new chapter. The inserted text is not underlined.

13. Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive

13.1 Introduction

The purpose of this chapter is to help UK firms consider:

- whether they fall within the scope of the Markets in Financial Instruments Directive 2004/39/EC ('MiFID') and therefore are subject to its requirements;
- how their existing *permissions* correspond to related MiFID concepts;
- whether the recast Capital Adequacy Directive ('recast CAD') applies to them; and
- if so, which category of investment firm they are for the purposes of the FSA transposition of the recast CAD.

Background

MiFID replaces the Investment Services Directive (ISD). It expands the kinds of business which must be regulated in the UK to include, in particular, activities relating to a wider range of commodity and other non-financial derivatives. As a result of MiFID, the categories of firm which can exercise passporting rights and the categories of business for which the passport is available are wider than under the ISD. In particular, whereas investment advice was a non-core service under ISD, it is an investment service in its own right under MiFID and so can be provided on a cross-border basis as a standalone business.

MiFID is supplemented by "Level 2 measures", Commission Regulation (EC) No 1287/2006 (*MiFID Regulation*) and Commission Directive 2006/73/EC (*MiFID Implementing Directive*). These implementing measures amplify and supplement certain of the concepts and requirements specified in MiFID.

MiFID scope

The scope aspects of MiFID are primarily addressed through the *Regulated Activities Order* ('RAO') and *PERG 2* focuses on the scope of *regulated activities* under the RAO and includes materials on the effect that MiFID has on the RAO. This chapter focuses more on the underlying MiFID investment services and activities, as well as the exemptions.

Where a firm's regular occupation or business is providing one or more *investment services* to third parties or performing investment activities in relation to MiFID financial instruments on a professional basis, it is a firm to which MiFID applies unless it is exempt.

Broadly, the exemptions from MiFID are likely to be relevant to insurers, group treasurers, professional firms to which Part XX of the *Act* applies, many *authorised professional firms*, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders. The exemptions are subject to conditions and limitations described in more detail below (see PERG 13.5).

The Treasury's implementation of the article 3 MiFID exemption is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital firms. The Treasury legislation enables firms falling within the scope of the exemption to elect to be subject to the requirements of MiFID and thereby acquire passport rights (see Q52).

In each case, it will be for firms and individuals to consider their own circumstances and consider whether they fall within the relevant exemptions. A firm which takes the benefit of one or more of the exemptions in article 2 or 3 MiFID may nevertheless require authorisation under the *Act* (see PERG 2).

In addition to investment firms, MiFID is also relevant to credit institutions providing investment services or performing investment activities (see Q5) and UCITS management companies to which article 5.4 *UCITS Directive* applies (in other words *UCITS investment firms*).

This guidance is concerned with the scope of MiFID and does not address the question of whether an investment firm that falls within the scope of MiFID is providing a MiFID investment service as opposed to an investment activity.

Recast Capital Adequacy Directive (recast CAD)

Investment firms subject to MiFID, including those who fall within the article 3 MiFID exemption but opt not to take advantage of it, and *UCITS investment firms* are subject to the requirements of the recast CAD. There are special provisions for certain commodities firms as well as firms whose MiFID investment services are limited to giving investment advice or receiving and transmitting client orders or both and who are not permitted to hold client money or securities.

Under the UK implementation of the recast CAD, the level of capital an investment firm subject to MiFID requires is determined by the type of investment services and activities it provides or performs, its scope of permission and any limitations or requirements attaching to that permission (see PERG 13.6). A firm relying on an article 2 or 3 MiFID exemption is not subject to the recast CAD.

How does this document work?

This document is made up of Q&As divided into the following sections:

- General (PERG 13.2);
- Investment services and activities (PERG 13.3);
- Financial instruments (PERG 13.4);
- Exemptions from MiFID (PERG 13.5);
- The recast CAD (PERG 13.6); and
- Flow charts, tables and lists (PERG 13 Annexes 1, 2, 3 and 4).

We have also included guidance in the form of flow charts to help firms decide whether MiFID and the recast CAD apply to them as well as permission maps indicating which regulated activities and *specified investments* correspond to MiFID investment services, activities and MiFID financial instruments (see PERG 13 Annexes 1, 2, 3 and 4).

Article and recital references are to MiFID (Level 1 measures) unless otherwise stated. References to categories of MiFID investment services and activities and MiFID financial instruments adopt the structure of Annex 1 MiFID: for example, A1 refers to "reception and transmission of orders in relation to one or more financial instruments" and C1 relates to "transferable securities".

13.2 General

Q1. Why does it matter whether or not we fall within the scope of MiFID?

Depending on whether or not you fall within the scope of MiFID, you may be subject to:

- domestic legislation implementing MiFID (for example, FSA rules);
- directly applicable legislation made by the European Commission (the *MiFID Regulation*); and
- domestic legislation implementing the recast CAD (see PERG 13.6).

The question is also relevant to whether you can exercise passporting rights in relation to investment services or activities - only firms to which MiFID applies can do so.

Q2. Is there anything else we should be reading?

The Q&As complement, and should be read in conjunction with, the relevant legislation and the general guidance on regulated activities, which is in chapter 2 of our Perimeter Guidance manual ('PERG'). The Q&As relating to the recast CAD should be read in conjunction with the relevant parts of our General Prudential sourcebook ('GENPRU') and the Prudential sourcebook for banks, building societies and investment firms ('BIPRU').

More generally, you should be aware that the recast CAD forms part of the Capital Requirements Directive ('CRD'), which also amends the Banking Consolidation Directive ('BCD').

Q3. How much can we rely on these Q&As?

The answers given in these Q&As represent the FSA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of MiFID and the recast CAD affect the regulatory position of any particular person will depend on his individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As are not a substitute for reading the relevant provisions in MiFID, the recast CAD, the MiFID implementing measures and The Treasury's implementing legislation, including the statutory instruments listed in Annex 4 ('Principal Statutory Instruments relating to MiFID scope issues').

Moreover, although MiFID and the recast CAD set out most of the key provisions and definitions relating to scope, some provisions may be subject to further legislation by the

European Commission. In addition to FSA guidance, MiFID's scope provisions may also be the subject of guidance or communications by the European Commission or the Committee of European Securities Regulators ('CESR'). Similarly, recast CAD provisions may be the subject of guidance or communications by the European Commission or the Committee of European Banking Supervisors ('CEBS').

Q4. We provide investment services to our clients – does MiFID apply to us?

Yes if you are:

- an “investment firm” and the exemptions in MiFID do not apply to you; or
- a “tied agent” as defined by MiFID.

If you are a non-EEA firm, for example the UK branch of a US firm, MiFID does not apply to you. However, if MiFID would have applied to you if you had been incorporated or formed in the EEA, you will be a *third country investment firm* under the FSA's rules. As a result, certain MiFID based requirements will apply to you.

See the flow charts in Annex 1 for further information and PERG 13.5 for guidance relating to exemptions. See Q7 and 8 for guidance on whether you are an investment firm and Q11 for guidance relating to tied agents.

Q5. We are a credit institution. How does MiFID apply to us?

If you are an EEA credit institution, article 1.2 MiFID provides that selected MiFID provisions apply to you, including organisational and conduct of business requirements, when you are providing investment services to your clients or performing investment activities. In our view, MiFID will apply when you are providing ancillary services in conjunction with investment services. Where you provide ancillary services on a standalone basis, MiFID will not apply in relation to those services. Article 1.2 MiFID is reflected in paragraph (2) of the *Handbook* definition of “MiFID investment firm”.

Q6. We are a UCITS management company that, in addition to managing unit trusts and investment companies, provides portfolio management services to third parties. How does MiFID apply to us?

If you are the management company of a *UCITS scheme* with a permission to manage investments including MiFID financial instruments pursuant to article 5.3 *UCITS Directive*, certain MiFID provisions apply to you when you provide investment services to third parties (see article 5.4 *UCITS Directive*). These include initial capital endowment, organisational and conduct of business requirements. You are a *UCITS investment firm* for the purposes of the FSA Handbook. Article 5.4 *UCITS Directive* is reflected in paragraph (3) of the *Handbook* definition of “MiFID investment firm”.

Q7. We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?

If your regular occupation or business includes the provision of investment services in relation to MiFID financial instruments to others on a professional basis, you are an investment firm and require *authorisation* unless you benefit from an exemption or are a tied agent (see Q11).

Where you are a firm with more than one business, you can still be an investment firm. We expect that the vast majority of firms which were subject to the requirements of the ISD are subject to MiFID requirements where they continue to provide the same investment services. We also expect some firms that were not subject to the ISD (for example, certain commodity dealers) to be investment firms for the purposes of MiFID and subject to MiFID based requirements. What amounts to a “professional basis” depends on the individual circumstances and in our view relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.

Q8. We do not provide investment services to others but we do buy and sell financial instruments (for example, shares and derivatives) on a regular basis. Are we an investment firm for the purposes of MiFID?

Yes, if you are trading in MiFID financial instruments for your own account as a regular occupation or business on a “professional basis”. You can be an investment firm even if you are not providing investment services to others; this is a change from the position under the ISD, arising from the fact that you are also an investment firm under MiFID where you perform investment activities on a professional basis.

Even if you are an investment firm you may still be able to rely on one or more exemptions in article 2 MiFID, in which case MiFID will not apply (see PERG 13.5 and in particular article 2.1(d) (see Q40 and Q41)), 2.1(i) (see Q44 and Q45) and 2.1(k) (see Q46).

Q9. We are a credit institution that does not provide investment services to customers but we do have a treasury function. Are we subject to MiFID?

Not necessarily. Although you may be dealing on own account in relation to MiFID financial instruments, you may be able to rely upon the exemption in article 2.1(d) MiFID (see Q40). In our view, credit institutions can rely on exemptions in article 2 where they meet the conditions of the exemptions.

Q10. Is there any change to the “by way of business” test in domestic legislation?

There is no change to article 3 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001 as part of MiFID implementation by The Treasury, so the domestic test for whether you are carrying on ‘regulated activities by way of business’ and require *authorisation* remains unchanged.

Q11. How will we know whether we are a tied agent (article 4.1(25))?

A tied agent under MiFID is a similar concept to an *appointed representative* under the *Act*. A tied agent does not require authorisation for the purposes of MiFID, just as an *appointed representative* does not require *authorisation* under the *Act*. In our view, you will only be a tied agent if your principal is an investment firm (including a credit institution) to which MiFID applies. So, if you act for a principal that is subject to an exemption in either article 2 or 3 MiFID (as implemented by The Treasury – see Q48 and Q49), you are not a tied agent for the purposes of MiFID although you may be an *appointed representative* for domestic purposes. You will still not require authorisation under MiFID, either because you are not performing investment services and activities or, if you are, because you fall within an exemption in article 2 or 3 MiFID.

Assuming your principal is an investment firm to which MiFID applies, if you are registered as an *appointed representative* on the FSA Register and carry on the activities of *arranging (bringing about) deals in investments* or *advising on investments*, in either case in relation to MiFID financial instruments, you are likely to be a tied agent for the purposes of article 4.1(25).

It is possible for a UK representative to be a tied agent of an incoming EEA firm, in which case if the representative is established in the UK it will also be a branch of its principal. However, it is not possible for a tied agent to provide *investment services* on behalf of more than one investment firm to which MiFID applies.

Further material on *appointed representatives* and tied agents is contained in chapter 12 of our Supervision Manual ('SUP').

13.3 Investment Services and Activities

Q12. Where do we find a list of MiFID services and activities?

In Section A of Annex 1 to MiFID. There are eight investment services and activities in Section A (A1 to A8), four of which are further defined in article 4 MiFID. Those activities that are further defined are:

- investment advice (article 4.1(4) MiFID);
- execution of orders on behalf of clients (article 4.1(5) MiFID);
- dealing on own account (article 4.1(6) MiFID); and
- portfolio management (article 4.1(9) MiFID).

A further provision relating to investment advice is contained in article 52 of the *MiFID implementing Directive*.

Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? (A1 and recital 20)

Under the general definition of this service, you only provide the service if you are both receiving and transmitting orders. For example, this would be the case if you transmit subscription or redemption orders received from a client to the operator of a collective investment undertaking or transmit buy or sell orders to agency brokers.

This service though is also extended to include arrangements that bring together two or more investors, thereby bringing about a transaction between those investors. This meaning may be relevant, for example, to corporate finance firms. It could include, in our view, negotiating terms for the acquisition or disposal of investments on behalf of a corporate client with a potential buyer or seller, for example as part of a merger or acquisition. You may be providing this service even though, having brought the investors together, the actual offer or acceptance is not communicated through you.

The extended meaning of the service only applies if the firm brings together two or more investors and a person issuing new securities, including a collective investment undertaking, should not be considered to be an ‘investor’ for this purpose. This limitation does not apply though to the general definition of the service. Accordingly whilst an arrangement whereby a

person, on behalf of a client, receives and transmits an order to an issuer will, in our view, amount to reception and transmission, one in which it simply brings together an issuer with a potential source of funding for investment in a company, will not.

If you are party to a transaction as agent for your client or commit your client to it, you may be doing more than receiving and transmitting orders and will need to consider whether you are providing the investment service of executing orders on behalf of clients.

Q14. We are introducers who merely put clients in touch with other investment firms – are we receiving and transmitting orders?

No. If all you do is introduce others to investment firms so that they can provide investment services to those clients, this in itself does not bring about a transaction and so will not amount to receiving and transmitting orders. But if you are a person who does more than merely introduce, for example an introducing broker, you are likely to be receiving orders on behalf of your clients and transmitting these to clearing firms and therefore may fall within the scope of MiFID.

Q15. When might we be executing orders on behalf of clients? (A2, article 4.1(5) and recital 21)

When you are acting to conclude agreements to buy or sell one or more MiFID financial instruments on behalf of clients. You will be providing this investment service if you participate in the execution of an order on behalf of a client, as opposed simply to arranging the relevant deal. In our view, you can execute orders on behalf of clients either when dealing in investments as agent (by entering into an agreement in the name of your client or in your own name, but on behalf of your client) or, in some cases, by dealing in investments as principal (for example by back-to-back or riskless principal trading).

Q16. What is dealing on own account? (A3 and article 4.1(6))

Dealing on own account is trading against proprietary capital resulting in the conclusion of transactions in one or more MiFID financial instruments. In most cases, if you were a firm who was dealing for own account under the ISD, the FSA would expect you to be dealing on own account for the purposes of MiFID if you continue to perform the same activities.

Dealing on own account involves position-taking which includes proprietary trading and positions arising from market-making. It can also include positions arising from client servicing, for example where a firm acts as a *systematic internaliser* or executes an order by taking a market or ‘unmatched principal’ position on its books.

Dealing on own account may be relevant to firms with a *dealing in investments as principal* permission in relation to MiFID financial instruments, but only where they trade financial instruments on a regular basis for their own account, as part of their MiFID business. We do not think that this activity is likely to be relevant in cases where a person acquires a long term stake in a company for strategic purposes or for most venture capital or private equity activity. Where a person invests in a venture capital fund with a view to selling its interests in the medium to long term only, in our view he is not dealing on own account for the purposes of MiFID.

In our view, where you are a firm which meets all of the conditions of article 5.2 of the recast CAD (see Q61), you will not be dealing on own account.

Q17. What is portfolio management under MiFID? (A4 and article 4.1(9))

Portfolio management is managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more MiFID financial instruments. If there is only a single financial instrument in a portfolio, you may be carrying on portfolio management even if the rest of the portfolio consists of other types of assets, such as real estate. Portfolio management includes acting as a third party manager of the assets of a *collective investment scheme*, where discretion has been delegated to the manager by the operator of the scheme. In the case of management of a collective investment undertaking, however, an exemption may be available to the operator (see Q43). The advisory agent who keeps clients’ portfolios under review and provides advice to enable the client to make investment decisions (but does not exercise discretion to take investment decisions himself) is not carrying on portfolio management but may be providing other investment services such as investment advice under MiFID.

Q18. What is investment advice under MiFID? (A5 and article 4.1(4))

Investment advice means providing personal recommendations to a client, either at his request or on your own initiative, in respect of one or more transactions relating to MiFID financial instruments.

Q19. What is a ‘personal recommendation’ for the purposes of MiFID (article 52 of the MiFID implementing Directive)?

A personal recommendation is one given to a person:

- in his capacity as an investor, or potential investor, or as agent for either which is:
 - presented as suitable for him or based on a consideration of his personal circumstances; and
 - constitutes a recommendation to him to do one or more of the following:
 - buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
 - exercise, or not to exercise, any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

This is similar to the UK regulated activity of *advising on investments* but is narrower in scope insofar as it requires the recommendation to be of a personal nature. A personal recommendation does not include advice given to an issuer to issue securities, as the latter is not an “investor” for the purposes of MiFID or article 53 of the RAO.

Q20. Can you give us some other practical examples of what are not personal recommendations under MiFID?

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public (article 52 of the *MiFID implementing Directive*) and a ‘distribution channel’ is one through which information is, or is likely to become, publicly available because a large number of people have access to it. Advice about financial instruments in a newspaper, journal, magazine, publication, internet communication or radio or television broadcast should not amount to a personal recommendation for the purposes of MiFID (recital 79 to the *MiFID implementing Directive*).

Merely providing information to clients should not itself normally amount to investment advice. Practical examples include:

- advising clients on how to fill in an application form;
- disseminating company news or announcements;
- merely explaining the risks and benefits of a particular financial instrument; and
- producing league tables showing the performance of financial instruments against published benchmarks.

However, you should bear in mind that, where a person provides only selective information to a client, for example, when comparing one MiFID financial instrument against another, or when a client has indicated those benefits that he seeks in a product, this could, depending on the circumstances, amount to an implied recommendation and hence investment advice for the purposes of MiFID.

If you provide an investment research service to your clients or otherwise provide recommendations intended for distribution channels or the public generally, this is not MiFID investment advice (A5) although it may be an ancillary service (B5) for the purposes of MiFID and may also amount to the regulated activity of *advising on investments* for which you are likely to require *authorisation*.

Q21. Is generic advice investment advice for the purposes of MiFID (recitals 79 and 81 *MiFID implementing Directive*)?

No. Investment advice is limited to advice on particular MiFID financial instruments, for example “I recommend that you buy XYZ Company shares”. If you only provide generic advice on MiFID financial instruments and do not provide advice on particular MiFID financial instruments, you are not a firm to which MiFID applies and do not require *authorisation*.

If you are an investment firm to which MiFID applies, however, the generic advice that you provide may be subject to MiFID-based requirements. For example, if you recommend to a client that it should invest in equities rather than bonds and this advice is not in fact suitable, you are likely, depending on the circumstances of the case, to contravene MiFID requirements to:

- act honestly, fairly and professionally in accordance with the best interests of your clients; and

- provide information to clients that is fair, clear and not misleading.

Q22. What is underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis? (A6)

A6 comprises two elements:

- the ‘underwriting of financial instruments’; and/or
- the ‘placing of financial instruments on a firm commitment basis’.

Underwriting is a commitment to take up financial instruments where others do not acquire them. In our view, placing is the service of finding investors for securities on behalf of a seller and may involve a commitment to take up those securities where others do not acquire them. We associate underwriting and placing of financial instruments with situations where a company or other business vehicle wishes to raise capital for commercial purposes, and in particular with primary market activity.

In our view, the ‘firm commitment’ aspect of the placing service relates to the person arranging the placing, as opposed to the person who has agreed to purchase any instruments as part of the placing. Accordingly, placing on a firm commitment basis occurs where a firm undertakes to arrange the placing of MiFID financial instruments and to purchase some or all the instruments that it may not succeed in placing with third parties. In other words, the placing element of A6 requires the same person to arrange the placing and provide a firm commitment that some or all of the instruments will be purchased.

Where a person distributes units in a UCITS fund to investors, in our view this does not amount to placing although it is likely to involve the reception and transmission of orders.

Q23. When might placing of financial instruments without a firm commitment basis arise (A7)?

Where the person arranging the placing does not undertake to purchase those MiFID financial instruments he fails to place with third parties.

Q24. What is a multilateral trading facility? (A8, article 4.1(15) and recital 6)

The concept of a multilateral trading facility (MTF) draws on standards, issued by CESR, on which the FSA's previous alternative trading system regime was based. It includes multilateral trading systems (for example, trading platforms) operated either by investment firms or by market operators which bring together multiple buyers and sellers of financial instruments.

As was the case with the alternative trading systems regime, in our view a multilateral trading facility does not include bilateral systems where an investment firm enters into every trade on own account (as opposed to acting as a riskless counterparty interposed between the buyer and the seller).

For there to be an MTF, the buying and selling of MiFID financial instruments in these systems must be governed by non-discretionary rules in a way that results in contracts. As the rules must be non-discretionary, once orders and quotes are received within the system an MTF operator must have no discretion in determining how they interact. The MTF operator instead must establish rules governing how the system operates and the characteristics of the quotes and orders (for example, their price and time of receipt in the system) that determine the resulting trades.

In our view, a firm can be an MTF operator whether or not it performs any other MiFID investment service or activity listed in A1 to A7.

Q25. What about ancillary services (Annex 1, section B)? Do we need to be authorised if we wish to provide these services?

Yes, but only when providing these services is a *regulated activity*, for example, if you provide custody services which fall within the *regulated activity* of *safeguarding and administering investments*. You are not an investment firm within the scope of MiFID, however, if you only perform ancillary services (regardless of whether these are *regulated activities* requiring *authorisation* under the Act).

Q26. We are an investment firm - can we apply for passporting rights that include ancillary services?

Yes, but only if:

- you carry on the ancillary services together with one or more investment services and activities; and
- where the ancillary service is also a *regulated activity*, you have a permission enabling you to carry on those activities.

You will not be able to apply for passporting rights in respect of ancillary services only. In our view, this does not restrict the ability of credit institutions to exercise passporting rights under the *BCD* which correspond to ancillary services under MiFID (for example, the activity of safekeeping and administration of securities in Annex 1 paragraph 12 of the *BCD*).

13.4 Financial Instruments

Q27. Where do we find a list of MiFID financial instruments?

In Section C of Annex 1 to MiFID. There are ten categories of financial instruments in Section C (C1 to C10). Transferable securities (C1) and money market instruments (C2) are defined in article 4. Further provisions relating to certain derivatives under C7 and C10 are contained in articles 38 and 39 of the *MiFID Regulation*.

Q28. What are transferable securities? (C1 and article 4.1(18))

Transferable securities refer to classes of securities negotiable on the capital markets but excluding instruments of payment. We consider that instruments are negotiable on the capital markets when they are capable of being traded on the capital markets.

Transferable securities include (to the extent they meet this test):

- shares in companies (whether listed or unlisted, admitted to trading or otherwise), comparable interests in partnerships and other entities and equivalent securities;
- bonds and other forms of securitised debt;
- depositary receipts in respect of the instruments above;
- securities giving the right to acquire or sell transferable securities (for example, warrants, options, futures and convertible bonds); and
- securitised cash-settled derivatives, including certain futures, options, swaps and other contracts for differences relating to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

Examples of instruments which, in our view, do not amount to transferable securities include securities that are only capable of being sold to the issuer (as is the case with some industrial and provident society interests) and OTC derivatives concluded by a confirmation under an ISDA master agreement.

Q29. What are units in collective investment undertakings (C3)?

This category of financial instrument includes units in regulated and unregulated collective investment schemes. In our view, in accordance with article 1.2(a) and 2.1(o) of the

Prospectus Directive, shares in closed-ended corporate schemes, such as shares in investment trust companies, are also units in collective investment undertakings for this purpose (as well as being transferable securities).

Q30. Which types of financial derivative fall within MiFID scope (C4, C8 and C9)?

The scope of financial derivatives under MiFID is wider than under the ISD and includes the following:

- derivative instruments relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or measures, that may be settled physically or in cash (C4);
- derivative instruments for the transfer of credit risk (C8); and
- financial contracts for differences (C9).

The scope of C4, C8 and C9 does not extend to spot transactions, transactions which are not derivatives (such as forwards entered into for commercial purposes) and sports spread bets. In our view, neither C4 nor C9 comprise forward foreign exchange instruments unless they are caught by the scope of the Regulated Activities Order (see *PERG 2.6.22BG*). A non-deliverable currency forward which is not a "future" for the purposes of the Regulated Activities Order because it is made for commercial purposes will likewise fall outside the scope of MiFID.

Q31. What are derivative instruments for the transfer of credit risk (C8)?

Derivative instruments that are designed for the purposes of transferring credit risk from one person to another. They include, for example, credit default products, synthetic collateralised debt obligations, total rate of return swaps, downgrade options and credit spread products.

Q32. Which types of commodity derivative fall within MiFID scope?

Broadly speaking, the following commodity derivatives fall within the scope of MiFID:

- a derivative relating to a commodity derivative, for example, an option on a commodity future (C4);
- cash-settled commodity derivatives (including physically settled derivatives that provide for settlement in cash at the option of one of the parties other than in the event of default or termination) (C5);

- physically settled commodity derivatives traded on a *regulated market* or MTF (C6); and
- other commodity derivatives capable of physical settlement and not for commercial purpose, that is standardised contracts subject to clearing house or margin arrangements so long as they fall into one of the following categories (C7):
 - instruments traded on a non-EEA trading facility that performs an analogous function to a *regulated market* or MTF;
 - instruments expressly stated to be traded on or subject to the rules of a *regulated market*, MTF or a non-EEA trading facility that performs an analogous function; or
 - back-to-back contracts with clients or counterparties equivalent to contracts traded on a *regulated market*, MTF or such a non-EEA trading facility.

Q33. What is a commodity for the purposes of MiFID?

“Commodity” means any goods of a fungible nature that is capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity (article 2.1 of the *MiFID Regulation*). The fact that energy products, such as gas or electricity, may be “delivered” by way of a notification to an energy network (such as notifications under the Network Code or the Balancing and Settlement Code) does not prevent them being “capable of being delivered” for these purposes. If a good is freely replaceable by another of a similar nature or kind for the purposes of the relevant contract (or is normally regarded as such in the market), the two goods will be fungible in nature for these purposes. Gold bars are a classic example of fungible goods. In our view, the concept of commodity does not include services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible (recital 26 of the *MiFID Regulation*).

Q34. Are there any other derivatives subject to MiFID regulation?

There is a miscellaneous category of derivatives in C10, which is supplemented by articles 38 and 39 of the *MiFID Regulation*. These relate to:

- climatic variables;
- freight rates;
- inflation rates or other official economic statistics;
- telecommunications bandwidth;

- commodity storage capacity;
- transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;
- an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
- a geological, environment or other physical variable;
- any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred; or
- an index or measure related to the price or volume of transactions in any asset, right, service or obligation.

C10 derivatives must also meet at least one of the following criteria:

- the contract is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of default or other termination event; or
- the contract is traded in a *regulated market* or an MTF; or
- the contract is standardised, subject to clearing house or margin arrangements and falls into one or more of the categories described under the fourth bullet point in Q32 above.

13.5 Exemptions from MiFID

Q35. Where do we find a list of MiFID exemptions?

In articles 2 and 3 of MiFID.

Q36. We are an insurer. Does MiFID apply to us?

No. Insurers are exempt from MiFID (article 2.1(a)).

Q37. We are a non-financial services group company providing investment services to other companies in the same group. Are we exempt under the group exemption in article 2.1(b)?

Yes, if you provide these services exclusively for your parent company, your subsidiaries and those of your parent company. This means that providing investment services for the benefit of group companies must be the only investment service that you undertake. The exemption is narrower than the corresponding exclusion in article 69 of the Regulated Activities Order (groups and joint enterprises) insofar, for example, as it does not apply to investment services supplied to a joint venture participant (see *PERG* 2.9.10G).

Q38. We also buy and sell financial instruments for ourselves. Are we still able to use the group exemption?

Yes. The group exemption applies to investment services and not investment activities. So, as long as your own account dealing does not involve you providing an *investment service* (to which MiFID applies) to non-group entities, you can still rely on the group exemption in respect of the services you provide solely to other group companies.

So far as your own account dealing is concerned, you may be able to rely upon the exemption in article 2.1(i) (see Q44 and Q45) if you meet the relevant conditions. The ability to combine reliance on article 2.1(b) and article 2.1(i) could be relevant to companies performing group treasury functions.

Q39. We provide investment services as a complement to our main professional activity. Are we exempt?

Yes, you will be exempt under article 2.1(c) MiFID if you provide these services in an incidental manner in the course of your professional activity, and that activity is regulated by

legal or regulatory provisions or a code of ethics that do not exclude the provision of investment services. The meaning of ‘incidental’ is potentially subject to further Commission legislation pursuant to article 2.3 MiFID.

This exemption is relevant, for example, to firms belonging to *designated professional bodies*, such as accountants, actuaries and solicitors, to whom Part XX of the *Act* applies. It could also apply to *authorised professional firms* which provide investment services in an incidental manner in the course of their professional activity. In our view, the criteria set out in *PROF* 2.1.14G in relation to section 327(4) of the *Act* are also relevant to considering whether a firm can rely on the exemption in article 2.1(c) MiFID, as they were in relation to the corresponding ISD exemption.

If an *authorised professional firm* has the standard requirement on its permission that it “...must not carry on the specified regulated activities otherwise than in an incidental manner in the course of the provision by it of professional services (that is, services which do not consist of regulated activities)”, our assumption is that it is exempt from MiFID if it complies with this requirement.

If you are an *authorised professional firm* not falling within article 2.1(c) MiFID, you may also wish to consider whether you are exempt or otherwise from MiFID requirements by virtue of the domestic implementation of the article 3 exemption (see Q48 and Q49).

The article 2.1(c) MiFID exemption may also apply to journalists, broadcasters and publishers (where they are subject to regulation or a code of ethics), although in most cases the FSA would not expect these persons to fall within the MiFID definition of investment firm (see Q7 and Q8).

Q40. We regularly buy and sell financial instruments ourselves but never as a service to third parties. Are there any exemptions which might apply to us?

Yes, you could fall within the article 2.1(d) MiFID exemption but not if you:

- are a market maker (please see Q41 below); or
- deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to

engage in dealings with them. A system for these purposes might include a trading platform, website or other mechanism that functions on the basis of a set of rules.

You cannot rely, however, on the article 2.1(d) MiFID exemption if you provide any investment services or activities other than dealing on own account. If buying and selling MiFID financial instruments is not your main business, or, as the case may be, the main business of your group, you might though wish to consider further the exemption in article 2.1(i) MiFID (see Q44 and Q45).

Q41. What is a market maker?

A market maker is “a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him” (article 4.1(8) MiFID). This is likely to be the case if you are recognised or registered as a market maker on an investment exchange. However, in our view anyone who satisfies the definition will be a market maker for the purposes of MiFID, even if they are not under an obligation to make quotes, for example retail service providers who make a market in shares traded on the Stock Exchange Electronic Trading Service (‘SETS’) but without doing so as registered market makers under the rules of the London Stock Exchange.

Q42. Is there an exemption, as there was under the ISD, relating to employee share schemes and company pension schemes?

Yes, there is an exemption in article 2(1)(e) MiFID for persons providing investment services consisting exclusively in the administration of employee-participation schemes, for example employee share schemes and company pension schemes. In our view, whilst administration for these purposes could extend to services comprising reception and transmission or execution of orders on behalf of clients or placing, it would not include *personal recommendations* in relation to, or managing, the assets of employee share schemes or company pension schemes.

This exemption can also be combined with the “group exemption” in article 2.1(b) MiFID, by virtue of article 2.1(f) MiFID. In our view, it may also be combined with the exemption in article 2.1(i) MiFID if a firm is dealing on own account in financial instruments as an ancillary activity to its main business, or, as the case may be, the main business of its group.

Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

Yes. Generally speaking, collective investment undertakings are specifically exempt, as are their depositaries and managers. So far as collective investment schemes are concerned, the “manager” corresponds, in essence, to the operator of a scheme and not to a person who is managing the assets of the scheme (unless that person is also the operator). In our view, the manager of a collective investment undertaking only benefits from the exemption in respect of any investment services or activities it may carry on in that capacity. To the extent that it also provides investment services or performs investment activities in a different capacity, for example, if it provides investment advice to, or manages the assets of, an individual third party, these services and activities fall outside the scope of the article 2.1(h) exemption.

In the case of *UCITS management companies*, some MiFID provisions will apply to those who provide portfolio management services, investment advice or safekeeping and administration services in relation to units to third parties, by virtue of article 5.4 of the *UCITS Directive* (see Q6).

Q44. Who can rely on the exemption in article 2.1(i)?

You may be able to rely on the exemption if:

- you deal on own account in MiFID financial instruments; or
- provide investment services in commodity derivatives or C10 derivative contracts to clients of your main business (or if you are part of a group, the group’s main business); or
- both.

However, the exemption will only apply if what you do is ancillary to your main business and that main business is neither the provision of investment services nor banking services. If you are part of a group, what you do must be ancillary to the main business of your group whose main business is neither the provision of investment services nor banking services.

In our view, a firm which is part of a group whose main business is not investment or banking services and which provides, for example, as a stand-alone business, investment

services in commodity derivatives or C10 contracts for its own clients (who are not clients of the group's main business), is likely to fall outside the scope of the article 2.1(i) exemption.

When considering what is a firm's or group's 'main business', in our view various factors are likely to be relevant including turnover, profit, capital employed, numbers of employees and time spent by employees. These factors should then be considered in the round in deciding whether any one operation or business line amounts to a firm's or group's main business. In our view, a similar approach can be applied when determining a firm's 'main business' for the purposes of article 2.1(k) (see Q46).

Q45. What is an ancillary activity for these purposes?

The meaning of 'ancillary' is potentially subject to further European Commission legislation pursuant to article 2.3 MiFID. For an activity to be 'ancillary' for these purposes, in our view, it must at least be both directly related and subordinate to the main business of the group. Where, for example, a commodity producer buys or sells commodity derivatives for the purposes of limiting an identifiable risk of its main business, for instance in circumstances where the risk management exclusion in article 19 of the Regulated Activities Order would apply, in our view this would qualify as ancillary for the purposes of this exemption. On the other hand, where a commodity producer deals on own account for speculative purposes, it is unlikely that this would be ancillary to the main business in the case of article 2.1(i) MiFID. This activity may fall, however, within the article 2.1(k) MiFID exemption (see Q46).

Q46. Our main business is producing commodities and we buy and sell commodity derivatives. We are a member of a non-financial services group. Are we exempt from MiFID?

Yes. You will be exempt under article 2.1(k) MiFID because you are a person:

- whose main business consists of dealing on own account in commodities and/or commodity derivatives, and
- who is not part of a group whose main business is the provision of other investment services or banking services.

The question of what is your main business for the purposes of the first bullet point above is determined on an entity basis and not on a group basis (which is different from the approach

taken in article 2.1(i) MiFID). You should also note that the article 2.1(k) MiFID exemption refers to commodities and/or commodity derivatives but not C10 derivatives.

Recital 22 of the *MiFID Regulation* indicates that the exemptions in article 2.1(i) and (k) MiFID could be expected to exclude significant numbers of commercial producers and consumers of energy and other commodities, including energy suppliers and commodity merchants.

Q47. We traded on an investment exchange as a local firm and were exempt from the ISD. Are we exempt under MiFID?

Yes. If you fell within the exemption in article 2.2(j) ISD for local firms and continue to perform the same services and activities, you should generally fall within the exemption in article 2.1(l) MiFID. If you provide *personal recommendations* in relation to MiFID financial instruments, however, you will not be able to rely upon the exemption in article 2.1(l) MiFID.

Q48. Article 3 is an optional exemption. Will the exemption apply to UK firms?

Yes, the optional exemption has been exercised by The Treasury.

Q49. Which firms might fall within this exemption?

The exemption applies to persons who meet all the following conditions:

- they do not hold clients' funds or securities;
- they do not provide any investment service other than reception and transmission of orders or investment advice, or both, in relation to transferable securities and units in collective investment undertakings;
- they transmit orders only to one or more of the following:
 - other MiFID investment firms;
 - credit institutions authorised under the BCD;
 - branches of third country investment firms or credit institutions complying with rules considered by the FSA to be at least as stringent as those laid down in MiFID, the BCD or the CAD;
 - collective investment undertakings or their managers authorised under the law of an EEA State to market units to the public;

- EU incorporated investment companies the securities of which are listed or dealt in on a *regulated market*, for example investment trust companies.

If you are a UK firm that meets these qualifying conditions, you will be exempt from regulations made by the European Commission under MiFID.

Where you provide *personal recommendations* or receive and transmit orders in relation to derivatives which are MiFID financial instruments but not transferable securities, you will fall outside the scope of this exemption. In our view, this would be the case, for example, if you provided either or both of these investment services in relation to OTC derivatives concluded by a confirmation under an ISDA master agreement (see PERG 13 Annex 2 Table 2).

Q50. We are (or previously were) an IFA and have a permission which covers (i) arranging (bringing about) deals in investments; (ii) making arrangements with a view to transactions; and (iii) advising on investments, in each case in relation to securities but not derivatives. We are not permitted to hold client money or investments and do not have dealing or managing permissions in relation to MiFID financial instruments. Are we exempt?

The FSA expects so, assuming you do not:

- carry on activities outside your permission; or
- transmit orders to persons other than those listed in Q49 (for example, you will fall outside the exemption if you transmit orders directly to collective investment schemes whose units cannot be marketed to the public in any EEA State either because they are unregulated schemes or non-EEA authorised collective investment schemes); or
- place MiFID financial instruments without a firm commitment basis (see Q22 and Q23).

We would generally not expect IFAs to be placing MiFID financial instruments without a firm commitment basis as we associate placing of financial instruments with situations where a company or other business vehicle wishes to raise capital for commercial purposes, and in particular with primary market activity.

Q51. What happens if we breach any of the qualifying conditions (see Q49)? Do we then lose the exemption?

You are required to notify us of a breach (see SUP 15.3.11R). We will then consider whether you should continue to benefit from the exemption and what, if any, supervisory or occasionally enforcement action is appropriate in the circumstances.

Q52. If we fall within the exemption does this prevent us from acquiring passporting rights under MiFID?

No. Firms which would otherwise be exempt can apply to opt into MiFID regulation with a view to acquiring passport rights (although they would then become subject to the requirements of MiFID, including certain enhanced prudential requirements – see Q58 and Q59).

Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?

You are not a firm to which MiFID applies and so are not a *MiFID investment firm* for the purposes of the FSA Handbook. As such you are not subject to the requirements of the recast CAD as transposed in the FSA Handbook and cannot exercise passporting rights.

13.6 The recast Capital Adequacy Directive

Q54. What is the purpose of this section?

This section is designed to help UK investment firms consider:

- whether the recast CAD, as implemented in the UK, applies to them;
- if so, which category of firm they are for the purposes of the FSA's base capital resources requirements made under the recast CAD, for example whether they are a *BIPRU 50K firm*, a *BIPRU 125K firm*, a *BIPRU 730K firm*, a *UCITS investment firm*, an *exempt CAD firm* or a firm falling within the transitional regime for certain commodity brokers and dealers; and
- how the recast CAD otherwise impacts on their business, by explaining when a firm will be a *limited licence firm*, a *limited activity firm* or a *full scope BIPRU investment firm*.

This section is intended to provide a general summary of these issues and not a detailed or exhaustive explanation of the recast CAD as implemented in the UK.

Q55. Are we subject to the recast CAD?

Only investment firms subject to the requirements of MiFID are subject to the requirements of the recast CAD. This includes *UCITS investment firms* (see Q6 and Q63).

Despite being subject to the requirements of MiFID, broadly speaking, if you are one of the following investment firms our implementation of the recast CAD will only apply to you in a limited way:

- a firm whose main business consists exclusively of providing *investment services or activities* in relation to commodity derivatives or C10 derivatives, or both, and to whom the ISD would not have applied. If you fall into this category, you will fall within a transitional regime under which you will not be subject to the capital requirements of the recast CAD but will be subject to other requirements (see Q57);
or
- a firm that is only authorised to provide investment advice or receive and transmit orders, or both, without holding client money or securities. If you fall into this

category, you will be an *exempt CAD firm* and only subject to base capital requirements under the recast CAD (see Q58 and Q59 below).

If you are an investment firm to which an exemption in either article 2 or article 3 MiFID applies (see PERG 13.5 and PERG 13 Annex 1 flow chart 2), you are not subject to the recast CAD. However, if you potentially fall within the article 3 exemption, but decide to opt into MiFID regulation, for instance to acquire passporting rights (see Q52), you are subject to the recast CAD. If you do so, you are an *exempt CAD firm* (see Q58 and Q59).

There is also a special exemption under the recast CAD for locals that do not fall within the exemption for local firms under MiFID (see Q47). However, we do not think that UK regulated firms that were subject to the regulatory regime for locals prior to MiFID implementation are likely to fall within the exemption under the recast CAD. This is because they are likely to fall within article 2.1(1) MiFID.

Q56. We are an investment firm to which MiFID applies and do not fall into one of the limited categories described above. How does the recast CAD apply to us?

You are a *CAD investment firm*. Broadly speaking, you should go through an initial two-stage process in considering how the recast CAD will apply to you:

- consider what kind of base capital requirements apply to you; and
- consider whether you are a *limited licence firm*, a *limited activity firm* or a *full scope BIPRU investment firm* to determine how other capital requirements of the recast CAD apply to you.

You are either a *BIPRU 50K firm* (subject to a base capital requirement of euro 50,000) (see Q60), a *BIPRU 125K firm* (subject to a base capital requirement of euro 125,000) (see Q61), a *BIPRU 730K firm* (subject to a base capital requirement of euro 730,000) (see Q62) or a *UCITS investment firm* (see Q63). Your base capital requirement depends essentially on the scope of your *permission* and any limitations or requirements placed upon it.

If you are a *CAD investment firm*, in essence the scope of your *permission* and any limitations or requirements placed upon it also dictate whether you are a *limited licence firm*, a *limited activity firm* or a *full scope BIPRU investment firm*. Broadly speaking, the benefit of being a

limited licence firm or a *limited activity firm* (see Q64 and Q65) is that you are exempt from minimum own funds requirements to hold capital to cover operational risk, although you are subject to the requirements to hold own funds calculated by reference to credit risk, market risk and fixed overheads (see *GENPRU 2.1.45R*). If you are a *full scope BIPRU investment firm*, you are subject to the full range of recast CAD risk requirements (see Q66). See, generally, *GENPRU 2.1.45R* in relation to the calculation of capital resources requirements for *limited licence firms*, *limited activity firms* and *full scope BIPRU investment firms*.

The question of whether you are a *limited licence firm* or a *limited activity firm* may also be relevant to capital treatment at a group level. This is outside the scope of this guidance which focuses only on the application of the recast CAD at the level of the individual firm, although you may find the decision tree at BIPRU 8 Annex 5R helpful in considering these issues.

Q57. How do we know if we are a firm to which the transitional regime for certain commodity brokers and dealers applies?

You are a firm to which the transitional regime applies if:

- you are a firm to which the ISD did not or would not have applied on 31 December 2006; and
- your main business consists exclusively of the provision of investment services or activities in relation to financial instruments set out in C5, 6, 7, 9 and 10 of Annex 1 of MiFID. See *BIPRU TP 15*.

This exemption is only relevant if you are a firm to which MiFID applies, that is, you do not fall within the exemptions in articles 2 or 3 of MiFID (see Q55). Although you are exempt from the capital requirements of the recast CAD, you are subject to risk management and other systems and control requirements in the form of *SYSC* (see *BIPRU TP 15.11G*). You may also be subject to the requirements of chapter 3 of *IPRU(INV)*.

In our view, your main business for the purposes of this exemption is the main business to which MiFID applies.

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

This category may be relevant to you if you have permission to *advise on investments* or *arrange deals in investments* in relation to MiFID financial instruments but fall outside the article 3 MiFID exemption (for example, because you choose to opt out of the exemption or because you transmit orders to persons not listed in the exemption or provide services in relation to derivatives that are not transferable securities). You can be an *exempt CAD firm* if you:

- are not authorised to hold client money in relation to MiFID business;
- do not have a *safeguarding and administering investments (without arranging)* permission in relation to MiFID financial instruments; and
- have a requirement on your permission so that the only MiFID investment services and activities you can perform are reception and transmission of orders or investment advice or both.

Where you hold client money for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold money or securities for clients to whom you only provide services that do not constitute *investment services* and therefore fall outside the scope of MiFID.

The conditions relating to the article 3 MiFID exemption look similar to those for an *exempt CAD firm*. There are important differences, however, between the two:

- the article 3 MiFID exemption (see Q49) extends only to services provided in relation to transferable securities and units in collective investment undertakings, whereas no such restriction applies to *exempt CAD firms*; and
- the article 3 MiFID exemption requires orders to be transmitted to certain persons only (see Q49 and Q50), whereas no such restriction arises in the case of *exempt CAD firms*.

If you are an *exempt CAD firm*, you are subject to base capital requirements which comprise the following broad options:

- base capital of euro 50,000; or
- professional indemnity insurance of euro 1,000,000 for any one claim and euro 1,500,000 in aggregate; or

- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see the Interim Prudential Sourcebook for Investment Businesses (Exempt CAD Firms) Instrument 2007 and in particular sections 13.1 and 13.1A and chapter 9. You will be subject to the relevant ongoing requirements in the Interim Prudential Sourcebook for Investment Businesses relating to securities and futures firms and personal investment firms, as appropriate (see *IPRU(INV)* 13.1A.6R and *IPRU(INV)* 9.2.8R).

Q59. If we are subject to the Insurance Mediation Directive, does this make any difference to the requirements which apply?

Yes. If the only *investment services* that you are authorised to provide are investment advice or receiving and transmitting orders or both, without holding client money or securities, you can still be an *exempt CAD firm*. However, you are subject to different base capital requirements. Broadly speaking, article 8 recast CAD requires you to have professional indemnity insurance of euro 1,000,000 for any one claim and euro 1,500,000 in aggregate (this is the *IMD* requirement), plus coverage in one of the following forms:

- base capital of euro 25,000; or
- professional indemnity insurance of euro 500,000 for any one claim and euro 750,000 in aggregate; or
- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see the final paragraph of the answer to Q58.

As mentioned in Q58, when you hold client money or securities for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold client money for those to whom you provide insurance mediation services.

You should also bear in mind that if you are a firm to whom article 2 or article 3 MiFID applies (see *PERG* 13.5), you are not subject to the recast CAD.

Q60. Are we a BIPRU 50K firm?

This category may be relevant to you if you are not an *exempt CAD firm* and have one or more of the following permissions in relation to MiFID financial instruments:

- *arranging (bringing about) deals in investments;*
- *dealing in investments as agent;* or
- *managing investments,*

provided that you are not authorised to:

- hold client money in relation to MiFID business or *safeguard and administer (without arranging)* MiFID financial investments; or
- deal on own account in, or underwrite on a firm commitment basis, issues of MiFID financial instruments (if you have a *dealing in investments as principal* permission in relation to MiFID financial instruments, you need a limitation or requirement on your permission to this effect).

Q61. Are we a BIPRU 125K firm?

This category may be relevant to you if you would have been a *BIPRU 50K firm* but for the fact that you are entitled to hold client money in relation to MiFID business or hold MiFID financial instruments.

You may also be a *BIPRU 125K firm* if you meet the conditions of article 5.2 recast CAD. Broadly speaking, this applies to investment firms which execute investors' orders and hold financial instruments for their own account provided that:

- such positions arise only as a result of the firm's failure to match investors' orders precisely;
- the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;
- the firm meets the requirements laid down in articles 18, 20 and 28 recast CAD (including own funds requirements in respect of position risk, settlement and counterparty credit risk and large exposures); and

- such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

If you meet the conditions of article 5.2 recast CAD and are not authorised to hold client money in relation to MiFID business or *safeguard and administer (without arranging)* MiFID financial instruments, you will be a *BIPRU 50K firm*.

Q62. Are we a BIPRU 730K firm?

If you are a *CAD investment firm* and you are neither a *BIPRU 50K firm* nor a *BIPRU 125K firm* nor a *UCITS investment firm* (see Q63), you will be a *BIPRU 730K firm*.

Q63. We are a UCITS investment firm. How will the recast CAD apply to us?

UCITS investment firms (*UCITS management companies* that are authorised to perform the additional services of portfolio management, investment advice and safeguarding and administration of units) are subject to the recast CAD in parallel with the capital requirements in the *UCITS Directive*.

If you are a *UCITS investment firm*, your base capital requirement is contained in *GENPRU 2.1.48R* (which refers to *UPRU 2.1.2R(1)*) and in summary is:

- a minimum base capital requirement of euro 125,000; and
- an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios under management exceeds euro 250,000,000 (subject to an overall maximum base capital requirement of euro 10,000,000).

In our view, a *UCITS investment firm* should be a *limited licence firm*, as the *UCITS Directive* prevents it from dealing on own account outside its scheme management activities. As a result, where a *UCITS investment firm* has a *dealing in investments as principal* permission, this should be limited to box management activities where MiFID financial instruments are concerned. In our view, a *UCITS investment firm* which has this limitation and complies with it will not be dealing on own account for the purposes of the MiFID and the recast CAD.

Q64. Are we a limited licence firm?

A *limited licence firm* is one that is not authorised to:

- deal on own account (see Q16); and
- underwrite and/or place financial instruments on a firm commitment basis (see Q22).

You can be a *limited licence firm* if you are either:

- a *BIPRU 50K firm* (see Q60); or
- a *BIPRU 125K firm* (see Q61).

Generally, you cannot be a *limited licence firm* if you are a *BIPRU 730K firm*. However, you may be a *limited licence firm* if you operate a multilateral trading facility (and therefore are a *BIPRU 730K firm*) and do not have a *dealing in investments as principal* permission enabling you to deal on own account or to underwrite or place financial instruments on a firm commitment basis.

For calculation of the variable capital requirement for a *BIPRU limited licence firm* (including a *UCITS investment firm*), see *GENPRU 2.1.45R*.

Q65. Are we a limited activity firm?

A *limited activity firm* is a *BIPRU 730K firm* that deals on own account only for the purpose of:

- fulfilling or executing a client order; or
- gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order.

If you wish to be a *limited activity firm*, you should apply for a limitation on your *dealing in investments as principal* permission reflecting these conditions.

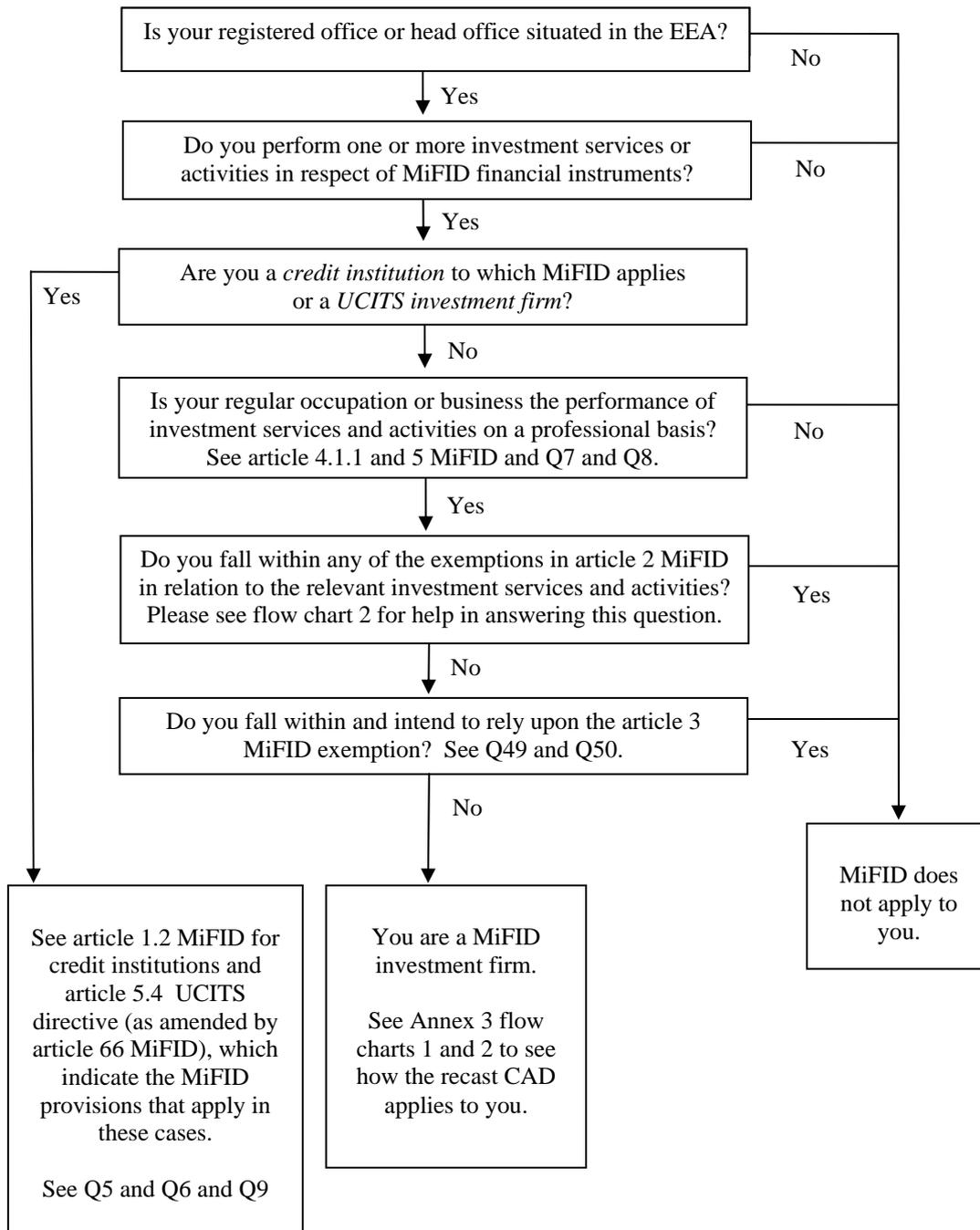
There is also a category for certain firms which, among other things, do not hold client money or securities and have no external customers. We do not think that any UK regulated firms are likely to fall within this third category of *limited activity firm*.

Q66. What is the effect of being a CAD investment firm which is neither a limited licence firm nor a limited activity firm?

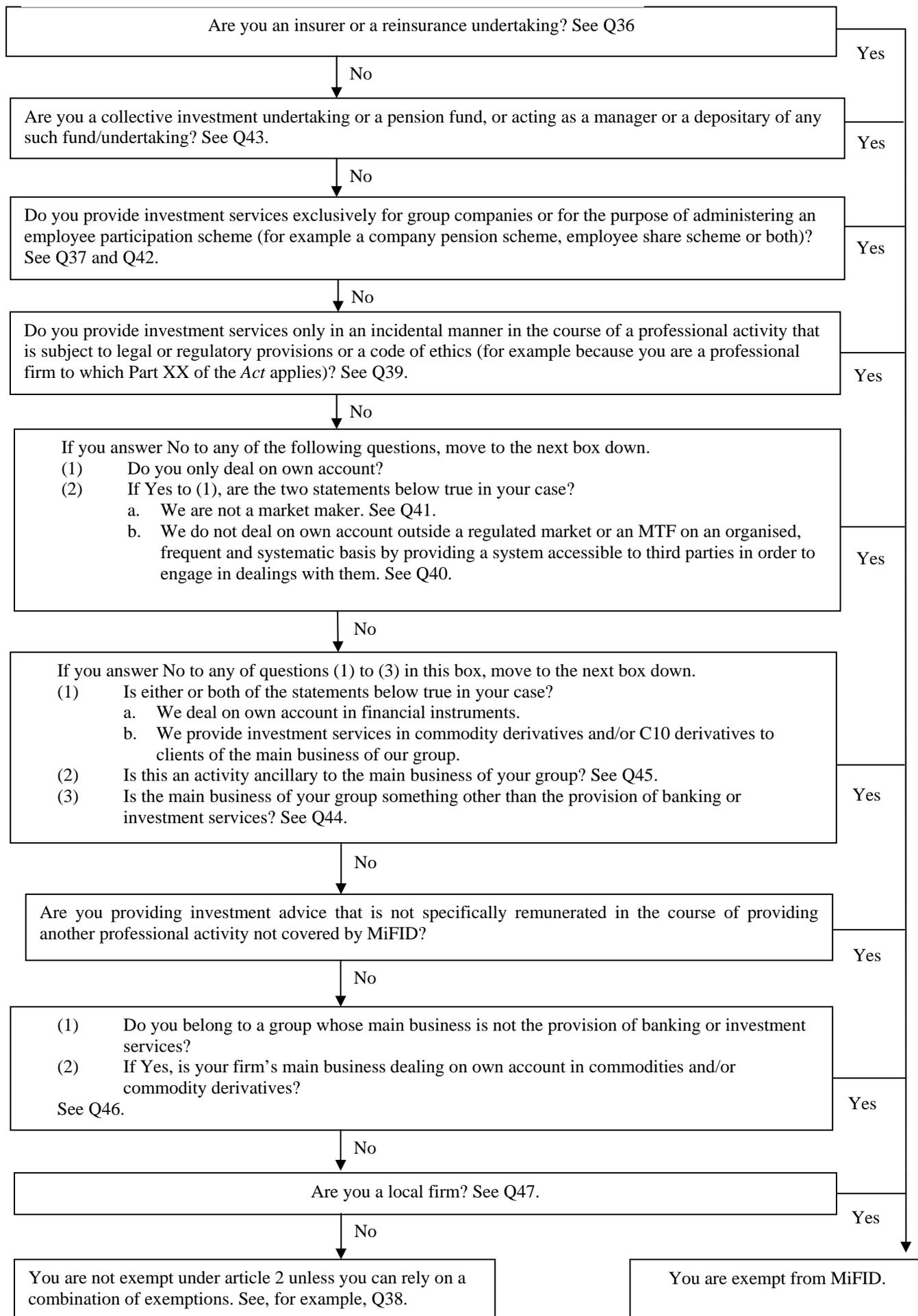
You will be a *full scope BIPRU investment firm*, subject to the full range of recast CAD risk requirements.

ANNEX 1

Flow chart 1- Does MiFID apply to us?



Flow chart 2- Am I exempt under article 2 MiFID?



ANNEX 2

Table 1 - MiFID Investment services and activities and the Part IV permission regime

MiFID Investment Services and Activities	Part IV permission	Comments
A1- Reception and transmission of orders in relation to one or more financial instruments	Arranging (bringing about) deals in investments (article 25(1) <i>RAO</i>).	<p>This was an ISD service.</p> <p>Generally speaking, only firms with permission to carry on the activity of arranging (bringing about) deals in investments in relation to securities and contractually based investments which are financial instruments can provide the service of reception and transmission. This is because a service must bring about the transaction if it is to amount to reception and transmission of orders.</p> <p>The activity of arranging (bringing about) deals in investments is wider than A1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders.</p> <p>See Q13 and Q14 for further guidance.</p>
A2- Execution of orders on behalf of clients	<p>Dealing in investments as agent (article 21 <i>RAO</i>)</p> <p>Dealing in investments as principal (article 14 <i>RAO</i>)</p>	<p>This was an ISD service.</p> <p>Usually, where a firm executes orders on behalf of clients it will need permission to carry on the activity of dealing in investments as agent. Where a firm executes client orders on a true back-to-back basis or by dealing on own account, it also needs permission to carry on the activity of dealing in investments as principal.</p> <p>See Q15 for further guidance.</p>
A3- Dealing on own account	Dealing in investments as principal (article 14 <i>RAO</i>)	<p>Dealing on own account falls within the ISD, but only where a service is provided. Under MiFID, dealing on own account is caught even if no service is provided. Where a firm is dealing on own account, it needs permission to carry on the activity of dealing in investments as principal.</p> <p>See Q16 for further guidance.</p>

<p>A4- Portfolio management</p>	<p>Managing investments (article 37 <i>RAO</i>)</p> <p>Dealing in investments as principal (article 14 <i>RAO</i>)</p> <p>Dealing in investments as agent (article 21 <i>RAO</i>)</p> <p>Arranging (bringing about) deals in investments (article 25(1) <i>RAO</i>)</p> <p>Making arrangement with a view to transactions in investments (article 25(2))</p>	<p>This was an ISD service.</p> <p>A firm performing the portfolio management service needs a permission to carry on the activity of managing investments.</p> <p>Firms may also need permission to perform other regulated activities to enable them to give effect to decisions they make as part of their portfolio management (see adjacent column).</p> <p>See Q6, Q17 and Q43 for further guidance.</p>
<p>A5- Investment advice</p>	<p>Advising on investments (article 53 <i>RAO</i>)</p>	<p>This was an ISD non-core service.</p> <p>A firm providing investment advice will need permission to carry on the activity of advising on investments.</p> <p>See Q18 and Q19 for further guidance.</p>
<p>A6- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis</p>	<p>Dealing in investments as principal (article 14 <i>RAO</i>)</p> <p>Dealing in investments as agent (article 21 <i>RAO</i>)</p>	<p>This corresponds broadly to the service of underwriting and/or placing described in Section A4 of the Annex to ISD.</p> <p>Where a firm underwrites an issue of financial instruments and holds them on its books before they are sold or offered to third parties, it needs permission to carry on the activity of dealing in investments as principal.</p> <p>Where an underwriting firm sells the relevant instruments as agent for the issuer and then purchases any remaining instruments as principal, it needs permission to carry on the activity of dealing in investments as agent in relation to its selling activity and of dealing in investments as principal in relation to its purchase of the remaining instruments.</p>

		See Q22 for further guidance.
A7- Placing of financial instruments without a firm commitment basis	<p>Dealing in investments as agent (article 21 <i>RAO</i>)</p> <p>Arranging (bringing about) deals in investments (article 25(1) <i>RAO</i>)</p>	<p>This corresponds in part to the service in Section A4 of the Annex to ISD outlined in the commentary to A6.</p> <p>Where a firm arranges the placement of financial instruments with another entity, it needs permission to carry on the activity of arranging (bringing about) deals in investments.</p> <p>Where a firm sells the relevant instruments on behalf of the issuer, it also needs permission to carry on the activity of dealing in investments as agent.</p> <p>See Q22 for further guidance.</p>
A8- Operation of Multilateral Trading Facilities	Operating a multilateral trading facility (article 25D <i>RAO</i>)	<p>This service replaces the ATS operators regime.</p> <p>Firms performing this service will need permission to carry on the regulated activity of operating a multilateral trading facility. Broadly speaking, any authorised person who operated an alternative trading system prior to 1 November 2007 was automatically granted permission to operate a multilateral trading facility, unless it notified the FSA to the contrary by 1 October 2007.</p> <p>Firms will not require permission to carry on any other regulated activities if all they do is operate a multilateral trading facility. If they carry on additional regulated activities, they should ensure that their permission properly reflects this.</p> <p>See Q24 for further guidance.</p>

Table 2: MiFID financial instruments and the Part IV permission regime

MiFID financial instrument	Part IV permission category	Commentary
C1- Transferable securities	share (article 76) debenture (article 77) government and public security (article 78) warrant (article 79) certificate representing certain securities (article 80) unit (article 81) option (excluding a commodity option and option on a commodity future) future (excluding a commodity future and a rolling spot forex contract) contract for differences (excluding a spread bet and a rolling spot forex contract) spread bet	<p>Transferable securities are securities negotiable on the capital market excluding instruments of payment and include:</p> <ul style="list-style-type: none"> (a) shares in companies (b) bonds; (c) depositary receipts; (d) warrants; and (e) miscellaneous securitised derivatives. <p>Transferable securities comprise various categories of derivatives in the permission regime: for example, options (excluding commodity options and options on commodity futures); futures (excluding commodity futures and rolling spot forex contracts); contracts for differences (excluding spread bets and rolling spot forex contracts).</p> <p>The permission investment categories above, however, are wider than the MiFID definition of transferable securities, as they comprise both securitised and non-securitised instruments. Firms with permissions containing these investment categories will fall outside the article 3 MiFID exemption as transposed in domestic legislation, where they provide investment services in relation to financial instruments which are non-securitised investments (for example, OTC derivatives concluded by a confirmation under an ISDA master</p>

		agreement). For further guidance on the article 3 exemption see Q49; for further guidance on transferable securities see Q28.
C2- Money market instruments	debenture (article 77) government and public security (article 78) certificate representing certain securities (article 80)	The definition in article 4.1(19) MiFID refers to classes of instruments normally dealt in on the money markets.
C3- Units in a collective investment undertaking	unit (article 81) shares (article 76)	C3 includes units in regulated and unregulated collective investment schemes. This category also includes closed-ended corporate schemes, such as investment trust companies (hence the reference to shares in the adjacent column). For further guidance, see Q29.
C4- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash	option (excluding a commodity option and an option on a commodity future) commodity option and option on a commodity future future (excluding a commodity future and a rolling spot forex contract) rolling spot forex contract contract for differences (excluding a spread bet and a rolling spot forex contract) spread bet	C4 includes the financial instruments in sections B3-6 of the Annex to the ISD and in our view derivatives relating to commodity derivatives, for example options on commodity futures. For further guidance, see Q30 and Q32. Note that for the purposes of the permission regime, commodity options and options on commodity futures are treated as a single permission category. (see <i>PERG 2 Annex 2 Table 2</i>).
C5- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in	commodity option and option on a commodity future commodity future	C5 instruments are generally contracts for differences. Where a C5 instrument provides for the possibility of physical settlement, it may also be either

<p>cash at the option of one of the parties (otherwise than by reason of a default or other termination event)</p>	<p>contract for differences (excluding a spread bet and rolling spot forex contract)</p>	<p>a commodity future or commodity option, depending on its structure.</p> <p>For further guidance see Q32 and Q33.</p>
<p>C6- Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF</p>	<p>commodity option and option on a commodity future</p> <p>commodity future</p> <p>contract for differences (excluding spread bet and rolling spot forex contract)</p>	<p>C6 instruments will generally be either commodity futures or commodity options, depending on their structure. Those instruments with a cash settlement option may also be contracts for differences.</p> <p>For further guidance see Q32 and Q33.</p>
<p>C7- Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls</p>	<p>commodity option and option on a commodity future</p> <p>commodity future</p> <p>contract for differences (excluding spread bet and rolling spot forex contract)</p>	<p>C7 is supplemented by Level 2 measures (see article 38 of the <i>MiFID Regulation</i>).</p> <p>For further guidance see Q32 and Q33.</p>
<p>C8- Derivative instruments for the transfer of credit risk</p>	<p>option (excluding a commodity option and an option on a commodity future)</p> <p>contract for differences (excluding spread bet and rolling spot forex contract)</p> <p>spread bet</p> <p>rolling spot forex contract</p>	<p>C8 derivatives are financial instruments designed to transfer credit risk, often referred to as credit derivatives.</p> <p>For further guidance see Q31.</p>
<p>C9- Financial contracts for differences</p>	<p>contract for differences (excluding spread bet and rolling spot forex contract)</p> <p>spread bet</p>	<p>In our view, C9 derivatives could include those contracts for differences with a financial underlying, for example the</p>

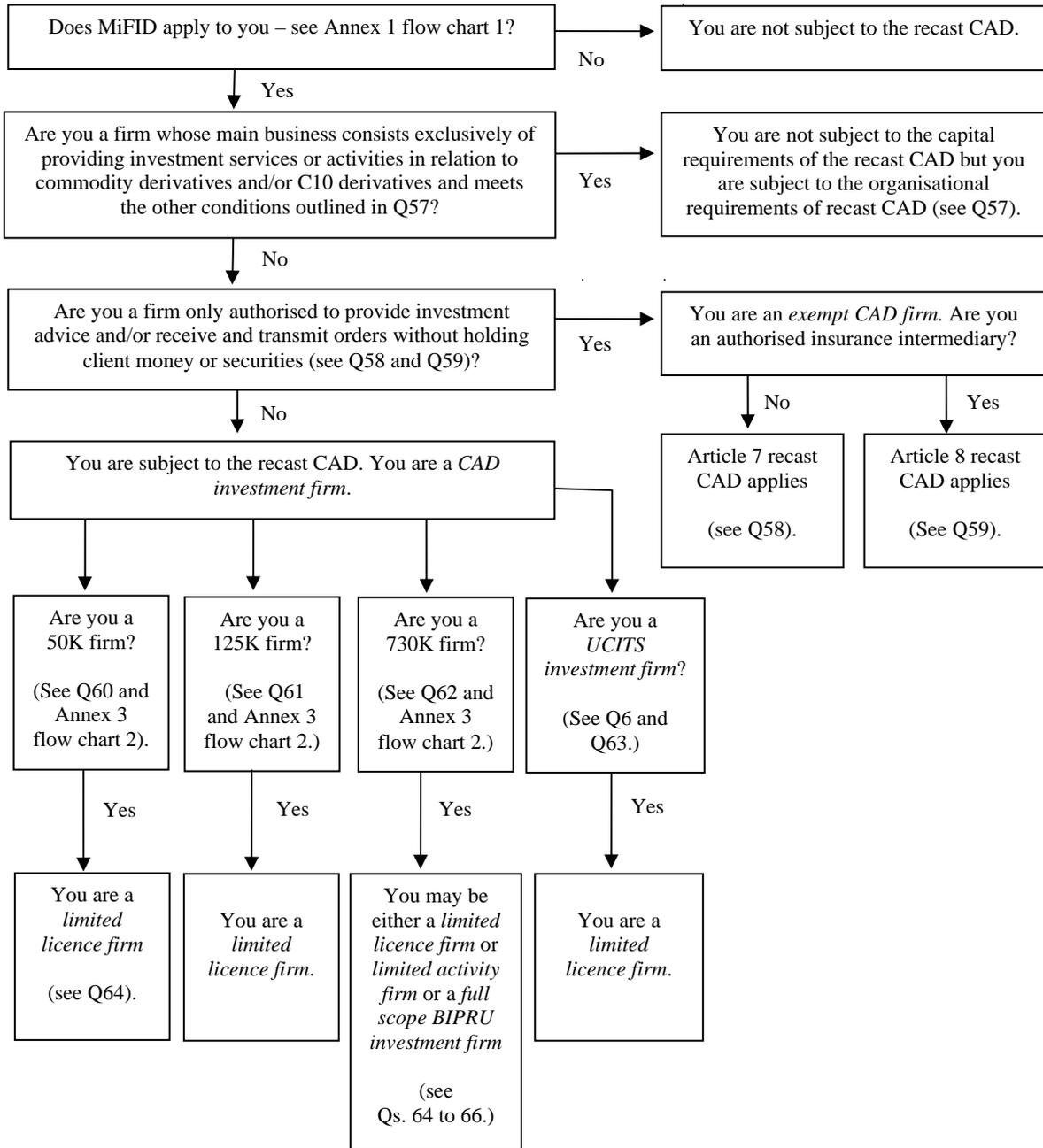
	rolling spot forex contract	FTSE index.
C10- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.	option (excluding commodity option and option on a commodity future) future (excluding a commodity future and a rolling spot forex contract) contract for differences (excluding spread bet and rolling spot forex contract) spread bet	C10 is supplemented by Level 2 measures (see articles 38 and 39 of the <i>MiFID Regulation</i>) and comprises miscellaneous derivatives. For further guidance see Q34.

Note

In our view, the categories of financial instrument in C1 to C10 are not mutually exclusive, so a financial instrument may fall within more than one category. For example, an interest in an investment trust company falls within C1 and C3.

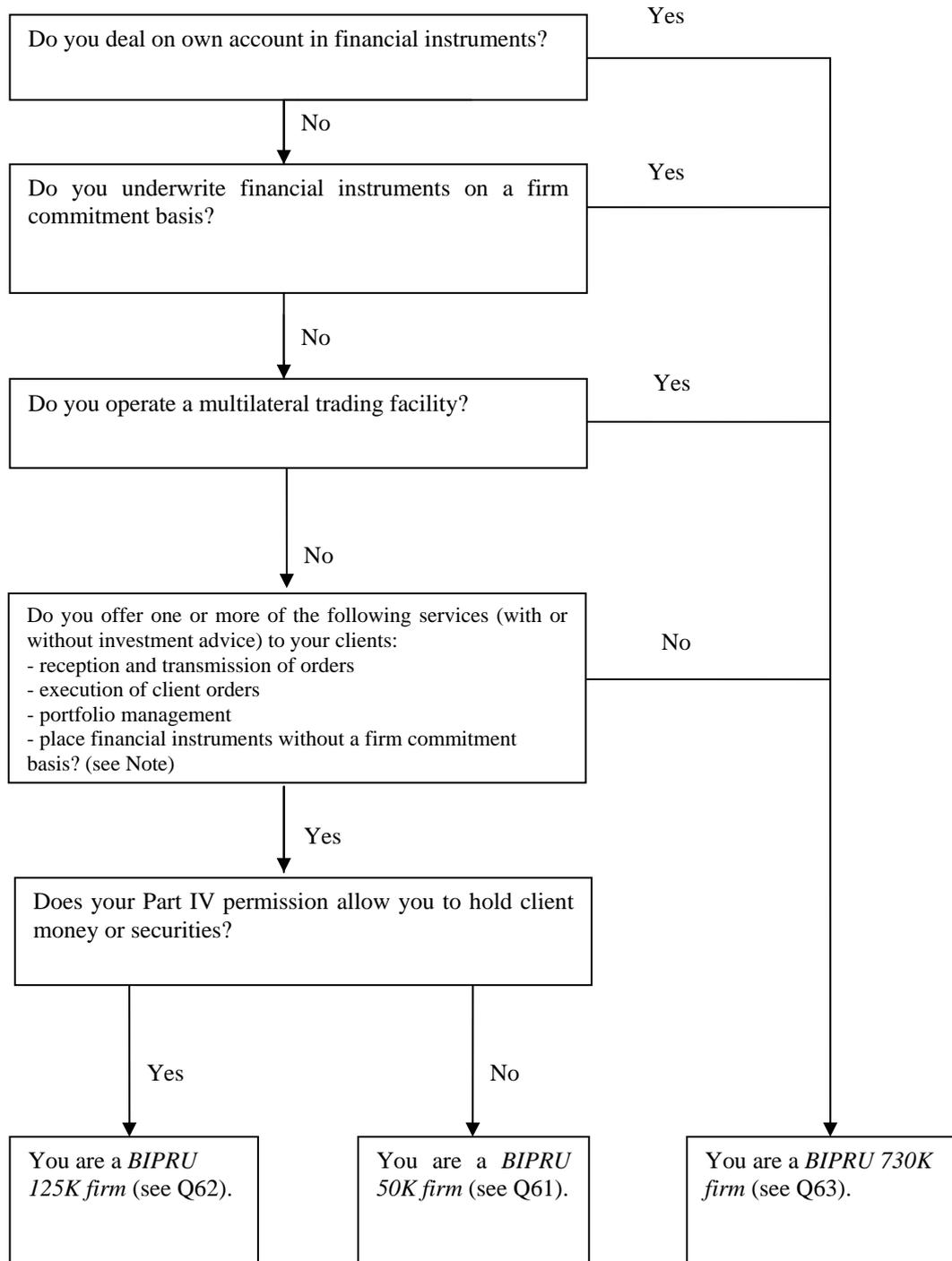
ANNEX 3

Flow chart 1- Are you subject to the recast CAD?



Flow chart 2 – CAD investment firms (excluding UCITS investment firms)

Are we a BIPRU 50K firm, a BIPRU 125K firm or a BIPRU 730K firm?



Note

It is possible, in principle, that a *CAD investment firm* may only provide the *investment service* of investment advice and hold client funds or securities, in which case the starting point is generally that it is a *BIPRU 730K firm*. In practice, if such a firm wishes to benefit from a lower capital treatment (for example euro 125,000), it may wish to add an *arranging (bringing about) deals in investments* element to its permission to enable it to receive and transmit orders in relation to MiFID instruments.

Annex 4 – Principal Statutory Instruments relating to MiFID scope issues

1. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 [SI 2006 No. 3384]
2. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 [SI 2007 No 126]
3. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006 [SI 2006 No 2975]
4. The Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006 [SI 2006 No 3414]
5. The Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 [SI 2007 No 125]

PERIMETER GUIDANCE (MiFID SCOPE) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000 .

Commencement

- B. This instrument comes into force on 1 November 2007.

Amendments to the Perimeter Guidance manual (PERG)

- C. PERG is amended in accordance with the Annex to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Perimeter Guidance (MiFID Scope) Instrument 2007.

By order of the Board
22 March 2007

Annex

Amendments to the Perimeter Guidance manual (PERG)

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

1.2.3 G ...

For the meanings of defined terms used in *PERG*, see the *Glossary*. It is essential that readers refer to these definitions. In the case of those parts of *PERG* which take the form of Q&A, however, to ensure greater accessibility of the text we have only italicised *Handbook* terms in those places where we think that it would be helpful to the majority of readers.

...

2.2.4 G The rest of this chapter provides a high level guide through the questions set out in *PERG* 2.2.3G. It aims to give an overall picture but in doing so it necessarily relies on the reader referring to UK statutory provisions and European legislation to fill in the detail (which can be extensive).

...

Modification of certain exclusions as a result of ~~Investment Services~~ MiFID and the Insurance Mediation Directives

2.5.3 G The application of certain of the exclusions considered in *PERG* 2.8 (Exclusions applicable to certain regulated activities) and *PERG* 2.9 (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to ~~the *Investment Services Directive*~~ *MiFID* or the *Insurance Mediation Directive*. The reasons for this and the consequences of it are explained in *PERG* 2.5.4G as respects ~~the *Investment Services Directive*~~ *MiFID*, and *PERG* 5 (Insurance mediation activities), as respects the *Insurance Mediation Directive*.

Investment services and activities

2.5.4 G It remains the Government's responsibility to ensure the proper implementation of ~~the *Investment Services Directive*~~ *MiFID*. In this *Directive*, Certain *persons* (called '*investment firms*') who are caught by the *Directive* subject to the requirements of *MiFID* must be brought within the scope of regulation under the *Act*. A core element of *MiFID* is the concept of "investment firm". An *investment firm* is any *person* whose ~~ordinary~~ regular occupation or business is involves the provision to third parties on a professional basis of one or more ~~core~~ investment services to third parties or the performance of one or more *investment activities* on a professional basis (these services are described in the extract from the *Directive* in Schedule 2 to the *Regulated Activities Order*). The *Investment Services Directive* does not apply in the circumstances described in the extract from the *Directive* in Schedule 3 to the *Regulated Activities Order*. A *person* will need to consider

~~whether he is an *investment firm* to which the *Directive* applies, having due regard to the provisions in Schedule 3 to the *Regulated Activities Order*. An *investment firm* is not subject to *MiFID* requirements if it falls within one or more of the exemptions in article 2 *MiFID*. Further information about these exemptions is contained in *PERG* 13.5. To the extent that an *investment firm* falls within one of these exemptions, it will not be a *MiFID investment firm*. Where a *firm* is not a *MiFID investment firm* because one or more of the exemptions in article 2 apply, it may still be carrying on *regulated activities* and therefore require *authorisation* unless it is an *exempt person*.~~

2.5.4A The UK has exercised the optional exemption in article 3 of *MiFID*. Further information about this exemption is contained in Q48 to 53 in *PERG* 13.5. It is a requirement of article 3 *MiFID* that the activities of firms relying on the exemption are “regulated at national level”. The investment services to which article 3 apply (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to *regulated activities* (see *PERG* 13 Annex 2 Tables 1 and 2).

2.5.5 G For persons who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by ~~the *Investment Services Directive-MiFID*~~. To achieve this result, some of the exclusions in the Order (that will apply to persons who are not caught by ~~the *MiFID Directive*~~) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A “*MiFID investment firm*”, for these purposes, includes *credit institutions* to which *MiFID* applies (see *PERG* 13, Q5 and 9) and *UCITS investment firms* providing the services of *portfolio management and personal recommendations* in relation to *financial instruments* or the ancillary service of safekeeping and administration in relation to units of collective investment undertakings. The same exclusions are also unavailable to *third country investment firms* when they provide *investment services and activities*. Article 4(4) of the *Regulated Activities Order* (Specified activities: general) lists a number of exclusions that must be disregarded. These relate to the exclusions concerned with:

...

(4A) professions or businesses not involving *regulated activities* (see *PERG* 2.9.5G);

(5) sale of goods (see *PERG* 2.9.7G);

(6) groups and joint enterprises (see *PERG* 2.9.9G);

(7) sale of a *body corporate* (see *PERG* 2.9.11G); and

- (8) business angel-led enterprise capital funds (see *PERG 2.9.20G* to *PERG 2.9.22G*).

...

2.6.20 G The *specified investment* category of *options* ~~is limited to~~ comprises:

- (1) *options* to acquire or dispose of *securities* or *contractually based investments*, currency and certain precious metals and *options* to acquire or dispose of such *options*. *Options* to buy or sell other types of *commodity* will only fall within this *specified investment* category if they are *options* to buy or sell *futures*, or *options* to buy or sell *contracts for differences*, which are based on other *commodities*. But *options* to buy or sell other types of *commodity* may be *contracts for differences* (see *PERG 2.6.23G*);
- (2) options to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Annex 1 to *MiFID* (see article 83(2) of the *Regulated Activities Order* and *PERG 13, Q32 to Q34* for guidance about these instruments), but only where they are options in relation to which a *MiFID investment firm* or a *third country investment firm* provides or performs *investment services and activities* on a professional basis; and
- (3) options to acquire or dispose of an option to which (2) applies. See article 83(1)(e) of the *Regulated Activities Order*.

2.6.20A G It follows therefore that options not falling within *PERG 2.6.20G(1)*, for example physically settled options on non-precious metals, such as copper options, will not be *options* unless they meet the conditions in *PERG 2.6.20G(2)*. Moreover, where the option in question is one to which *PERG 2.6.20G(2)* applies, it will be an *option* only in relation to the *investment services and activities*, or *ancillary services* where relevant, provided by that *person*. The same applies in the case of options falling within *PERG 2.6.20G(3)*, for example an option on a physically settled copper option traded on a *regulated market*.

Futures

...

2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only when they are the object of *investment services or activities* provided or performed by certain *persons*. These are contracts as described in *PERG 2.6.21G*:

- (1) that would not be regarded as having been entered into for investment purposes because they fail one of the tests mentioned in *PERG 2.6.22G*;

- (2) that fall within paragraphs 5, 6, 7 or 10 of Annex 1 to MiFID (see PERG 13, Q32 to Q34 for guidance about these derivatives); and
- (3) in relation to which a MiFID investment firm or a third country investment firm provides or performs investment services and activities on a professional basis.

See article 84(1A)-(1D) of the *Regulated Activities Order*.

2.6.22B G The transposition of MiFID does not have the effect of turning spot or forward foreign exchange contracts into financial instruments where such instruments satisfy the commercial purpose test in article 84(2) of the Regulated Activities Order. In our view, very few instruments are likely to fall within PERG 2.6.22AG in practice, given that this category only applies in the case of instruments not falling within PERG 2.6.22G. An example of an instrument falling within PERG 2.6.22AG could be rights under a contract for a derivative which provides for physical delivery of a commodity at a future date and which is entered into on a multilateral trading facility.

Contracts for differences

- 2.6.23 G The specified investment category of contracts for differences covers:
- (1) rights under contracts for differences; and
 - (2) rights under other contracts whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in certain factors; and
 - (3) other derivative contracts (not within (1) or (2)) falling within paragraph 8 of Annex 1 to MiFID, that is derivative instruments for the transfer of credit risk (see PERG 13, Q30 to Q31 for guidance about these instruments), but only where a MiFID investment firm or a third country investment firm provides or performs investment services and activities on a professional basis.

~~The factors mentioned in (2) include In addition to fluctuations in the value or price of property of any description or in an index, those factors also include fluctuations or in any 'other factor designated in the contract'. This catches a wide range of factors.~~

~~All contracts in this category are cash-settled instruments (as opposed to being settled by way of delivering something other than cash). Many would be unenforceable as gaming contracts were it not for section 412 of the Act (Gaming contracts). Examples of things that count as specified investments under this category are spread bets and interest rate swaps.~~

2.6.23A G All contracts in this category are cash-settled instruments (as opposed to being settled by way of delivering something other than cash). Many would be

unenforceable as gaming contracts were it not for section 412 of the Act (Gaming contracts). Examples of instruments that count as *specified investments* under this category are *spread bets* and interest rate swaps.

...

Operating a multilateral trading facility

2.7.7D G *Guidance on the MiFID investment service of operating a multilateral trading facility is given in PERG 13, Q24. So far as the regulated activity of operating a multilateral trading facility is concerned, this does not comprise the activities of dealing in investments as agent, dealing in investments as principal, or arranging deals in investments. Where a firm carries on one or more of these activities in addition to operating a multilateral trading facility, these are separate regulated activities for which it requires permission.*

...

2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing e-money, effecting or carrying out contracts of insurance, operating a multilateral trading facility* or carrying on any of the activities that are regulated in relation to *collective investment schemes*, ...

...

2.8.4C G The exclusions referred to in *PERG 2.8.4G(1), (2), (5) and (6)(b), (c) and (d)* will not be available to *persons* who, ~~in~~ when carrying on the activity of *dealing in investments as principal*, are ~~investment firms~~ MiFID investment firms or third country investment firms (see *PERG 2.5.4G to PERG 2.5.5G* (Investment services and activities)).

...

2.8.5A G The exclusions referred to in *PERG 2.8.5G(1), (2) and (3)(a), (b), (c), (d) and (j)* will not be available to *persons* who, ~~in~~ when carrying on the activity of *dealing in investments as agent*, are ~~investment firms~~ MiFID investment firms or third country investment firms (see *PERG 2.5.4G to PERG 2.5.5G* (Investment services and activities)).

...

2.8.6B G The exclusions referred to in *PERG 2.8.6AG (4) and PERG 2.8.6AG (13)(b), (c), (d), (e) and (l)* will not be available to *persons* who, ~~in~~ when carrying on an *arranging activity*, are ~~investment firms~~ MiFID investment firms or third country investment firms (see *PERG 2.5.4G to PERG 2.5.5G* (Investment services and activities)).

...

- 2.8.7 G ...
- The exclusion in article 38 of the *Regulated Activities Order* and the exclusions referred to in *PERG 2.8.7G (2)*, *PERG 2.8.7G (3)* and *PERG 2.8.7G (5)* will not be available to persons who, ~~in~~ when carrying on the activity of *managing investments*, are ~~investment firms~~ MiFID investment firms or third country investment firms (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).
- ...
- 2.8.12B G The exclusions referred to in *PERG 2.8.12AG(1)(b)* and *(2)(a)*, *(b)*, *(c)* and *(g)* will not be available to persons who, when carrying on the activity of *advising on investments* are MiFID investment firms or third country investment firms (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).
- ...
- 2.9.5 G ...
- The exclusion is, however, disapplied where a person is carrying on *insurance mediation* or *reinsurance mediation*. This is due to article 4(4A) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to *insurance mediation activities* is in *PERG 5* (Insurance mediation activities). The exclusion is also disapplied for persons who, when carrying on the relevant regulated activity, are MiFID investment firms or third country investment firms (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).
- ...
- 2.9.8 G ... in relation to rights under a *contract of insurance* or *units* in a *collective investment scheme* (or rights to, or interests in, either). The exclusions are also disapplied for persons who, ~~in~~ when carrying on the relevant *regulated activity*, are MiFID investment firms or third country investment firms (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).
- ...
- 2.9.10 G ... *Guidance* on exclusions relevant to *insurance mediation activities* is in *PERG 5* (Insurance mediation activities). The exclusions are also disapplied for persons who, ~~in~~ when carrying on the relevant *regulated activity*, are MiFID investment firms or third country investment firms (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).
- ...
- 2.9.12 G ... The exclusions in *PERG 2.9.11G (2)*, *(3)* and *(4)* are disapplied where they concern a *contract of insurance*. *Guidance* on exclusions relevant to *insurance mediation activities* is in *PERG 5* (Guidance on insurance mediation activities). The exclusions are also disapplied for persons who, ~~in~~ when carrying on the relevant *regulated activity*, are MiFID investment

firms or third country investment firms (see *PERG 2.5.4G to PERG 2.5.5G* (Investment services and activities)).

...

2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of: ...

(3B) operating a multilateral trading facility;

...

2.9.16 G ...Where a *person* does not have a permanent place of business in the *United Kingdom*, he will not, in any event, need to rely on these exclusions unless what he does is regarded as carried on in the *United Kingdom* (see *PERG 2.4*). Nor will a *person* be able to rely on the exclusions in *PERG 2.9.15G* (1) to (4) if when carrying on the relevant *regulated activity* it is a *MiFID investment firm* and its *Home State* is the *United Kingdom*.

...

2.9.21A The exclusions for business angel-led enterprise capital funds are also disappplied for *persons* who, ~~in~~ when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G* (Investment services and activities)).

...

...

PERG 2 Ann 2G

2 Table

Table 1: Regulated Activities [see note 1 to Table 1]

...	
Designated investment business [see notes 1A and 1B to Table 1]	
...	(in relation to (d) to (g) and (h) to (1) <i>security</i> [expanded in Table 3]; or <i>contractually based investment</i> [expanded in Table 3].)
...	...
<u>(ga) operating a multilateral trading facility (article 25D) [see note 2A]</u>	<u><i>securities</i> or <i>contractually based investments</i> which are <i>financial instruments</i> (see <i>PERG 13 Annex 2 G Table 2</i> and note 2A to Table 1).</u>
...	

3 Table

Notes to Table 1:
Note 1:
In addition to the <i>regulated activities</i> in Table 1, article 64 of the <i>Regulated Activities Order</i> specifies that <i>agreeing to carry on a regulated activity</i> is itself a <i>regulated activity</i> in certain cases. This applies in relation to all the <i>regulated activities</i> listed in Table 1 apart from:
...
<ul style="list-style-type: none"> • <i>effecting and carrying out contracts of insurance</i> (article 10); • <i>operating a multilateral trading facility</i> (article 25D)
...

Note 2A:
<u>PERG 13 Ann 2 Table 2 contains a map indicating which <i>securities</i> and <i>contractually based investments</i> correspond to <i>financial instruments</i>. A firm's <i>permission</i> should comprise each of the categories of <i>security</i> and <i>contractually based investment</i> in relation to which it carries on the activity of <i>operating a multilateral trading facility</i>.</u>
...

Advice in publications and broadcasts and MiFID

7.3.2A G Advice about *financial instruments* in a newspaper, journal, magazine, publication, internet communication or radio or television broadcast should not normally be a *personal recommendation* under *MiFID* (see *PERG 13, Q18 to Q21*).

...

8.31.3A G The exclusion in article 67 will not apply to a *person* who is *advising on investments* when he does so as a *MiFID investment firm* or a *third country investment firm* (see *PERG 2.5.4G to 2.5.5G (Investment services and activities)*).

...

8.33.7 G The exclusion in article 29 will not apply to a *person* who is carrying on an *arranging* activity when he does so as a *MiFID investment firm* or a *third country investment firm* (see *PERG 2.5.4G to 2.5.5G (Investment services and activities)*).

...

8.36.3 G Table Controlled activities

...	
4.	Arranging deals in investments
<u>4A</u>	<u>Operating a multilateral trading facility</u>
...	

...

10.1 Background

Q1. ...

...

The Q&As complement the general *guidance* on regulated activities in Chapter 2 of our Perimeter Guidance Manual ('*PERG*'), the general guidance on insurance mediation activities in Chapter 5 of *PERG* (*PERG* 5), the guidance about the scope of the *Markets in Financial Instruments Directive* in Chapter 13 of *PERG* (*PERG* 13) and the relevant legislation. In addition, Chapter 12 of *PERG* (*PERG* 12) has further guidance about the regulated activities relating to the operation and sale of personal pension schemes that came into force on 6 April 2007.

...

10.4 ...

Q32. What are the exclusions that might apply to me as a pensions administration service provider?

One or more of the following exclusions might be available to you depending on the nature and scope of the services you provide:

- *dealing in investments as agent and arranging with or through an authorised person* (articles 22 and 29 of the *Regulated Activities Order*);
- *dealing in investments as agent, arranging and advising on investments* as a necessary part of providing other non-regulated services (article 67 of the *Regulated Activities Order*); and
- services provided to a member of your *group* (article 69 of the *Regulated Activities Order*).

But none of these exclusions will apply to you if, in carrying on the relevant regulated activity, you are an investment firm and do not benefit from any of the

exemptions under *MiFID* (see Chapter 13 of *PERG*, including Q42).

...

10.4A The application of EU Directives

Q41A. Are pension scheme trustees and administration service providers likely to be subject to authorisation under the Markets in Financial Instruments Investment Services Directive or subject to the Capital Adequacy Directive?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be carrying on an investment service for the purposes of, or otherwise be exempt under article 2.21 of, the Markets in Financial Instruments Investment Services Directive. The following table expands on this in broad terms.

As for the re-cast Capital Adequacy Directive, this will only apply to persons who are MiFID ISD investment firms or BCD credit institutions.

Detailed guidance on the scope of MiFID and the re-cast Capital Adequacy Directive is in PERG 13.

Activity	Potential <u>MiFID ISD investment activity or service</u> ?	Potential application of <u>MiFID ISD</u> or of a <u>MiFID ISD article 2.21</u> exemption?
Dealing in scheme assets as trustee	<p>Dealing in investments for own account</p> <p><u>Execution of orders on behalf of clients</u></p>	<p><u>MiFID ISD</u> will not apply provided the trustees are either not acting by way of business or otherwise are not holding themselves out as persons who provide a dealing service to third parties. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis</p> <p>Where the pension scheme is a collective investment undertaking <u>In any event, the trustee should be exempt under article 2.21 (h) as <u>manager or depositary (or both) of the scheme a pension fund</u></u></p>
Issuing rights under a	None – the rights are not <u>MiFID ISD investments</u>	<u>MiFID ISD</u> does not apply

<p>stakeholder or personal pension scheme to members</p>	<p><u>financial instruments</u></p>	
<p>Pension scheme service provider:</p> <p>a. dealing in scheme assets as agent for the trustees</p> <p>b. arranging deals in scheme assets <u>as agent for the trustees</u></p> <p><u>c. arranging for persons to join the scheme or to switch or dispose of, or to acquire further, rights under the scheme</u></p>	<p>a. Executing orders other than for own account <u>Execution of orders on behalf of clients</u></p> <p>b. Receiving and transmitting orders</p> <p>c. <u>None – the rights are not MiFID financial instruments and neither are any rights to or interests in financial instruments that the scheme member may acquire under the scheme</u></p>	<p>MiFID ISD will potentially apply where the investments are MiFID ISD financial instruments (such as shares, debt securities or units)</p> <p>However, many pension schemes will be employee participation schemes, the administration of which is exempt under article 2.21 (de)</p> <p>Where the service provider is providing services exclusively for the benefit of a corporate trustee who is a member of its group, the exemption in article 2.21 (b) should apply. <u>And article 2.1(f) will provide for the exclusions in 2.1(b) and 2.1(e) to be combined where the service provider is both administering an employee participation scheme and providing services to a trustee who is a group member</u></p> <p>Where the activity is receiving and transmitting orders <u>and the service provider is authorised</u>, the <u>optional intermediaries exemption in article 2.1 (g) 3 of MiFID</u> may apply</p> <p>Where the pension scheme is a collective investment undertaking, the scheme administrator may <u>If the service provider is acting as the operator of a stakeholder or personal pension scheme (for example, as the scheme administrator), he should be exempt under article 2.2 1 (h) as manager of the scheme a pension fund</u></p>
<p>Managing the assets of the scheme</p>	<p>Investment management</p>	<p>MiFID ISD will not apply to trustees provided they are either not acting by way of business or otherwise are not holding themselves out as, or additionally remunerated for, providing investment management services. This is because the</p>

		<p>trustees would not be regarded as providing an investment service to third parties on a professional basis</p> <p>Also, where the pension scheme is a collective investment undertaking, the scheme administrator may, and the In any event, the trustees will, be exempt under article 2.2 (h) in respect of anything they do in the capacity of manager or depositary of the scheme respectively should be exempt under article 2.1 (h) as manager or depositary (or both) of a pension fund</p> <p><u>If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(h) as manager of a pension fund</u></p> <p><u>But a service provider who is merely managing the assets of a pension fund without being the manager or depositary of the scheme will not be exempt under article 2.1(h). The manager and depositary are those persons charged with responsibility for managing the fund or safeguarding its assets and not persons to whom such functions may be delegated or outsourced</u></p>
Safeguarding and administering the scheme assets	None	Safekeeping and administration of investments is an an <u>MiFID ISD non-core ancillary</u> service
Establishing, operating or winding up a stakeholder or personal pension scheme	None	<u>MiFID ISD</u> does not apply
Advising trustees or members of	Investment advice	Investment advice is an ISD non-core service

<p>prospective members</p> <p><u>a. Pension scheme trustee advising fellow trustees or members or prospective members</u></p> <p><u>b. Pension scheme service provider advising trustees or members or prospective members</u></p>		<p><u>MiFID will potentially apply where the advice concerns MiFID financial instruments (such as shares, debt securities or units) and so may apply to advice given to the trustees about scheme assets. However, beneficial interests in financial instruments held under the trusts of a pension scheme will not themselves be financial instruments under MiFID. And rights under a personal pension or stakeholder pension scheme are also not financial instruments. So, advice given to scheme members or prospective members should not be investment advice under MiFID</u></p> <p><u>MiFID will not apply to trustees who are advising their fellow trustees for the purposes of the trust provided they are not additionally remunerated for providing investment advisory services</u></p> <p><u>Also, trustees will be exempt under article 2.1 (h) in respect of anything they do in the capacity of manager or depositary of a pension fund (including advising their fellow trustees)</u></p> <p><u>If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(h) as manager of a pension fund if he gives advice to the trustees</u></p> <p><u>Where the service provider is providing advice to a corporate trustee who is a member of its group, the exemption in article 2.1 (b) may apply (and may be combined with the exemption for administration of an employee participation scheme under article 2.1(f) where relevant)</u></p>
--	--	---

~~Q41B. Will the implementation of the Markets in Financial Instruments Directive be likely to affect the current position of pension scheme trustees and administration service providers under the Investment Services Directive and the Capital Adequacy Directive?~~

~~This is unlikely to be the case. The position under the Markets in Financial Instruments Directive should not be materially different to the position under the Investment Services Directive (or, as a result, the Capital Adequacy Directive) as regards the usual activities of pension scheme trustees and administration service providers. The one possible exception to this concerns investment advice which will become an investment service for the first time under the Markets in Financial Instruments Directive. This will not apply to advice given to scheme members about their rights under the scheme as those rights will not be financial instruments for the purposes of the Directive. But the Directive will apply to advice in the form of a recommendation to scheme trustees or members about their buying or selling a particular financial instrument for the purposes of the scheme. Financial instruments will include shares, debt securities and units in a collective investment scheme but not life policies or deposits. This will be subject to the possible availability of an exemption in article 2.1 of the Directive.~~

~~Draft guidance on the changes in regulatory scope that will be caused by the implementation of the Markets in Financial Instruments Directive and its effect on the application of the Capital Adequacy Directive was issued as Annex 5 to Consultation Paper 06/9 (Organisation systems and controls) and will, in due course, form Chapter 13 to PERG. [deleted]~~

**CONDUCT OF BUSINESS SOURCEBOOK (USE OF DEALING COMMISSION)
(AMENDMENT) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 6 April 2007.

Amendments to the Handbook

- C. The Conduct of Business sourcebook (COB) is amended in accordance with the Annex to this instrument

Citation

- D. This instrument may be cited as the Conduct of Business Sourcebook (Use of Dealing Commission) (Amendment) Instrument 2007.

By order of the Board
22 March 2007

Annex

Amendments to the Conduct of Business sourcebook (COB)

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

- 7.18.8 G Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FSA* ~~do~~ does not regard as meeting the requirements of either *COB* 7.18.4E(1) or *COB* 7.18.5E(1) include:
-
- (c) connectivity services such as electronic networks and dedicated telephone lines;
- ...
- (g) ~~office administrative computer software, such as word processing or accounting programmes;~~ order and execution management systems;
- (ga) office administrative computer software, such as word processing or accounting programmes;

...

...

**STAKEHOLDER PENSION DECISION TREES
(AMENDMENT NO 2) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power); and
 - (2) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 May 2007.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COB) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Stakeholder Pension Decision Trees (Amendment No 2) Instrument 2007.

By order of the Board
26 April 2007

Annex

Amendments to the Conduct of Business sourcebook (COB)

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

COB 6 Annex 1R Decision trees for stakeholder pension schemes (as required in COB 6.5.8R): text, content and format (R)

...

Estimated pensions in the Pension Table

The Pension Table later on will give you a fair idea of the pension income you could get, depending on your age and contributions. **But please remember that the figures in the table are only estimates and are not guaranteed. You may get less, or you may get more.**

The pension figures are also shown before income tax. When you receive your pension during retirement you may be taxed on it.

The estimated pensions are based on the stakeholder pension charge limit of 1.5% for the first 10 years (if the stakeholder pension scheme has kept to the original 1% charge limit on the fund, then the estimated pension figures in the Pensions Table will be higher). There's more about charges under "Further information" on page [insert page number].

Following the 2007 Budget it is expected that from April 2008 the basic rate tax level will be reduced from 22% to 20%. Where relevant we have referred to this change in the Pension Table.

The figures in the table are calculated on the basis of the following assumptions:

Before you retire

Your monthly contributions increase in line with inflation.....2.5% a year.
Before charges, your fund grows by.....7% a year.
Charges deducted from your fund.....1.5% of fund a year for 10 years,then reducing to 1%.
Tax rebates on contributions.....rebate of basic level tax at 20% (theexpected rate fromApril 2008).

When you retire

Your entire fund is used to buy an annuity, and you do not take any tax-free lump sum.
Annuity rates assume that the investment return after retirement is.....~~0.6~~ 0.8% a year in excess of inflation.
Your pension increases in line with inflation.
Your spouse will receive half your pension on your death.

...

This information is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

Pension Table

How much should I save towards a pension?

THIS IS AN IMPORTANT DECISION

Most people save every month. It is better if you can keep up your monthly contributions.

The following table shows the **estimated monthly pension**, at today's prices, that you would get for different **regular monthly contributions**. The contribution shown is assumed to **increase each year in line with inflation**. The government will also add tax rebates to increase the actual amounts paid into your stakeholder pension (although all tax breaks are subject to change). The estimated pension figures include this tax rebate, calculated using the tax rate that is expected to come into force in April 2008 (i.e. 20% basic rate tax).

They also assume that your pension will increase in line with inflation.

Remember: these estimates are not guaranteed – you could get more or less than the amounts shown.
A stakeholder pension would be on top of any State pensions you are entitled to.

The table gives you an idea of how much you need to pay now – as a regular monthly contribution – to receive the monthly pension you want when you retire. First look down the left-hand column to find the age closest to your age now. Then look across to find the monthly contribution you want to pay and the age at which you want to retire.

Your approximate age now	What you pay per month for the first year (tax rebates will be added to this amount)							
	£20		£50		£100		£200	
	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60	Initial monthly pension if you retire at 65	Initial monthly pension if you retire at 60
20	£98	£67-68	£245	£169-171	£490-491	£339-342	£980-983	£679-684
25	£79	£54	£197-198	£135	£395-396	£270-271	£790-792	£540-543
30	£62-63	£42	£157	£105-106	£314-315	£210-212	£628-630	£421-424
35	£49	£32	£122	£80	£245	£160-161	£490-491	£320-322
40	£40-37	£23	£101-93	£58	£202-187	£117	£404-374	£234-235
45	£27	£16	£68	£40	£136-137	£80	£273-274	£161
50	£18	£9	£47	£24	£94	£49	£188	£98
55	£11	£4	£28	£11	£57	£23	£114-115	£46
60	£5		£13		£26-27		£53-54	

Have you found the level of monthly pension that you need in the table and can you afford the monthly contribution?

If yes, tick

Yes, I've found the pension I need and can afford the monthly contribution

If no, tick

No, I can't find the pension I need or I can't afford the contribution

Consider starting a stakeholder pension or restart making contributions to a stakeholder pension. If you are employed, check if your employer offers workplace access to a particular stakeholder pension and if he offers a contribution to it. If in doubt seek help from an expert adviser. See "Where do I go from here?" on the next page.

For details of where to get further help, see "Where do I go from here?" on the next page.

You have completed the trees

[Insert current tax year]

...

Tax relief

Everybody who contributes to a stakeholder pension will get tax relief on their contributions.

Under present tax arrangements, for each £1 you pay into your stakeholder pension fund, HM Revenue and Customs will pay an extra 28p into your fund, even if you don't normally pay income tax.

Example

If you pay in £50 a month, income tax relief will increase your contribution to £64.10.

Following the 2007 Budget it is expected that from April 2008 the basic rate tax level will be reduced from 22% to 20%. This means that for each £1 you pay into your stakeholder pension fund after April 2008, HM Revenue and Customs will pay an extra 25p into your fund, even if you don't normally pay income tax.

Example

If you pay in £50 a month, income tax relief will increase your contribution to £62.50.

The Government has simplified the tax rules for pensions since April 2006. Under the new tax rules, you can pay as much as you like into a stakeholder pension, **but there are limits on the amount of tax relief given.** You will receive tax relief on yearly contributions made by and for you in any year up to:

- £2,808 in 2007, this is expected to change to £2,880 for tax years from April 2008;
or
- 100% of your UK earnings;

whichever is more.

Most people can contribute up to £3,600 to a stakeholder pension in any tax year, including basic-rate tax relief. This means you could pay in £2,808 in 2007, and it is expected that you could pay £2,880 in tax years from April 2008, and the income tax relief would increase your contribution to £3,600.

If you pay income tax at the higher rate, you will be able to claim back the extra tax from HM Revenue and Customs at the end of each tax year.

Even if you have no form of paid employment, you can set up a stakeholder pension. You can then benefit from tax relief on your contributions, even if you don't pay any income tax.

There is however a maximum "annual allowance" – set at ~~£215,000~~ £225,000 for tax year 2006/07 – which applies to all contributions made by you and on your behalf (including from an employer). If the contributions made by and for you in any year exceed the annual allowance, the contributions above the annual allowance will still attract tax relief, but you will have to pay a 40% tax charge on any contributions which exceed the annual allowance.

There is also an overall "lifetime allowance" on the total amount of money you can save in your pension free of any tax charge when you come to draw your benefits. This is set at £1.56 million for tax year 2006/07, rising in stages to £1.8 million by tax year 2010/11. It includes the value of all the other current or old pension schemes you may have from previous jobs. There is information on how to get details of your old pension plans on page [*insert page number*].

...

**PURE PROTECTION CONTRACT DEFINITION (REMOVAL OF AGE LIMIT)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers); and
 - (2) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 June 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOB) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Pure Protection Contract Definition (Removal of Age Limit) Instrument 2007.

By order of the Board
26 April 2007

Annex A

Amendments to the Glossary of definitions

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

Amend the following definition as shown.

- pure protection contract*
- (1) a ~~long-term insurance contract~~ long-term insurance contract in respect of which the following conditions are met:
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (b) ~~the contract provides that benefits are payable on death (other than death due to an accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding seventy years; [deleted]~~
 - (c) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (d) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with ~~any of (a), (b) or (c)~~; or
 - (e) [deleted]
- (2) a *reinsurance contract* covering all or part of a risk to which a *person* is exposed under a *long-term insurance contract*.

Annex B

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

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

~~Pension term assurance policies~~ Pure protection contracts: election to apply COB rules

- 1.2.17 R (1) ~~ICOB~~ This sourcebook does not apply to the extent that:
- (a) the activities ~~within ICOB 1.2.1R~~ to which this sourcebook applies relate to a ~~pension term assurance policy~~ pure protection contract; and
 - (b) the *firm* has elected to comply with ~~COB~~ the Conduct of Business sourcebook;

but the *firm* must then comply with the rest of the *Handbook* treating the ~~pension term assurance policy~~ pure protection contract as a *life policy* and a *designated investment*, and not as a *non-investment insurance contract*.

...

...

TP 1 Transitional provisions

TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies	Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force		
...
<u>12</u>	<u>ICOB 1.2.17R</u>	<u>R</u>	<u>A firm is not required to make, and retain a record of, the election to comply with the Conduct of Business sourcebook.</u>	<u>6 June 2007 to 5 June 2008</u>	<u>6 June 2007</u>

...

Schedule 1 Record keeping requirements

...

ICOB Sch 1.3

G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>ICOB</i> 1.2.17R(2)	Record of election to comply with COB <u>Conduct of Business sourcebook rules</u> for pension term assurance policies <u>pure protection contracts</u> (including amendment or reversal of election)	Date of election and precise description of parts of the <i>firm's</i> business that will comply with COB <u>Conduct of Business sourcebook</u> provisions	Not specified	Indefinitely
...

**NEW COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(AMENDMENT NO 2) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 140 (Restriction on managers of authorised unit trust schemes);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 238(5) (Restrictions on promotion);
 - (f) section 242 (Applications for authorisation of unit trust schemes);
 - (g) section 247 (Trust scheme rules); and
 - (h) section 248 (Scheme particulars rules); and
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 May 2007.

Amendments to the Handbook

- D. The New Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the New Collective Investment Schemes Sourcebook (Amendment No 2) Instrument 2007.

By order of the Board
26 April 2007

Annex

Amendments to the New Collective Investment Schemes sourcebook (COLL)

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

Table: contents of the prospectus

4.2.5 R ...

...	...
Allocation of payments	
14	If, in accordance with COLL 6.2.19 <u>6.7.10R</u> (Allocation of payments to income or capital), the <i>authorised fund manager</i> ...
...	...

...

Guidance on spread: general

5.2.11A G ...

- (3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it and other companies in its group on behalf of the *scheme*.

...

Spread: general

5.6.7 R ...

- (11) For the purposes of this *rule* a single body is:
- (a) in relation to *transferable securities* and money market instruments, the *person* by whom they are issued; and
 - (b) in relation to *deposits*, the *person* with whom they are placed.

Guidance on spread: general

5.6.7A G ...

(3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it on behalf of the *scheme*.

...

Valuation and pricing guidance

6.3.6 G Table: This table belongs to COLL 6.3.2G(2)(a) and COLL 6.3.3R (Valuation)
...

Valuation and pricing	
1	The valuation of scheme property
	...
(4)	For the purposes of (2) and (3), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the <i>investment</i> or other part of the <i>scheme property</i> should, <u>in the case of a <i>single-priced authorised fund</i>, be excluded from the value of an <i>investment</i> or other part of the <i>scheme property</i>. In the case of a <i>dual-priced authorised fund</i>, any such payments should be added to the <i>issue</i> basis of the valuation, or subtracted from the <i>cancellation</i> basis of the valuation, as appropriate. Alternatively, the <i>prospectus</i> of a <i>dual-priced authorised fund</i> may prescribe any other method of calculating <i>unit prices</i> that ensures an equivalent treatment of the effect of these payments.</u>
	...

...

Replacement of a manager

6.5.7 R (1) The *manager* of an *AUT* is subject to removal by written notice by the *trustee* upon any of the following events:

...

(i) the *unitholders* of three quarters in value of all of the *units* ~~in~~ *existence* then *in issue* (excluding *units* held or treated as held by the *manager* or by any *associate* of the *manager*) making a request in writing to the *trustee* that the *manager* should be removed.

...

...

Qualified investor schemes: general

8.4.4 R The *scheme property* of a *qualified investor scheme* must, except where otherwise provided by the *rules* in this chapter, consist only of one or more of the following to which it is *dedicated*:

...

(2) an interest in an ~~*approved immovable*~~ immovable under *COLL* 8.4.11R (Investment in property), ~~provided the country or territory in which the land or building is situated is identified in the *prospectus*;~~

...

PERIODIC FEES (2007/2008) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 72 (The competent authority);
 - (2) section 74(4) (The official list);
 - (3) section 99(1) (Fees);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 138 (General rule-making power);
 - (6) section 156 (General supplementary powers);
 - (7) section 157(1) and (4) (Guidance);
 - (8) section 234 (Industry Funding);
 - (9) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (10) paragraphs 1 (General), 4 (Rules) and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 1 June 2007.

Amendments to the Handbook

- C. The Fees manual (FEES) is amended in accordance with Annex A to this instrument.
- D. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Periodic Fees (2007/2008) Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, but where an entire new section is being inserted or deleted, the instructions are described and the text is not underlined or struck through.

2.2.1R If a *person* does not pay the total amount of a periodic fee (including fees relating to transactions reported ~~reportable transactions~~ to the FSA using the FSA's Transaction Reporting System (see SUP 17)), FOS levy or case fee, or share of the FSCS levy, before the end of the date on which it is due, under the relevant provision in FEES 4, 5, or 6, that *person* must pay an additional amount as follows:

- (1) if the fee was not paid in full before the end of the due date, an administrative fee of £250; plus
- (2) interest on any unpaid part of the fee at the rate of 5% per annum above the Bank of England's repo rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

...

3.2.7.R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...
(q) A significant transaction, being one where: (i) the <i>issuer</i> has a market capitalisation in excess of £1.5 billion and it is a new applicant for a <i>primary listing</i> under the <i>listing rules</i> , or involved in a reverse or hostile takeover or a significant restructuring; or (ii) the <i>issuer</i> has a market capitalisation in excess of £5 billion and is involved in a <i>class 1 transaction</i> or a transaction requiring vetting of an equity <i>prospectus</i> or equivalent document; or (iii) the <i>issuer</i> is proposing a Depositary Receipt issue intended to raise more than £5 billion.	£50,000	On or before the date the application is made <u>On or before the date that the relevant documentation is first submitted to the FSA</u>

FEES 3 Annex 4R Application fees in relation to listing rules

Part 1

Fee type	Fee amount
Application Fees	
Application for <i>listing</i>	£225 plus £100 per each additional issue of securities with its own International Securities Identification Number unless the fee in Category <u>Categories 6 or 8</u> of FEES 3 Annex 5R Part 2 applies

FEES 3 Annex 5R Document vetting and approval fees in relation to listing and prospectus rules

...

Where a fee in category 6 or 8 of this fee schedule is payable, the listing application fee under FEES 3 Annex 4R Part 1 does not apply.

...

4.2.11.R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
Any <i>firm</i> which reports <u>transactions</u> its <i>reportable transactions</i> to the FSA using the FSA's Direct Reporting System or FSA's Transaction Reporting System (see SUP 17)	FEES 4 Annex 3R	(1) For transaction charges, the first working day of each <i>month</i> (2) For licence fees and enrolment charges, by the date set out on the relevant invoice	Not applicable
...			
<i>Listed issuers</i> (in LR) of <i>shares</i> , depository receipts and	FEES 4 Annex 7R	Within 30 days of the date of the	<u>Listed issuer</u> Issuer (in LR) becomes subject to

<p><i>securitised derivatives (in LR)</i>, unless the conditions set out below apply.</p> <p><u>The first condition is that the <i>listed issuer</i>, or a related entity, has already paid a periodic fee in respect of the period concerned. The second condition is that the <i>listed issuer</i> is subject to <i>listing rules</i> as a result of a reverse takeover, or that the <i>listed issuer</i> is a newly formed entity, created as a result of a restructuring.</u></p>		invoice	<i>listing rules</i>
---	--	---------	----------------------

...

FEES 4 Annex 2R

Delete FEES 4 Annex 2R and replace with the following:

4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2007 to 31 March 2008

Part 1

This table shows the tariff rates applicable to each fee block

(1)	For each activity group specified in the table below, the fee is the total of the sums payable for each of the tariff bands applicable to the <i>firm's</i> business, calculated as follows:	
	(a)	the relevant minimum fee; plus
	(b)	an additional fee calculated by multiplying the <i>firm's</i> tariff base by the appropriate rates applying to each tranche of the tariff base, as indicated.
(2)	A <i>firm</i> may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:	
	(a)	it has reasonable grounds for believing

		that the costs of identifying the <i>firm's</i> UK business separately from its non-UK business in the way described in Part 2 of FEES 4 Annex 1R are disproportionate to the difference in fees payable; and
	(b)	it notifies the FSA in writing at the same time as it provides the information concerned under FEES 4.4 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
(3)	For a <i>firm</i> which has not complied with FEES 4.4.2 R (Information on which fees are calculated) for this period:	
	(a)	the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10;
	(b)	an additional administrative fee of £250 is payable; and
	(c)	the minimum total fee (including the administrative fee in (b)) is £400.
Activity group	Fee payable	
A.1	Minimum fee (£)	155
	£ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELS)
	0 - 0.5	0
	>0.5 - 2	additional flat fee of £370
	>2 -10	additional flat fee of £520
	>10 - 200	26.78
	>200 - 2,000	26.75
	>2,000 - 10,000	26.67
	>10,000 - 20,000	26.48
	>20,000	26.29

	For a <i>firm</i> in A.1 which has a limitation on its <i>permission</i> to the effect that it may <i>accept deposits</i> from <i>wholesale depositors</i> only, the fee is calculated as above less 30%.	
A.2	Minimum fee (£)	460
	No. of mortgages	Fee (£/mortgage)
	0 - 50	0
	51 - 500	4.41
	501 - 1,000	1.77
	1,001 - 50,000	1.33
	50,001 - 500,000	0.46
	>500,000	0.10
A.3	Gross premium income (GPI)	
	Minimum fee (£)	420
	£ million of GPI	Fee (£/£m or part £m of GPI)
	0 - 0.5	0
	>0.5 - 2	1,954.24
	>2 - 5	1,815.84
	>5 - 20	1,703.33
	>20 - 75	542.24
	>75 - 150	475.35
	>150	67.00
	PLUS	
	Gross technical liabilities (GTL)	
	Minimum fee (£)	0
	£ million of GTL	Fee (£/£m or part £m of GTL)
	0 - 1	0
	>1 - 5	48.17
	>5 - 50	44.64

	>50 - 100	41.43
	>100 - 1,000	13.05
	>1,000	5.23
	For <i>UK ISPVs</i> the tariff rates are not relevant and a flat fee of £420 is payable in respect of the period 1 April 2007 to 31 March 2008.	
A.4	Adjusted annual gross premium income (AGPI)	
	Minimum fee (£)	210
	£ million of AGPI	Fee (£/£m or part £m of AGPI)
	0 - 1	0
	>1 - 50	655.12
	>50 - 1,000	610.75
	>1,000 - 2,000	419.24
	>2,000	287.84
	PLUS	
	Mathematical reserves (MR)	
	Minimum fee (£)	210
	£ million of MR	Fee (£/£m or part £m of MR)
	0 - 1	0
	>1 - 10	38.13
	>10 - 100	34.90
	>100 -1,000	23.63
	>1,000 - 5,000	16.62
	>5,000 - 15,000	12.92
	>15,000	10.04
	For <i>UK ISPVs</i> the tariff rates are not relevant and a flat fee of £420 is payable in respect of the period 1 January 2007 to 31 March 2007 to be invoiced with the fee for the financial period 2007/8.	
A.5	Minimum fee (£)	565

	£ million of Active Capacity (AC)	Fee (£/£m or part £m of AC)
	0 - 50	0
	>50 - 150	105.16
	>150 - 250	88.50
	>250	25.96
A.6		1,183,123
A.7	For class 1(C), (2) and (3) <i>firms</i> :	
	Minimum fee (£)	1,180
	£ million of Funds under Management (FuM)	Fee (£/£m or part £m of FuM)
	0 - 10	0
	>10 - 100	51.44
	>100 - 2,500	16.54
	>2,500 - 10,000	9.21
	>10,000	1.04
	For class 1(B) <i>firms</i> : the fee calculated as for class 1(C) <i>firms</i> above, less 15%. For class 1(A) <i>firms</i> : the fee calculated as for class 1(C) <i>firms</i> above, less 50%.	
A.8	This activity group does not apply for this period.	
A.9	Minimum fee (£)	1,845
	£ million of Gross Income (GI)	Fee (£/£m or part £m of GI)
	0 - 1	0
	>1 - 5	977.18
	>5 - 15	960.65
	>15 - 40	951.13
	>40	938.17
A.10	Minimum fee (£)	2,255

	No. of traders	Fee (£/trader)
	0 - 2	0
	3 - 5	2,520.00
	6 - 10	1,821.00
	11 - 50	1,683.00
	51 - 200	1,457.00
	>200	1,176.00
A.11	This activity group does not apply for this period.	
A.12	Minimum fee (£)	1,760
	No. of persons	Fee (£/person)
	0 - 1	0
	2 - 4	1,092.00
	5 - 10	553.00
	11 - 25	406.00
	26 - 150	221.00
	151 - 1,500	167.00
	>1,500	112.00
	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13	For class (2) <i>firms</i> :	
	Minimum fee (£)	1,650
	No. of persons	Fee (£/person)
	0 - 1	0
	2 - 4	967.00
	5 - 10	944.00
	11 - 25	906.00
	26 - 500	835.00
	501 - 4,000	767.00
	>4000	724.00

	For class (1) <i>firms</i> : £ 1650 For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	Minimum fee (£)	1,300.00
	No. of persons	Fee (£/person)
	0 - 1	0
	2	1,280.00
	3 - 4	1,215.00
	5 - 10	1,117.00
	11 - 100	1,060.00
	101 - 200	742.00
	>200	446.00
A.15	This activity group does not apply for this period.	
A.16	0	
A.17	This activity group does not apply for this period.	
A.18	Minimum fee (£)	650
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	0 - 100	0
	>100 - 1,000	4.58
	>1,000 - 5,000	3.83
	>5,000 - 10,000	3.06
	>10,000 - 20,000	2.30
	>20,000	1.93
A.19	Minimum fee (£)	410
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	0 - 100	0
	>100 - 1,000	3.88
	>1,000 - 5,000	3.39

	>5,000 - 15,000	2.45
	>15,000 - 100,000	0.98
	>100,000	0.40
B. Market operators	£20,000	
B. Service companies	Bloomberg LP	£35,000
	EMX Co Ltd	£25,000
	LIFFE Services Ltd	£25,000
	Plus Markets plc	£90,000
	OMGEO Ltd	£25,000
	Reuters Ltd	£35,000
	Swapswire Ltd	£25,000
	Thomson Financial Ltd	£25,000

Part 2

This table shows the permitted deductions that apply:

Activity group	Nature of deduction	Amount of deduction
A.1	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.2	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.3	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.4	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.5	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.6	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.7	Financial penalties	5.6% of the fee payable by the <i>firm</i> for

	received	the activity group (see Part 1)
A.9	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.10	Financial penalties received	8.7% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.12	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for then activity group (see Part 1)
A.13	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.14	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.18	Financial penalties received	4.9% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.19	Financial penalties received	5.4% of the fee payable by the <i>firm</i> for the activity group (see Part 1)
...		

FEES 4 Annex 4R

Delete FEES 4 Annex 4R and replace with the following:

4 Annex 4R Periodic fees in relation to collective investment schemes payable for the period 1 April 2007 to 31 March 2008

Part 1 - Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
ICVC AUT Section 264 of the <i>Act</i> Section 270 of the <i>Act</i>	640	1-2	1	640
		3-6	2.5	1,600
		7-15	5	3,200
		16-50	11	7,040
		>50	22	14,080
Section 272 of the <i>Act</i>	2,620	1-2	1	2,620
		3-6	2.5	6,550
		7-15	5	13,100
		16-50	11	28,820
		>50	22	57,640

Fees are charged according to the number of funds or sub-funds operated by a *firm* as at 31 March 2007. Where a new *collective investment scheme* becomes authorised during a year, fees are charged according to the number of funds or sub-funds operated by a *firm* as at the date of authorisation. Where more than one fund or sub-fund is operated the number of funds (not including the umbrella or parent fund) produces a 'fund factor' in accordance with the table above which is then applied to a basic fee to produce one total fee per operator. Fund factors are applied per operator rather than per scheme so that the fees relate to the number of funds rather than the number of schemes. This means that, for example, an authorised fund manager of three schemes pays the same as an operator or authorised fund manager of one scheme with three sub-funds (as only the sub-funds are counted).

Schemes set up under section 264 of the *Act* are charged according to the number of funds or sub-funds which a *firm* is operating and *marketing* into the *UK* as at 31 March immediately before the start of the period to which the fee applies. For example, for 2007/08 fees a reference to 31 March means 31 March 2007.

Delete FEES 4 Annex 5R and replace with the following:

4 Annex 5R Periodic fees for designated professional bodies payable in relation to the period 1 April 2007 to 31 March 2008

Table. Fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	£50,680	30 April 2007
	£90,350	1 September 2007
The Law Society of Scotland	£18,630	1 July 2007
The Law Society of Northern Ireland	£16,150	1 July 2007
The Institute of Actuaries	£10,250	1 July 2007
The Institute of Chartered Accountants in England and Wales	£45,940	1 July 2007
The Institute of Chartered Accountants of Scotland	£13,070	1 July 2007
The Institute of Chartered Accountants in Ireland	£11,430	1 July 2007

The Association of Chartered Certified Accountants	£25,820	1 July 2007
The Council for Licensed Conveyancers	£12,700	1 July 2007
Royal Institution of Chartered Surveyors	£16,560	1 July 2007

Notes

(1) The *FSA register* includes details of *exempt professional firms* carrying out *insurance mediation activity*.

...

FEES 4 Annex 6R

Delete FEES 4 Annex 6R and replace with the following:

4 Annex 6R Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2007 to 31 March 2008

In this Annex:
- the term <i>recognised body</i> includes a body which was a recognised investment exchange or a recognised clearing house recognised under the Financial Services Act 1986 and which is a <i>recognised body</i> as a result of Regulation 9 of the <i>Recognition Requirements Regulations</i> ; and
- the term recognition order includes a recognition order made by the <i>FSA</i> under section 37 or section 39 of the Financial Services Act 1986 or a recognition order made by the Treasury under section 40 of the Financial Services Act 1986.

Part 1 - Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
CRESTCo Limited	£229,000	30 April 2007
	£293,000	1 September 2007
ICE Futures	£148,500	30 April 2007
	£205,500	1 September 2007
LIFFE Administration and Management	£252,500	30 April 2007

	£296,500	1 September 2007
LCH.Cleernet Limited	£290,500	30 April 2007
	£280,500	1 September 2007
The London Metal Exchange Limited	£166,500	30 April 2007
	£180,500	1 September 2007
London Stock Exchange plc	£332,000	30 April 2007
	£366,000	1 September 2007
virt-x Exchange Ltd	£40,000	30 April 2007
	£99,000	1 September 2007
EDX London Ltd	£32,000	30 April 2007
	£72,000	1 September 2007
NYMEX Europe Limited	£67,500	30 April 2007
	£20,500	1 September 2007
Any other <i>UK recognised investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£150,000	30 days after the date on which the <i>recognition order</i> is made
Any other <i>UK recognised clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£250,000	30 days after the date on which the <i>recognition order</i> is made

Part 2 - Periodic fees for overseas recognised bodies

Name of overseas recognised body	Amount payable	Due date
Cantor Financial Futures Exchange	£20,000	1 July 2007
The Chicago Mercantile Exchange	£20,000	1 July 2007

Chicago Board of Trade	£20,000	1 July 2007
EUREX (Zurich)	£20,000	1 July 2007
National Association of Securities and Dealers Automated Quotations (NASDAQ)	£20,000	1 July 2007
NQLX LLC	£20,000	1 July 2007
New York Mercantile Exchange Inc.	£20,000	1 July 2007
The Swiss Stock Exchange	£20,000	1 July 2007
Sydney Futures Exchange Limited	£20,000	1 July 2007
Wareterminborse Hannover	£20,000	1 July 2007
US Futures Exchange LLC	£20,000	1 July 2007
SIS x-clear AG	£50,000	1 July 2007
Eurex Clearing AG	£50,000	1 July 2007
Any other <i>overseas investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£20,000	30 days after the date on which the <i>recognition order</i> is made
Any other <i>overseas clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£50,000	30 days after the date on which the <i>recognition order</i> is made

...

4 Annex 7R Periodic fees in relation to the Listing Rules for the period 1 April 2007 to 31 March 2008

Delete FEES 4 Annex 7R and replace with the following:

Fee type	Fee amount
Annual fees for the period 1 April 2007 to 31 March 2008	
Annual Issuer Fees - all <i>listed issuers</i> of <i>shares</i> , depositary receipts and <i>securitised derivatives</i> . This fee represents the total annual fee for a <i>listed issuer</i> - no additional annual fee is due under the <i>disclosure rules</i> .	(1) For all <i>issuers</i> of <i>securitised derivatives</i> , depositary receipts and global depositary receipts the fees payable are set out in Table 1. (2) For all other <i>issuers</i> , fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:

	<p>(a) the relevant minimum fee; plus</p> <p>(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche. Where issuers have more than one type of <i>share</i> in issue, the highest market capitalisation of all of its securities in issue is used.</p> <p>(3) Notwithstanding (2), <i>overseas issuers</i> with a <i>listing of equity securities</i> which is not a <i>primary listing</i> will only pay 80% of the fee otherwise payable under (2).</p>
<p>Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year. For fees purposes <i>issuers</i> should take into account only equity ordinary <i>shares</i>, including those issued by suspended <i>issuers</i>.</p>	

Table 1

Annual fees for issuers of *securitised derivatives*, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£3,340
Issuers of depositary receipts and global depositary receipts	£4,008

Table 2

Tiered annual fees for all other issuers

Fee payable	
Minimum fee (£)	3,340
£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 - 100	0
>100 - 250	14.57
>250 - 1,000	5.828
>1,000 - 5,000	1.9388

>5,000 - 25,000	0.0364
>25,000	0.0098

Delete FEES 4 Annex 8R and replace with the following:

4 Annex 8R Periodic fees in relation to the disclosure rules for the period 1 April 2007 to 31 March 2008

Annual fees for the period 1 April 2007 to 31 March 2008	
All non-listed <i>issuers</i> of <i>shares</i> , depositary receipts and securitised derivatives. Annual fees for listed <i>issuers</i> in respect of Disclosure Rules obligations are incorporated in the annual fee for listed <i>issuers</i> under the Listing Rules.	(1) For all non-listed <i>issuers</i> of securitised derivatives, depositary receipts and global depositary receipts the fees payable are set out in Table 1.
	(2) For all other non-listed <i>issuers</i> , fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:
	(a) the relevant minimum fee; plus
	(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche.
Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.	

Table 1
Annual fees for non-listed issuers of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£2,672
<i>Issuers of depositary receipts and global depositary receipts</i>	£3,206

Table 2

Fee payable	
Minimum fee (£)	2,672
£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 - 100	0

>100 - 250	11.656
>250 - 1,000	4.6624
>1,000 - 5,000	1.551
>5,000 - 25,000	0.0291
>25,000	0.0078

...

Delete FEES 5 Annex 1R and replace with the following:

FEES 5 Annex 1R

5 Annex 1R Annual Fees Payable in Relation to 2007/08

Introduction: annual budget	
1.	The <i>annual budget</i> for 2007/08 approved by the <i>FSA</i> is £57.3m.
Part 1: General levy and supplementary levy	
2.	The total amount expected to be raised through the <i>general levy</i> in 2007/08 will be £18.3m (net of £1.2m to be raised from consumer credit firms).
Part 2: Fee tariffs for general levy and supplementary levy	
3.	No <i>establishment costs</i> will be raised in 2007/08 by the <i>supplementary levy</i> .

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in DISP 2.6.1 R	£0.009 per relevant account, subject to a minimum levy of £100
2-Insurers - general (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.065 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
3-The <i>Society</i> (of Lloyd's)	Not applicable	£28,000 to be allocated by the <i>Society</i>
4-Insurers - life (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.12 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100

5-Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i>)	Relevant funds under management	£0.0005 per £1,000 of relevant funds under management, subject to a minimum levy of £100
6-Operators, trustees and depositaries of collective investment schemes and operators of personal pension schemes or stakeholder pension schemes	Flat fee	Levy of £50
7-Dealers as principal	Flat fee	Levy of £50
8-Advisory arrangers, dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> (<i>controlled functions</i> 21, 22, 24, 25, 26)	£150 per relevant <i>approved person</i> (<i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £150
9-Advisory arrangers, dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant <i>approved persons</i> (<i>controlled functions</i> 21, 22, 24, 25, 26)	£45 per relevant <i>approved person</i> (<i>controlled functions</i> 21, 22, 24, 25, 26), subject to a minimum levy of £50
10-Corporate finance advisers	Flat fee	Levy of £50
11-	N/A for 2007/08	
12-	N/A for 2007/08	
13-Cash plan health providers	Flat fee	Levy of £50
14-Credit unions	Flat fee	Levy of £50
15-Friendly societies whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £50
16-Mortgage lenders, advisers and arrangers (excluding <i>firms</i> in blocks 13, 14 & 15)	Flat fee	Levy of £50

17 - General insurance mediation (excluding <i>firms</i> in blocks 13, 14 & 15)	Flat fee	Levy of £50
4.	[not used]	
5.	The <i>industry blocks</i> in the table are based on the equivalent activity groups set out in Part 1 of <i>FEES 4 Annex 1R</i> .	
6.	Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 2 of <i>FEES 4 Annex 1R</i> , it must be calculated in the same way as that tariff base - taking into account only the <i>firm's relevant business</i> .	
...		

Annex B

Amendments to the Supervision manual (SUP)

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

Amend SUP 16.7 as follows:

...

16.7.68.R Financial reports from a UCITS management company (see *SUP* 16.7.67R)

Report	Return	Frequency	Due date
...			
Adequate information relating to the following activities: (1) <i>insurance mediation activity</i> ; (2) <i>mortgage mediation activity</i> ; (3) <i>retail investment activity</i> .	<i>RMAR</i> (excluding sections A, B, C, D, <u>E</u> , and <u>J</u>)	Half yearly	For half yearly report: 30 <i>business days</i> after period end
Adequate information relating to <i>mortgage lending</i> and <i>mortgage administration</i> .	MLAR (excluding A1, A2, and B1 <u>and</u> <u>J</u>)		

MiFID (MISCELLANEOUS AMENDMENTS) (NO 2) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

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

(1)	(2)
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex A
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the MiFID (Miscellaneous Amendments) (No 2) Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

...

1.1.16 R ...

(1) ...

(2) ~~the only investment service for which it is authorised is~~ it is only authorised to provide the service of investment advice and/or receiving and transmitting orders from investors (as referred to in Section A of Annex I of MiFID) without in both cases holding money or securities belonging to its clients in relation to investment services it provides and which for that reason ~~it~~ may not at any time place itself in ~~debt~~ debit with ~~those~~ its clients.

...

Annex B

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

Changes made to certain provisions by this Annex replace the changes made to the same provisions by Annexes A and B to the *Interim Prudential Sourcebook for Investment Businesses (Exempt CAD Firms) Instrument 2007 (FSA 2007/2)*.

Contents

Chapter

- 1 ...
- 2 Authorised Professional Firms
- 3 Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms
- ...
- 10 ~~Securities and Futures Firms which are Investment Firms~~[deleted]
- ...
- Chapter 1: Application and General Provisions
- ...
- 1.1.1 G Before 1 January 2007, the Interim Prudential Sourcebook for Investment Businesses (*IPRU(INV)*) was part of the *Handbook* that dealt with capital requirements for *investment firms* subject to the position risk requirements of the previous version of the *Capital Adequacy Directive*. Now, however, *investment firms* which are subject to the risk-based capital requirements of the *Capital Adequacy Directive* are subject to the General Prudential Sourcebook (*GENPRU*) and the Prudential Sourcebook for Banks, Building Societies and Investment Firms (*BIPRU*). ~~However the FSA has not yet removed the parts of *IPRU(INV)* that deal with requirements for *firms* subject to risk-based capital requirements of the previous version of the *Capital Adequacy Directive*. Consequently, many provisions of *IPRU(INV)* will not apply to any *firm*. The FSA intends to remove these provisions in due course.~~
- ...
- 1.2 Application

...

1.2.2 R (1) *IPRU(INV)* applies to:

...

- (g) the *Society of Lloyd's* (in relation to *underwriting agents*); ~~and~~
- (h) [deleted]
- (i) a *credit union* which is a *CTF provider*; ~~and~~
- (j) an exempt CAD firm.

...

1.2.5 R Table

This table belongs to *IPRU(INV)* 1.2.4R

<i>Authorised Pprofessional firm</i>	Chapters 1 and 2
<i>Securities and futures firm</i> (which is not a <i>MiFID investment firm</i>)	Chapters 1 and 3
<i>Securities and futures firm</i> (which is an <i>exempt BIPRU commodities firm</i>)	Chapters 1 and 3
<i>Securities and futures firm</i> (which is an <i>exempt CAD firm</i> other than a <i>firm</i> which was subject to the requirements of Chapter 10 before 1 November 2007)	Chapters 1, 3 and 9
The <i>Society of Lloyd's</i> (in relation to <i>underwriting agents</i>) and <i>members' advisers</i>	Chapters 1 and 4
<i>Investment management firm</i> (which is not an <i>exempt CAD firm</i>)	Chapters 1 and 5
<i>Investment management firm</i> (which is a <u><i>local firm</i></u>)	Chapters 1, 5 and 9
<i>Service company</i>	Chapters 1 and 6
<i>Securities and futures firm</i> which is a <i>MiFID investment firm</i> and a <i>local firm</i>	Chapters 1 and 10
<i>Securities and futures firm</i> (which is an <i>exempt CAD firm</i> and was subject to the requirements of Chapter 10 before 1 November 2007)	Chapters 1, 9 and 10

<i>Personal investment firm</i>	Chapters 1 and 13
<i>Credit union which is a CTF provider</i>	Chapters 1 and 8

...

Chapter 2 : Authorised Pprofessional firms

2.1 Application

2.1.1 R (1) ...

(2) The definitions in the *Glossary annexed to the General Provisions Instrument 2001* (which is applicable to the *Handbook* generally) apply to this Chapter.

2.1.2 R (1) An *authorised professional firm* of a kind falling within (2) must comply with such of *IPRU(INV)* 3, 5, 9 ~~40~~ or 13 which in accordance with *IPRU(INV)* 2.1.4R, most appropriately correlates to the type and scale of the business which it conducts.

(2) The type of *authorised professional firm* to which (1) applies is one:

(a) which is also an *ISD investment firm exempt CAD firm*;

...

...

(4) An *authorised professional firm* which, in accordance with (1), is required to comply with *IPRU(INV)* 3, 5, 9 ~~40~~ or 13 must immediately give notification of that fact to the *FSA* in accordance with *SUP* 15.7 (Forms and methods of notification).

...

2.1.4 R This table belongs to *IPRU(INV)* 2.1.1R

TYPE OF BUSINESS ACTIVITY	CHAPTER OF SOURCEBOOK
(i) <i>managing investments</i> other than for <i>private customers</i> ; or	<i>Investment management firm – IPRU(INV) 5</i>
...	<i>Investment management firm (which is an exempt CAD firm) – IPRU(INV) 5 and 9</i>
(iii) acting as the manager or trustee of an AUT; or [deleted]	
...	
(i) a <i>regulated activity</i> carried on as a	<i>Securities and futures firm – IPRU(INV) 10 (ISD firm);</i>

<p>member of an <i>exchange</i>; or</p> <p>(ii) acting as a <i>market maker</i> in <i>securities</i> or <i>derivatives</i>; or</p>	<p>or <u><i>Securities and futures firm</i> (which is an <i>exempt CAD firm</i>) - IPRU(INV) 9</u></p>
<p>(iii) <i>corporate finance business</i>; or</p> <p>(iv) <i>dealing</i> or <i>arranging deals</i> in <i>securities</i> or <i>derivatives</i>, other than <i>inter-professional investments</i>; or</p> <p>(v) the provision of clearing services as a <i>clearing firm</i>; or</p> <p>(vi) <i>spread betting</i>;</p>	<p><u><i>Securities and futures firm</i> (which is not a <i>MiFID investment firm</i>) – IPRU(INV) 3 (non <i>ISD firm</i>)</u></p>

2.1.5 G An authorised professional firm will be ~~an *ISD investment firm*~~ a *MiFID investment firm* if its business activities include the provision of a ~~core investment service~~ *investment services and/or activities* for a third party. An authorised professional firm will not however be ~~an *ISD investment firm*~~ a *MiFID investment firm* if it falls within one of the exclusions contained in ~~paragraph 2 of Article 2 of the directive~~ *MiFID*. Paragraph 2(c) of Article 2(1)(c) provides for an exclusion for an authorised professional firm which provides ~~core investment service~~ *investment services and/or activities* in an incidental manner in the course of a professional activity (~~provided and that activity is regulated by the firm's designated professional body~~).

...

Chapter 3: Financial resources for Securities and Futures Firms which are not *MiFID Investment Firms* or which are *Exempt BIPRU Commodities Firms*

...

3-1 R This chapter applies to a *securities and futures firm* which:

- (a) is not a *MiFID investment firm*;
- (b) ~~is a *securities and futures firm* which is an *exempt CAD firm* and which was not subject to the requirements of chapter 10 before 1 November 2007~~ is an *exempt CAD firm* that carries on any regulated activity other than *MiFID business*; or
- (c) is an *exempt BIPRU commodities firm*.

...

3-6 G The financial and non-financial resources rules for an *exempt CAD firm* are set out in *IPRU(INV)* chapter 9. As such, rules 3-61 to 3-182 do not apply to an *exempt CAD firm* unless it carries on any regulated activity other than

MiFID business (see IPRU(INV) 9.2.3R). ~~An exempt CAD firm remains subject to the non-financial resources rules (rule 3-10 to rule 3-41(9)) contained in this chapter.~~

...

3-10(2) R ...

(b) demonstrate whether or not the *firm* is or was at that time complying with its *financial resources requirement* ~~or, in the case of an exempt CAD firm, its obligations under IPRU(INV) 9;~~ and

...

...

3-73(4) R ...

G ...

G FSA would consider 10% of a *firm's* expenditure incurred on its behalf by third parties to be material ~~for the purposes of 10-73(4)R.~~

...

Operational risks

3-79(2) ...

G In assessing whether to impose a *requirement* on a *firm* to cover an unusual risk profile or operational risks, the FSA will consider various criteria. ~~Relevant guidance can be found in sections 4 and 5 of Appendix 48 to IPRU(INV) 10.~~ In addition, the FSA will take into account material group risks to a *firm*, where these have not been captured in a group financial resources test. Secondary requirements may be applied, for example, where there has been a major failure on the part of a *firm* to maintain adequate controls, as a means of providing an additional capital buffer whilst these problems are addressed.

...

3-173A R ...
(1)

(a)

(b) after notifying the FSA in writing, ~~in accordance with rule 10-174.~~

...

APPENDIX 1 - GLOSSARY OF TERMS FOR IPRU(INV) 3

Amend the following definitions as shown:

investment [delete the existing definition and replace with the following]
means a *designated investment*.

Delete the following definitions from Appendix 1; the text is not shown struck through:

Act

authorised person

authorised unit trust scheme

body corporate

business day

clearing firm

clearing house

client money

close relative

closing date

collective investment scheme

contract for differences

controller

core investment service

debenture

derivative

designated investment exchange

director

EEA

EEA state

firm

FSA

future

geared futures and options fund

government & public securities

group

holding company

incoming EEA firm

internal controls

investment firm

ISA

local

marketable instrument

marketing group

money

OECD

operator

option

OTC

permission

recognised investment exchange

recognised scheme

Regulated Activities Order

regulated collective scheme

reporting accountant

requirement

security

share

sole trader

subsidiary

Takeover Code

Takeover Panel

tender offer

unregulated collective investment scheme

venture capital business

venture capital firm

venture capital investment

warrant

...

Appendix 20

GUIDANCE NOTES ON RECONCILIATION OF FIRM'S BALANCES WITH A COUNTERPARTY WHICH IS A MEMBER OF AN EXCHANGE (~~rule~~ RULE 3-11(1) (d)) AND IPRU(INV) 9.6.1R (FOR AN EXEMPT CAD FIRM))

Introduction

1 The purpose of this guidance is to state how under rule 3-11(1)(d) and IPRU(INV) 9.6.1R (for an exempt CAD firm) the reconciliation process with counterparties which are also members of exchanges should be performed.

...

The obligation on firms

9 Where a *firm* receives a statement from a counterparty during the year, the recipient *firm* is not also required by virtue of rule 3-11(1)(d) (or IPRU(INV) 9.6.1(1)R for an exempt CAD firm) to send a further statement to that counterparty in the same year.

10 ... Rule 3-11 (or IPRU(INV) 9.6.1R for an exempt CAD firm) only requires that specific balances be covered. ...

11 Rule 3-11(3) (or IPRU(INV) 9.6.1(1)R(4) for an exempt CAD firm) requires a *firm* to respond, within one month of receipt, to a circularisation request received from another *firm*. The one month response period should also be observed in relation to circularisation requests received under rule 3-11(1)(d) (or IPRU(INV) 9.6.1(1)R for an exempt CAD firm).

...

Chapter 4: Lloyd's firms

...

4.2.4 G A *members' adviser* is not regulated by the *Society* and accordingly this chapter specifies the financial resource and accounting requirements to be met. *Firms* which fall within the scope of this chapter will be *firms* with *permission* only to advise persons on *syndicate* participation at Lloyd's. The nature of that advisory business is akin to corporate finance advice and so the applicable requirements are those in *IPRU(INV)* 3 relevant to *firms* giving corporate finance advice. *Firms* with other *permissions* will fall within the scope of other chapters of *IPRU(INV)*, *GENPRU*, *BIPRU* or *INSPRU*.

...

Interim Prudential Requirements for Former IMRO Firms

CHAPTER 5: FINANCIAL RESOURCES

5.1.1 Application

...

5.1.1(1)(a) R This chapter applies to an *investment management firm*, other than an *European investment firm* incoming *EEA firm* or *MiFID investment firm* (unless it is an *exempt CAD firm* for the purpose of calculating its *own funds* and if it carries on any *regulated activity* other than *MiFID business*) as set out in Table 5.1.1(1)(a).

(b) R This chapter does not apply to a *European investment firm*.~~[deleted]~~

TABLE 5.1.1(1)(a)		APPLICATION OF CHAPTER 5			
...					
Accounting records rules					
5.3.1(1)	Yes	No	...		
to					
5.3.1(6)					
Financial notification rules					
5.5.1(1)	Yes	No	No	No	No
...					
Note 3	The financial <u>and non-financial</u> resources rules for an <i>exempt CAD firm</i> are set out in <i>IPRU(INV)</i> chapter 9. However, rules 5.2.1(1) to 5.2.7(5) apply to an <i>exempt CAD firm</i> for the purpose of calculating its <i>own funds requirement</i> (see <i>IPRU(INV)</i> 9.2.89R(2)(a)) (although the <u>Category A items of Tier 1 capital as set out in Table 5.2.2(1) are replaced by all the items in <i>IPRU(INV)</i> 9.3.1R</u>) and if it carries on any <i>regulated activity</i> other than <i>MiFID business</i> (see <i>IPRU(INV)</i> 9.2.3R). An <i>exempt CAD firm</i> remains subject to the non-financial resources rules (rule 5.3.1(1) to rule 5.5.1(1))				

contained in this chapter.

...

5.2.1 GENERAL REQUIREMENT

ADEQUACY OF FINANCIAL RESOURCES

...

- 5.2.1(3) R A firm's financial resources means:
- (a) ...
 - (b) its *liquid capital*, if the *firm* is subject to a *liquid capital requirement* under paragraph (a) of rule 5.2.3(1); ~~or~~
 - (c) ~~where the *firm* is an *ISD firm* subject to an *own funds requirement* and a *liquid capital requirement* under paragraph (b) of rule 5.2.3(1), its *own funds* and its *liquid capital*; or~~ ~~[deleted]~~
 - (d) ~~where the *firm* is an *ISD firm* and a trustee of an *authorised unit trust scheme* subject to paragraph (c) of rule 5.2.3(1), its *own funds* or its *liquid capital*.~~ ~~[deleted]~~

...

5.2.3 FINANCIAL RESOURCES REQUIREMENT

DETERMINATION OF REQUIREMENT

- 5.2.3(1)(a) R The *financial resources requirement* for a *firm* ~~which is not an *ISD firm*~~ is a *liquid capital requirement*, determined in accordance with paragraph (a) of rule 5.2.3(4), unless the *firm* falls within any of the exceptions in rule 5.2.3(2).
- (b) R ~~The *financial resources requirement* for a *firm* which is an *ISD firm* is an *own funds requirement* determined in accordance with paragraph (b) of rule 5.2.3(3), and a *liquid capital requirement* calculated in accordance with paragraph (b) or (c) of rule 5.2.3(4).~~ ~~[deleted]~~
- (c) R ~~The *financial resources requirement* for a *firm* which is an *ISD firm*, but which is also a trustee of an *authorised unit trust scheme* or a *depository* of an *ICVC*, is the higher of an *own funds requirement* determined in accordance with paragraph (a)(i) of rule 5.2.3(3) and a *liquid capital requirement* calculated in accordance with paragraph (b) of rule 5.2.3(4).~~ ~~[deleted]~~

EXCEPTIONS FROM THE LIQUID CAPITAL REQUIREMENT

- 5.2.3(2) R The *financial resources requirement* for a *firm* which is not an *ISD exempt CAD firm* is an *own funds requirement* determined in

accordance with paragraph (a) of rule 5.2.3(3) if its *permitted business* does not include *establishing, operating or winding-up a personal pension scheme* and:

(a) ...

...

OWN FUNDS REQUIREMENT

5.2.3(3)(a) R ...

(b) R ~~The *own funds requirement* for an *ISD firm* subject to paragraph (b) of rule 5.2.3(1) is an amount determined in accordance with Table 5.2.3(3)(b).~~[deleted]

Liquid capital requirement

5.2.3(4)(a) R ...

(b) R ~~The *liquid capital requirement* for an *ISD firm* subject to paragraph (b) or (c) of rule 5.2.3(1) is its *total capital requirement* calculated in accordance with rule 5.2.3(5), unless paragraph (c) of rule 5.2.3(4) applies.~~[deleted]

(c) R ~~The *liquid capital requirement* for an *ISD firm* whose *expenditure based requirement* consists of 6/52 of its *annual audited expenditure*, determined in accordance with Table 5.2.3(5)(a), is the greater of:~~

(i) ~~one quarter of its *annual audited expenditure* calculated in accordance with rule 5.2.4(1); and~~

(ii) ~~its *total capital requirement* calculated in accordance with rule 5.2.3(5).~~[deleted]

...

5.2.5(1) R ...

(b) in the event of the winding up of the *firm*, the loan ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled; ~~and~~

(c) ...

(ii) the loan does not have a minimum or fixed maturity but requires 5 years notice of repayment; and

(d) the loan is fully paid-up.

...

5.2.7 ~~LARGE EXPOSURES~~

5.2.7(1) G ~~[deleted]~~

~~GENERAL REQUIREMENT~~

5.2.7(2) R ~~[deleted]~~

~~LARGE EXPOSURE LIMITS~~

5.2.7(3) R ~~[deleted]~~

~~EXCEPTION TO THE LARGE EXPOSURE LIMITS~~

5.2.7(4) R ~~[deleted]~~

~~TRANSITIONAL ARRANGEMENTS~~

5.2.7(5) ~~[deleted]~~

Table 5.2.2(1)	CALCULATION OF OWN FUNDS AND LIQUID CAPITAL	
...		
(8)	Material holdings in credit and financial institutions <u>and, for exempt CAD firms only, material insurance holdings</u>	5 and 5A
...		
(12)	Other cumulative preference share capital and debt capital <u>but, for exempt CAD firms, only perpetual cumulative preference share capital and qualifying capital instruments</u>	6A
...		

PART II		
DETAILED REQUIREMENTS		
1	<u>Deductions and Ratios (Items 10, 11 and 15)</u>	(a) <u>Notwithstanding Table 5.2.2(1), for an firm which is an ISD firm exempt CAD firm, in calculating own funds, all of Item 8 must be deducted after the total of Tier 1 and Tier 2 capital and the following restrictions apply:</u>
		(i) the total of fixed term cumulative preference shares (item 10) and

long-term *qualifying subordinated loans* (item 11) that may be included in Tier 2 capital is limited to 50 per cent of Tier 1 capital; ~~and- (But see sub-paragraph (b)(ii) below.)~~

(ii) Tier 2 capital must not exceed 100 per cent of Tier 1 capital.

(b) [deleted]

(c) A firm which is not an *ISD firm exempt CAD firm* and which is subject to a *liquid capital requirement* under rule 5.2.3(1)(a) may take into account *qualifying subordinated loans* in the calculation of *liquid capital* up to a maximum of 400% of its Tier 1 capital.

...

5A Material insurance holdings (Item 8)

(a) A *material insurance holding* means the holdings of an *exempt CAD firm* of items of the type set out in (b) in any:

(i) *insurance undertaking*; or

(ii) *insurance holding company*;

that fulfils one of the following conditions:

(iii) it is a *subsidiary undertaking* of that *firm*; or

(iv) that *firm* holds a participation in it.

(b) An item falls into this provision for the purpose of (a) if it is:

(i) an *ownership share*; or

(ii) subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive*.

6	...	
6A	<u>Perpetual cumulative preference share capital</u>	<p><u>Perpetual cumulative preference share capital may not be included in the calculation of <i>own funds</i> by an <i>exempt CAD firm</i> unless it meets the following requirements:</u></p> <ul style="list-style-type: none"> (a) <u>it may not be reimbursed on the holder's initiative or without the prior agreement of the <i>FSA</i>;</u> (b) <u>the instrument must provide for the <i>firm</i> to have the option of deferring the dividend payment on the share capital;</u> (c) <u>the shareholder's claims on the <i>firm</i> must be wholly subordinated to those of all non-subordinated creditors;</u> (d) <u>the terms of the instrument must provide for the loss-absorption capacity of the share capital and unpaid dividends, whilst enabling the <i>firm</i> to continue its business; and</u> (e) <u>it must be fully paid-up.</u>
7	Qualifying arrangements (Item 13)	<ul style="list-style-type: none"> (a) An <i>ISD-firm</i> <u><i>exempt CAD firm</i></u> may only include a <i>qualifying undertaking</i> or other arrangement in item 13 if it is a <i>qualifying capital instrument</i> or a <i>qualifying capital item</i>. (b) A <i>firm</i> which is not an <i>ISD-firm</i> <u><i>exempt CAD firm</i></u> may only include <i>qualifying undertakings</i> in its calculation of <i>liquid capital</i> if: <ul style="list-style-type: none"> ...
8	Net trading book profits (Item 14)	<p>For <i>non-ISD-firms</i> <u>which are not <i>exempt CAD firms</i></u> the unaudited profits can be included at item 14. For <i>ISD-firms</i> <u>the amount which may be included at item 14 must comprise the <i>firm's trading book</i> profits less any foreseeable charges or dividends and any losses suffered in respect of its other business, save to the extent that these have been taken into account in calculating item 3 and/or item 7 of Part I.</u></p>

<p>Note</p> <p>...</p>

...

Delete Table 5.2.3(3)(b) in its entirety; the text is not shown struck through.

Table 5.2.3(3)(b) ~~OWN FUNDS REQUIREMENT~~ [deleted]

...

<p>Table 5.2.3(5)(b)</p> <p>...</p> <p>F Determination of disallowed value of <i>units</i></p> <p>The disallowed value of units held in a <i>unit trust manager's</i> <u><i>UCITS management company's</i></u> box is the difference between:</p> <p>(a) ...</p> <p>(b) the adjusted value of the units, being the value of the units calculated at cancellation prices less the value calculated at cancellation prices of the units multiplied by the following percentages based on the types of <i>investments</i> in the individual <i>unit trust</i> <u><i>UCITS</i></u> schemes:</p> <p>...</p>	<p>POSITION RISK REQUIREMENT</p> <p>PART I</p>
--	--

...

5.3.1 RECORDS

5.3.1(1) R ...

- (2) enable the *firm* to demonstrate its continuing compliance with its *financial resources requirements* ~~or, in the case of an exempt CAD firm, its obligations under IPRU(INV) 9~~; and

...

...

5.5.1 FINANCIAL NOTIFICATION

NOTIFICATION REQUIREMENTS FOR ISD FIRMS

- 5.5.1(1) R ~~An ISD firm must notify the FSA in writing as soon as it has reason to believe that any of the following has occurred:~~
- (a) ~~a counterparty in a repo or reverse repo transaction or a securities lending or borrowing transaction has defaulted; or~~
 - (b) ~~the firm is in breach of the requirement to maintain own funds in excess of its own funds requirement; or~~
 - (e) ~~it is in breach of the large exposures limits set out in rule 5.2.7(3).[deleted]~~

...

APPENDIX 1 - (INTERPRETATION)

GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

Amend the following definitions as shown:

investment firm has the meaning given to *investment firm* in the main *Glossary* except that it excludes persons to which ~~the ISD MiFID~~ does not apply as a result of articles 2.2 or 3 of ~~the ISD MiFID~~.

Note: An *investment firm* is not necessarily a *firm* for the purposes of the rules.

own funds requirement has the meaning given in rule 5.2.3(3)(a) ~~and (b)~~ (Own funds requirement).

participation [delete the existing definition and replace with the following]
has the meaning given to the term in the *Glossary*.

trading book in relation to a *firm's* business or ~~exposures~~ exposures, means:

- (a) ...
- (b) ~~exposures~~ exposures due to unsettled securities transactions, free deliveries, *OTC derivative* instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on securities included in (a)(i) to (iii) above; and
- (c) fees, commission, interest and dividends, and margin on exchange-traded derivatives which are directly related to the items included in (a) and (b) above.

Delete the following definitions from Appendix 1; the text is not shown struck through:

accepting deposits

Act

advice and advising on investments

ancillary activity

ancillary investment services undertaking

appointed representatives

approved bank

approved person

associate

authorised corporate director

authorised person

authorised unit trust scheme

body corporate

branch

certificates representing certain securities

chief executive

client money

close relative

collective investment scheme

competent authority

contractually based investment

control

controlled function

core investment service

custodian

custody

debenture

deposit

depository

designated investment

designated investment business

designated investment exchange

director

EEA

EEA right

EEA State

European investment firm

exempt exposure

exempted person or exempt person

exemption order

exposure

financial holding company

firm

friendly society

FSA

general prohibition

Glossary

government and public security

group

holding company

Home State

Home State regulator

Host State

ICVC

incoming EEA firm

initial capital

investment agreement

investment trust

investment trust savings scheme

ISA

ISA manager

ISD or Investment Services Directive

ISD firm

ISD investment services

large exposure

life policy

long-term insurance contract

market maker

non-core investment service

occupational pension scheme

operator

ordinary business investor

own account transaction

own funds return

own funds transitional provisions

packaged product

partially exempt exposures

pension contract

PEP

permission

permitted third party

powers of intervention

principal

RAO or Regulated Activities Order

recognised clearing house

recognised investment exchange

recognised scheme

redemption

registrar

regulated collective investment scheme

rule or rules

SARs

scheme

securities

small business investor

sole trader

subsidiary

Takeover Code

takeover or related operation

trustee

trustee firm

unit trust scheme

units

UK authorised investment firm

United Kingdom (UK)

unregulated collective investment scheme

venture capital investment

warrant

Chapter 9: Financial resources requirements for an exempt CAD firm

9.1 Application

9.1.1 R (1) This chapter applies to an *exempt CAD firm* which is:

~~(1a)~~ an *investment management firm*; or

~~(2b)~~ a *securities and futures firm*.

(2) This chapter also applies to a *local firm*.

9.2 General requirements

9.2.1 G For an *exempt CAD firm*, the *rules* contained within this chapter replace the *rules* in respect of financial resources, ~~and~~ financial resources requirements and non-financial resources related requirements contained within Chapter 3, or 5 or 10, as applicable. However, an *exempt CAD firm* must continue to comply with the requirements of Chapter 3, or 5 or 10, as applicable, ~~for its non-financial resources related requirements~~ and to the extent it is referred to Chapter 3, or 5 and 10 by a *rule* in this chapter.

...

9.2.3 R An *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business* must also have and maintain at all times financial resources calculated in accordance with the chapter of *IPRU(INV)* to which the *firm* is otherwise subject (Chapters 3, or 5 or 10) at least equal to the requirements set out in the relevant chapter.

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are not IMD insurance intermediaries

9.2.4 R (1) An *exempt CAD firm* which is not an *IMD insurance intermediary* must have:

...

...

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

9.2.5 R (1) A *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to the limits set out in 9.2.4R(1)(b)~~for a firm that is not~~

and in addition has to have:

...

...

Comparable guarantee

- 9.2.7 R (a) If another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee, an exempt CAD firm can treat it as an alternative to effecting or maintaining professional indemnity insurance pursuant to the rules relating to professional indemnity insurance above.
- (b) If the exempt CAD firm is a member of a *group* in which there is an *authorised person* with net tangible assets of more than £10 million, the comparable guarantee must be from that *person*.
- (c) A comparable guarantee means a written agreement on terms at least equal to those required by the *initial capital* and professional indemnity insurance requirements above to finance the claims that might arise as a result of the breach by the exempt CAD firm of its duties under the *regulatory system* or civil law.

Initial capital and ongoing capital requirements for local firms

- 9.2.8 R A local firm must:
- (a) have initial capital of €50,000; and
- [Note: Article 67(2) of MiFID and Article 6 of CAD]
- (b) maintain own funds calculated in accordance with the rules relating to own funds in 9.5, at least equal to the requirement for initial capital.

Ongoing capital requirements

- 9.2.89 R (1) An exempt CAD firm must, at all times, maintain a combination of professional indemnity insurance and *own funds*, (*own funds* to be calculated in accordance with (2)), at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.
- (2) (a) If the exempt CAD firm is an *investment management firm* its *own funds* must be calculated in accordance with the *rules* in IPRU(INV) 5.2.1(1) to 5.2.7(5).
- (b) If the exempt CAD firm is a *securities and futures firm* (~~subject to either Chapter 3 or Chapter 10~~) its *own funds* must be calculated in accordance with the *rules* relating to *own*

funds in IPRU(INV) 9.5 10.61(1)(B) to 10-176.

...

9.4 Policy terms for professional indemnity insurance

Insurers whose professional indemnity insurance policies can be used by an exempt CAD firm

- 9.4.1 R An exempt CAD firm that has professional indemnity insurance in accordance with this chapter must take out and maintain professional indemnity insurance that is at least equal to the requirements of the rule below from:

...

Terms to be incorporated in the professional indemnity insurance policy

- 9.4.2 R The policy of professional indemnity insurance must incorporate terms which make provision for:
- (1) cover in respect of claims for which an exempt CAD firm may be liable as a result of the conduct of itself, its *employees* and its *appointed representatives* (acting within the scope of their appointment);
 - ...
 - (4) cover in respect of *Ombudsman* awards made against the exempt CAD firm.

Policies in other currencies

- 9.4.3 R If a professional indemnity insurance policy is denominated in any currency other than euros, an exempt CAD firm must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected and at *renewal*, at least equivalent to those required for the purposes of the rules relating to professional indemnity insurance above.

...

The following text is all new and is not underlined.

After 9.4.4R, insert 9.5 and 9.6 as follows:

9.5 Calculation of own funds

- 9.5.1 R A *firm's initial capital*:

minus the sum of the items set out against **B**

plus the sum of the items set out against **C**

minus *material holdings in credit and financial institutions and material insurance holdings*

equals *own funds*.

9.5.2 R Table

This table forms part of *rule 9.5.1R*

(1) <i>Investments in own shares at book value</i>	B
(2) <i>Intangible assets</i>	
(3) <i>Material current year losses</i>	
(1) Revaluation reserves	C
(2) Perpetual cumulative preference <i>share</i> capital	
(3) Long-term subordinated loans	
(4) Perpetual long-term subordinated loans	
(5) Fixed term preference <i>share</i> capital	

Perpetual long-term subordinated loans and perpetual cumulative preference share capital

9.5.3 R Perpetual long-term subordinated loans and perpetual cumulative preference *share* capital may not be included in the calculation of *own funds* unless they meet the following requirements:

- (1) it may not be reimbursed on the holder's initiative or without the prior agreement of the *FSA*;
- (2) the instrument must provide for the *firm* to have the option of deferring the dividend payment on the share capital;
- (3) the shareholder's claims on the *firm* must be wholly subordinated to those of all non-subordinated creditors;
- (4) the terms of the instrument must provide for the loss-absorption capacity of the share capital and unpaid dividends, whilst enabling the *firm* to continue its business; and
- (5) it must be fully paid-up.

Subordinated loans

- 9.5.4 R A *firm* may include a subordinated loan in the calculation of its *own funds* only:
- (a) if it is drawn up in accordance with the standard forms obtained from the *FSA*;
 - (b) if it is signed by authorised signatories of all the parties; and
 - (c) to the extent that it is fully paid up.

Long-term subordinated loans

- 9.5.5 R A long-term subordinated loan may not be included in the calculation of *own funds* unless it meets the following requirements:
- (1) it must be fully paid-up;
 - (2) it has an original maturity of at least five years;
 - (3) the extent to which it may be used in the calculation of *own funds* shall be amortised on a straight line basis during at least the five years before repayment; and
 - (4) it must not become repayable before the agreed repayment date other than in the winding-up of the *firm* or unless the *firm* has provided the *FSA* with at least five years' written notice.
- 9.5.6 R A *firm* must not (except in accordance with the terms of the loan) make any payment of interest if after such action the *firm's own funds* will fall below 120% of its *own funds requirement*.

Perpetual non-cumulative and cumulative preference share capital

- 9.5.7 R A *firm* may include perpetual non-cumulative and cumulative preference share capital in its *initial capital* and its *own funds* only if there is an agreement between the *firm* and the shareholders which provides that redemption of the shares may not take place, if after such redemption the *firm* would be in breach of its *own funds requirement*.

Own funds - Restrictions

- 9.5.8 R (1) In calculating *own funds*:
- (i) the total amount of revaluation reserves, perpetual cumulative preference *share* capital, long-term subordinated loans, perpetual long-term subordinated loans and fixed term preference *share* capital must not exceed 100% of *initial capital* minus **B**; and
 - (ii) the total amount of fixed term preference *share* capital and long-term subordinated loans must not exceed 50% of *initial*

capital minus **B**.

9.6 Non-financial resource requirements

Reconciliation of balances

- 9.6.1 R (1) A *firm* must reconcile all balances and positions with:
- (a) *banks* and *building societies* (other than a client bank account subject to the *client money rules*), *exchanges*, *approved exchanges*, *clearing houses* and *intermediate brokers*; and
 - (b) *market counterparties* which are members of an *exchange* or *approved exchange*

as recorded by the *firm* to the balance or position on a statement or circularisation obtained by the *firm* from those entities and must correct any differences by agreement on a timely basis, unless:

- (i) the balances and positions due to and from the *market counterparty* have been agreed by other means; or
 - (ii) it arises solely as a result of identified differences in timing between the records of the *firm* and the *bank* or *building society*.
- (2) A *firm* must perform reconciliations under (1) above as frequently as is appropriate for the volume of transactions on the accounts and in any event not less than once every five weeks or, in relation to positions with *market counterparties*, not less than once every year.
- (3) A *firm* must circularise or request statements from *banks*, *building societies*, *exchanges*, *approved exchanges*, *clearing houses*, *intermediate brokers* and *market counterparties* which are members of an *exchange* or an *approved exchange* in good time in order to be able to comply with (1) and (2) above.
- (4) A *firm* must use its best endeavours to respond within one month of receipt to any circularisation from another *firm* requesting confirmation of outstanding balances.

- 9.6.2 G For guidance notes on the reconciliation of a *firm's* balance with *market counterparties* see Appendix 20 to Chapter 3.

Financial notification

- 9.6.3 R A *firm* must notify the *FSA* in writing as soon as it has reason to believe that it is in breach of its *own funds requirement*.

APPENDIX 9(1) (INTERPRETATION)

Amend the following definition as shown:

<i>own funds</i>	means the own funds of a <i>firm</i> calculated in accordance with rule 9.2.89R(2) and 9.2.8R(b) .
<i>verified</i>	... (f) follow up problem areas of which he is already aware in the course of auditing the <i>firm's</i> financial statements; and a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the FSA.

Insert the following definitions in the appropriate alphabetical position in Appendix 9(1); the text is all new and is not underlined:

<i>approved exchange</i>	means an investment exchange listed as such in Appendix 33 to <i>IPRU(INV)</i> 3.
<i>exchange</i>	means a <i>recognised investment exchange</i> or <i>designated investment exchange</i> .
<i>intangible assets</i>	the full balance sheet value of a <i>firm's</i> intangible assets including goodwill, capitalised development costs, licences, trademark and similar rights etc.
<i>intermediate broker</i>	in relation to a <i>margined transaction</i> , means any person through whom the <i>firm</i> undertakes that transaction.
<i>material current year losses</i>	means losses of an amount equal to 10% or more of <i>initial capital</i> minus B (with B calculated in accordance with Table 9.5.2R).
<i>material holding</i>	means a <i>firm's</i> holdings of <i>shares</i> and any other interest in the capital of a <i>credit institution</i> or <i>financial institution</i> : (a) which exceeds 10% of the capital of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer, the full amount is a <i>material holding</i> ; or (b) holdings not deducted under (a) if the total amount of such holdings exceeds 10% of that <i>firm's own funds</i> , in which case only the excess amount is a <i>material holding</i> .
<i>material insurance holdings</i>	(a) means the holdings of an <i>exempt CAD firm</i> of items of the type set out in (b) in any: (i) <i>insurance undertaking</i> ; or (ii) <i>insurance holding company</i>

that fulfils one of the following conditions:

- (iii) it is a *subsidiary undertaking* of that *firm*; or
 - (iv) that *firm* holds a participation in it.
- (b) An item falls into this provision for the purpose of (a) if it is:
- (i) an *ownership share*; or
 - (ii) subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive*.

own funds requirement

means the requirement set out in 9.2.9R(1) and 9.2.8R(b).

Delete Chapter 10 in its entirety; the text is not shown struck through:

Chapter 10: ~~Financial resources for Securities and Futures Firms which are Investment Firms~~[deleted]

...

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

Table 13.1(1)

This table forms part of 13.1.9

NOTIFIABLE EVENTS	
1.	...
2.	...
3.	<i>Exempt CAD firms</i>
	(a) [deleted]
	(b) [deleted]
	(c) [deleted]
	(d) [deleted]
	(e) [deleted]

(f) [deleted]

...

13.1A.3 R ...

(2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £510,000.

13.1A.4 R ...

(2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £510,000.

...

Ongoing capital requirements

13.1A.6 R ~~A *firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, (*own funds* to be calculated in accordance with 13.3.2R), at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.~~

Initial capital

13.1A.7 R A *firm's initial capital* consists of the sum of the following items:

6

...

Perpetual non-cumulative preference share capital

13.1A.8 R A *firm* may include *preference share* capital in *initial capital* only where
7 any *coupon* on it is not cumulative, and the *firm* is under no obligation to pay a *coupon* in any circumstances.

Audited retained earnings

13.1A.9 R When calculating *initial capital*, a *firm* may include its audited retained
8 earnings only after making the following adjustments:

...

Externally verified interim net profits or current account

13.1A. R A *firm* may include interim net profits or current account when calculating
109 *initial capital* to the extent that they have been *verified* by the *firm's* external auditor and are net of any foreseeable tax, dividend and other appropriations.

13.1A.4 R When calculating *initial capital*, a *firm* may include its partners' capital only

410 after making the following adjustments:

...

Defined benefit pension scheme: defined benefit liability

13.1A. R For the calculation of *initial capital*, a *firm* may substitute for a *defined*
112 *benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

13.1A. G A *firm* should keep a record of and be ready to explain to its supervisory
132 contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

The following text is all new and is not underlined.

After 13.1A.12G, insert 13.1A.13R to 13.1A.17R as follows:

Ongoing capital requirements

13.1A.13 R A *firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.

13.1A.14 R A *firm's initial capital*:
minus the sum of the items set out against **B**
plus the sum of the items set out against **C**
minus *material holdings in credit and financial institutions and material insurance holdings*
equals *own funds*.

13.1A.15 R Table 13.1A.15R

This table forms part of *rule* 13.1A.14

(1) <i>Investments in own shares</i> at book value	B
(2) Intangible assets	
(3) <i>Material current year losses</i>	
(4) Excess of current year drawings over current year profits	
(1) Revaluation reserves	

(2) Perpetual cumulative preference <i>share capital</i> and <i>debt capital</i>	C
(3) Long-term subordinated loans (in accordance with <i>IPRU (INV) 13.5.5AR</i>)	
(4) Fixed term preference <i>share capital</i> (if not redeemable by shareholders within 5 years)	

Perpetual cumulative preference share capital

- 13.1A.16 R Perpetual cumulative preference *share capital* may not be included in the calculation of *own funds* unless it meets the following requirements:
- (1) it may not be reimbursed on the holder's initiative or without the prior agreement of the *FSA*;
 - (2) the instrument must provide for the *firm* to have the option of deferring the dividend payment on the share capital;
 - (3) the shareholder's claims on the *firm* must be wholly subordinated to those of all non-subordinated creditors;
 - (4) the terms of the instrument must provided for the loss-absorption capacity of the share capital and unpaid dividends, whilst enabling the *firm* to continue its business; and
 - (5) it must be fully paid-up.

Own funds – Restrictions

- 13.1A.17 R (1) In calculating *own funds*:
- (i) the total amount of revaluation reserves, perpetual cumulative preference *share capital*, long-term subordinated loans and fixed term preference *share capital* must not exceed 100% of *initial capital* minus the sum of the items set out against B; and
 - (ii) the total amount of fixed term preference *share capital* and long-term subordinated loans must not exceed 50% of *initial capital* minus the sum of the items set out against B.

...

13.2 Financial Resources Tests

- 13.2.1 R An *exempt CAD firm* must meet:
- (1) ~~Financial Resources Test 1 (the *Own funds* Test) calculated~~

in accordance with section 13.3;[deleted]

...

...

13.2.2 G [deleted]

...

Delete Table 13.A and replace with the new table below; the text is not underlined:

SUMMARY OF FINANCIAL RESOURCES FOR EXEMPT CAD FIRMS			
Type of <i>firm</i>	Financial Resources Test 1A Adjusted <i>net current assets</i> Test	Financial Resources Test 2 Expenditure-based Test	Rules/section references
<i>Exempt CAD firm</i>	Adjusted net current assets of £1	Financial resources equal to the highest of 4/52 of Relevant Annual Expenditure or 13/52 of Relevant Annual Expenditure without <i>special adjustments</i> or £400 per <i>adviser</i>	13.1A.14 13.4 13.5.1D and 13.5.2 to 13.5.4
<i>Exempt CAD firm</i> which is a network	Adjusted net current assets of £1	Financial resources equal to the higher of 13/52 of Relevant Annual Expenditure or £400 per <i>adviser</i>	13.1A.14 13.4 13.5.1B and 13.5.2 to 13.5.4

13.3 Financial Resources Test 1 – Own Funds

Requirement

13.3.1 R [deleted]

13.3.1A G [deleted]

Calculation of own funds

13.3.2 R [deleted]

13.3.2A R [deleted]

13.3.2B G [deleted]

Delete Table 13.3.2(2) in its entirety; the text is not shown struck through.

Table 13.3.2(2)[deleted]

...

13.5 Financial Resources Test 2 – Expenditure-based Requirement

Requirement

13.5.1 R [deleted]

13.5.1A R [deleted]

13.5.1B R ~~A Category A2 firm which is permitted to carry on the activity of managing investments or to delegate such activity to an investment firm, or a Network in Category A2 or A3, An exempt CAD firm which is a network~~ must have financial resources calculated in accordance with whichever of (1), or (2) produces the higher amount:

(1) ...

(2) ...

13.5.1C R [deleted]

13.5.1D R (1) [deleted]

(2) An Category A3 exempt CAD firm which is not permitted to carry on the activity of *managing investments* or to delegate such activity to an *investment firm* must have financial resources calculated in accordance with whichever of (3), (4) or (5) produces the highest amount.

...

...

CALCULATION OF FINANCIAL RESOURCES TO MEET TESTS 1, 1A OR 2

13.5.4 R An exempt CAD firm must be able to calculate its financial resources at any time on the basis of the balance sheet it could draw up at that time. For this purpose:

- (1) ~~a Category A1 firm must adjust the assets in the balance sheet as specified in table 13.5.4(1) and include the liabilities after making the adjustments specified in table 13.5.4(1). [deleted]~~
- (2) an Category A2 or A3 exempt CAD firm, must adjust the assets in the balance sheet as specified in table 13.5.4(2) and include the liabilities after making the adjustments specified in table 13.5.4(2).

...

13.5.4A R ~~An exempt CAD firm must be able to identify separately any trading book items as indicated in rule 13.8 and any special adjustments. [deleted].~~

Delete Table 13.5.4(1) Part I in its entirety; the text is not shown struck through.

Table 13.5.4(1) Part I [deleted]

Delete Table 13.5.4(1) Part II in its entirety; the text is not shown struck through.

Table 13.5.4(1) Part II [deleted]

Table 13.5.4(2) Part I

This table forms part of rule 13.5.4

FIRMS IN CATEGORY A2 AND A3 <u>EXEMPT CAD FIRM</u>		
ASSETS	CALCULATION	TYPE OF ADJUSTMENT
...

Table 13.5.4(2) Part II

This table forms part of rule 13.5.4

FIRMS IN CATEGORY A2 AND A3 <u>EXEMPT CAD FIRM</u>		
LIABILITY	CALCULATION	TYPE OF ADJUSTMENT

...
-----	-----	-----

...

SUBORDINATED LOANS

13.5.5 R *A exempt CAD firm* may treat a subordinated loan as a financial resource, as specified in table ~~13.3.2(1)~~ 13.1A.15R, and subject to *rule* 13.5.5C, if the long term ~~or short term~~ subordinated loan is eligible for such treatment in accordance with *rule* 13.5.5A ~~or B as applicable~~.

...

13.5.5B R [deleted]

13.5.5C R The total amount of long term ~~or short term~~ subordinated loans that a *exempt CAD firm* may include in the calculation of its financial resources is restricted as stipulated in ~~table 13.3.2(2)~~ 13.1A.17R and in *SUP* 16.

Delete the text and tables in 13.6 entirely; the text is not shown struck through.

13.6 Large exposures [deleted]

Delete the text and table in 13.8 entirely; the text is not shown struck through.

13.8 Trading Book [deleted]

...

APPENDIX 13(1): Defined terms for Chapter 13

Amend the following definitions as shown:

collateral [delete the existing definition and replace with the following]

has the meaning given to the term in the *Glossary*.

initial margin [delete the existing definition and replace with the following]

has the meaning given in paragraph (2) of the definition of the term in the *Glossary*.

material holding [delete the existing definition and replace with the following]

means a *firm's* holdings of *shares* and any other interest in the capital of a *credit institution* or *financial institution*:

- (a) which exceeds 10% of the capital of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer, the full amount is a *material holding*; or

- (b) holdings not deducted under (a) if the total amount of such holdings exceeds 10% of that *firm's own funds*, in which case only the excess amount is a *material holding*.

verified

...

follow up problem areas of which he is already aware in the course of auditing the *firm's* financial statements,

a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the *FSA* (although this does not apply to *exempt CAD firms*);

Insert the following definitions in the appropriate alphabetical position in Appendix 13(1); the text is all new and is not underlined:

material insurance holdings

- (a) means the holdings of an *exempt CAD firm* of items of the type set out in (b) in any:

(i) *insurance undertaking*; or

(ii) *insurance holding company*;

that fulfils one of the following conditions:

(iii) it is a *subsidiary undertaking* of that *firm*; or

(iv) that *firm* holds a participation in it.

- (b) An item falls into this provision for the purpose of (a) if it is:

(i) an *ownership share*; or

(ii) subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive*.

own funds

means the own funds of a *firm* calculated in accordance with 13.1A.14R.

Delete the following definitions from Appendix 13(1); the text is not shown struck through:

accepting deposit

Act

advice or advising on investments

affiliated company

ancillary activity
appointed representative
appropriate personal pension
approved bank
approved collateral
approved depository
approved person
arranging (bringing about) deals in investments
associate
AUT
authorised corporate director
authorised fund
authorised person
authorised unit trust scheme
bearer form
bid price
body corporate
bonded investment
branch
broker fund
broker fund adviser
building society
business day
buying
Category A1 firm
Category A2 firm
Category A3 firm

charge
clearing firm
clearing house
client agreement
client asset rules
client bank account
client money
client money distribution rules
client transaction account
close relative
collective investment scheme
commencement
commencement day
commission
commodity
company
contingent liability investment
contracts of insurance
control
controlled activity
core investment service
corporate finance business
credit
custody asset
custody rules
deal
dealing

debenture
deposit
depository
derivative
designated investment
designated investment business
designated investment exchange
EEA right
EEA State
European Economic Area
evidential provision
exempt person
exemption order
exposure
fee
Financial Ombudsman Service Limited
firm
First Life Directive
forward price
friendly society
FSA
future
geared futures and options fund
government and public security
group
guidance
habitual residence

higher volatility fund
holding company
incoming EEA firm
incoming Treaty firm
incorporated friendly society
industrial assurance policy
insurance business
Insurance Directives
insurance undertaking
insurer
intermediate broker
introducer
investment
investment company with variable capital
investment firm
investment manager
investment services
Investment Services Directive
investment trust
investment trust savings scheme
IPRU(INV)
ISD investment firm
lead regulated firm
life policy
long-term insurance contract
making arrangements with a view to transactions in investments
managing investments

market maker
market value
marketable instrument
money-market instrument
nominee company
occupational pension scheme
OEIC
offer price
Ombudsman
on-exchange
open market position
open-ended investment company
option
OTC
over the counter
overseas firm
overseas introducing broker
overseas person
overseas regulator
own account order
own account transaction
packaged product
parent undertaking
penny share
pension annuity
pension buy-out contract
pension contract

pension opt-out
pension policy
pension scheme
pension transfer
PEP
PEP manager
PEP transfer
permitted activity
permitted third party
person
personal equity plan
personal pension contract
personal pension policy
personal pension scheme
PIA
plan manager
premium
previous regulator
principal
product provider
professional firm
property enterprise trust
pure protection contract
qualifying investment
recognised clearing house
recognised investment exchange
Regulated Activities Order

regulated activity
regulated collective investment scheme
regulated market
related designated investment
retirement fund
rule
safe custody investments
scheme holding
scheme particulars
security
sell
series of transactions
service company
share
small self-administered scheme
sole trader
specified investment
subsidiary
surrender value
traded life policy
unauthorised person
undertaking
unit
unit trust scheme
unregulated collective investment scheme
warrant
whole life assurance

Chapter 14: CONSOLIDATED SUPERVISION FOR INVESTMENT BUSINESSES

14.1 Application

14.1.1 R Subject to rule 14.1.2, *consolidated supervision* and this chapter apply to a *firm* which is a member of a group if:

(1) it is:

- (a) a *securities and futures firm*, subject to the financial rules in Chapter 3, which is a *broad scope firm* but not a *venture capital firm*; and
- (b) ~~a *securities and futures firm*, subject to the financial rules in Chapter 10, unless the *firm* is an *exempt CAD firm*; or~~ [deleted]
- (c) ~~a *category A personal investment firm*, subject to the financial rules in Chapter 13; and~~ [deleted]

(2) it is not a *BIPRU firm*.

...

14.4 Group financial resources

...

14.4.3 R Financial resources will be defined based upon the main *firm* in the group to which this chapter applies as follows:

...

- (4) ~~if an *ISD securities and futures firm*, Table 10-62(2)AR, but excluding any adjustment in (E) of that Table;~~ [deleted]
- (5) ~~if a *personal investment firm*, Table 13.3.2(1)R.~~ [deleted]

...

14.5 Group financial resources requirement

...

14.5.1 R ...

(1) ...

- (a) requirements in respect of intra-group balances with other entities within the scope of consolidation should be excluded; and

(b) ~~large exposures requirements of individual group entities should be excluded; [deleted]~~

(2) the sum of any adjustments that are made to each *firm's* financial resources, calculated on a solo basis in accordance with rule 14.4.3, in order to arrive at the amount of financial resources used to meet its solo financial resources requirement. These adjustments must exclude deductions in respect of the investment in and other relationships with other entities that are included within the scope of consolidation; ~~and:~~

(3) ~~if the main firm in the group is a securities and futures firm under rule 14.1.1(4), a group large exposures requirement. [deleted]~~

...

14.5.3 G (1) ...

...

(3) ~~In 14.5.1(2), the adjustments referred to, are for investment management firms, the illiquid assets and qualifying property adjustments, and for securities and futures firms, the adjustments referred to in item (E) of Table 10-62(2)A. For personal investment firms, the adjustment required by 14.5.1(1) and (2) combined is the higher of:~~

(a) ~~the own funds requirement in 13.3.1R or 13.10.1R and;~~

(b) ~~the sum of the relevant expenditure based requirement and illiquid assets, position risk, and counterparty risk adjustments required by Chapter 3 of IPRU(INV). [deleted]~~

Appendix 14(1) (Interpretation)

Amend the following definition as shown:

investment firm *investment firm* as in the main *Glossary* except that it excludes persons to which the ~~ISD~~ MiFID does not apply as a result of articles 2-2 or 3 of the ~~ISD~~ MiFID.

non-trading book ~~as in the Glossary in IPRU(INV) chapter 10.~~ in relation to a firm's business or exposures, means any position, counterparty exposure or balance sheet item not falling within the definition of trading book.

trading book as in the *Glossary* in IPRU(INV) chapter ~~40~~ 5.

Delete the following definitions from Appendix 14(1); the text is not shown struck through:

asset management company

Category A personal investment firm

Category D firm

group of connected third parties

large exposure

large exposures requirement

securities and futures firm

venture capital firm

Annex D [Required Forms]

These forms are the required forms referred to in IPRU(INV) and are listed below (a short contents list appears at the beginning of each section of the annex):

IPRU(INV)	FORM
Chapter	
2	<u>Authorised Professional firms</u>
3	<u>Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms) (former SFA Non-ISD Firms)</u>
...	...
...	...
<u>109</u>	<u>Securities and Futures Firms which are Investment Firms (former SFA ISD Firms) Exempt CAD Firms</u>
<u>109.1</u>	...
<u>10.2</u>	<u>Short Term Subordinated Loan Agreement [deleted]</u>
<u>109.3</u>	...
<u>109.4</u>	...
<u>109.5</u>	...
<u>10.6</u>	<u>Long Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]</u>
<u>10.7</u>	<u>Short Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]</u>

109.8 ...

...

Annex D, Chapter 2

2 Authorised Professional Firms

...

FORM OF BOND FOR AUTHORISED PROFESSIONAL FIRMS

...

(8) ...

- b. That the Principal is an authorised Professional Firm which has Permission ...

...

(9) ...

"the Principal" means the authorised Professional Firm named herein and includes each of the partners thereof where applicable;

...

...

Annex D, Chapter 3

3 Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms (former SFA Non-ISD Firms)

...

3.5 Guidance Notes on Completion of Agreements

A GENERAL

Introduction

...

- 2. All communications with the FSA regarding the proposed Agreement should in the first instance be via the firm's ~~inspector~~ usual contact.

~~ISD/Non-ISD~~

3. Firms are advised to ensure that the appropriate form of ~~ISD (Chap.10)/non-ISD (Chap.3)~~ subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm's authorisation categorisation. Should the firm's categorisation ~~change be changing from ISD to non-ISD (or vice versa)~~, this should be discussed with the firm's ~~inspector~~ usual contact as it is likely that any subordinated loan agreement in place will have to be revised.

...

16. Under rule IPRU(INV) 3-63(5) ~~(which is only relevant in relation to non-ISD firms)~~, an amount repayable within three months of the effective date of the loan or advance is only acceptable as an eligible capital substitute in the absence of a waiver. ...

17. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice ~~for a non-ISD form~~ in relation to IPRU(INV) 3 are as follows:

...

...

Annex D, Chapter ~~109~~

~~109~~ Securities and Futures Firms which are Investment Firms (former SFA ISD Firms) Exempt CAD Firms

Form	Page
109.1 ...	
10.2 Short Term Subordinated Loan Agreement [deleted]	17
109.3 ...	
109.4 ...	
109.5 ...	
10.6 Long Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]	38
10.7 Short Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]	53
109.8 ...	

~~109.1~~ Approved Form of Long-Term Subordinated Loan Agreement

A. Front Page

...

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) ~~40-639.5~~ and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

...

Schedule 2

C. Standard Terms

...

“Financial Rules” means the rules in IPRU(INV) ~~409~~ in the FSA handbook;

...

~~10.2 Approved Form of Short Term Subordinated Loan Agreement~~[deleted]

~~409.3~~ FORM OF DEED OF TERMINATION

...

~~409.4~~ FORM OF DEED OF VARIATION

...

~~409.5~~ FORM OF GUARANTOR UNDERTAKING

...

~~10.6 Approved Form of Long Term Subordinated Loan Agreement for the purposes of Consolidated Supervision~~[deleted]

~~10.7 Approved Form of Short Term Subordinated Loan Agreement for the purposes of Consolidated Supervision~~[deleted]

~~409.8~~ Guidance Notes on Completion of Agreements

...

ISD/Non-ISD

3. Firms are advised to ensure that the appropriate form of ~~ISD (Chap.10)/non-ISD (Chap.3)~~ subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm’s authorisation categorisation. Should the firm’s categorisation change ~~be changing from ISD to non-ISD (or vice versa)~~, this should be discussed with the firm’s ~~inspector~~ usual contact as it is likely that any subordinated loan agreement in place will have to be revised. ~~Subordinated loan agreements for ISD firms are further classified as either short term or long term this turns on whether the loan is to have an original maturity period of at least 2 or 5 years.~~

...

6. Firms are referred to rule IPRU(INV) ~~10-639.5~~ on the use of subordinated loans, including restrictions on approved lenders, repayment provisions and gearing limits.

...

ISD:-Long-term form

16. Firms are advised that for ~~an ISD~~ a long-term form the repayment date must be a specified date not less than 5 years from one or more of:
- the date of drawdown;
 - the borrower giving notice in writing to the lender and the FSA; or
 - the lender giving notice in writing to the borrower and the FSA.

...

ISD:-Short term form

18. ~~For short term agreements the applicable repayment period is at least two years, rather than five years as required for a long term form, but otherwise the requirements are as above.~~[deleted]
19. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice for a short term form are as follows:
- (a) ~~"The Borrower shall repay [the Loan/each Advance made to it] on the [date which falls two years after the date] [second anniversary] of drawdown of the [Loan/relevant Advance]."~~
 - (b) ~~"The Borrower shall repay [the Loan/each Advance made to it] two years after the date on which:~~
 - (a) ~~the Borrower gives written notice to the Lender and to the FSA;~~
 - ~~or~~
 - (b) ~~the Lender gives written notice to the Borrower and to the FSA."~~

Note: either (a) or (b) above by itself is sufficient.

- (c) ~~"[The Loan / Each Advance made to the Borrower] shall be repayable on the date specified by notice in writing given by the Lender to the Borrower and to the FSA or notice in writing given by the Borrower to the Lender and to the FSA, in either case that date being not less than two years after the date on which the notice is given."~~[deleted]

...

Annex C

Amendments to the Supervision manual (SUP)

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

...

3.1.2 R Applicable sections (see SUP 3.1.1 R)

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1)	<i>Authorised professional firm</i> which is required by <i>IPRU(INV)</i> 2.1.2R to comply with chapters 3, 5, 10 <u>9</u> or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Note 1)	...	....
...
(7)	<i>Investment management firm, personal investment firm</i> (other than a <i>small personal investment firm</i> or <u><i>exempt CAD firm</i></u>), or <i>securities and futures firm</i> (<u>other than an <i>exempt CAD firm</i></u>) ...	...	...
(7A)	<i>Investment management firm, personal investment firm</i> (other than a <i>small personal investment firm</i> or <u><i>exempt CAD firm</i></u>), or <i>securities and futures firm</i> (<u>other than an <i>exempt CAD firm</i></u>) not within (7) ...	...	...
...			
(7C)	<i>BIPRU investment firm</i> or <u><i>exempt CAD firm</i></u>	...	...

...

3.9.5 R Table Auditor's report

whether the auditor has:

...		
(10)	...	
	(b)	a category A personal investment firm (see SUP 3.9.6 R): IPRU(INV) 13.2R and IPRU(INV) 13.5R; [deleted]
	(c)	...
	(d)	a securities and futures firm which is not an <i>ISD MiFID</i> investment firm: IPRU(INV)3-70R, IPRU(INV)3-71R and IPRU(INV)3-73R;
	(e)	a securities and futures firm which is an ISD investment firm: IPRU(INV)10-71R, IPRU(INV)10-72R and IPRU(INV)10-73R; [deleted]
...	...	
(13)	...	
	(c)	a securities and futures firm which is not an <i>ISD MiFID</i> investment firm: IPRU(INV)3-10R;
	(d)	a securities and futures firm which is an ISD investment firm IPRU(INV)10-10R; (except IPRU(INV)10-10R(3)(m)-(n)) [deleted]
...	...	

...

3.9.6 R In SUP 3.9.5 R(10)(b) and (c), a "Category A *personal investment firm*" is a *personal investment firm* which is an *ISD investment firm* and a "Category B *personal investment firm*" is a *personal investment firm* other than an exempt CAD firm category A *personal investment firm*.

...

9.3.2 G ...

(5) ...

(c) for a securities and futures firm (or other firm required to comply with IPRU(INV) 3 or IPRU(INV) 10): IPRU(INV) 10-74R 3-79R and IPRU(INV) App 48 ; and

...

...

SUP Appendix 1

App 1.3 Prudential categories and sub-categories

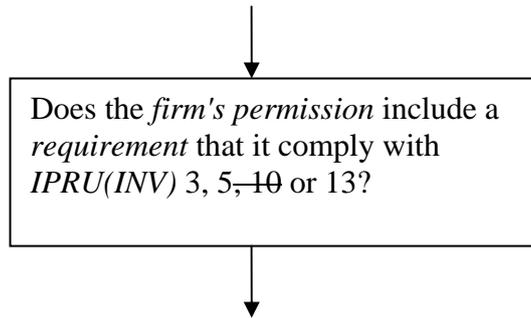
G Prudential categories and sub-categories used in the Prudential sourcebooks and the Supervision manual

Prudential categories (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
...
<i>Investment management firm*</i>	<i>IPRU(INV) 1 and 5</i>	<u><i>Exempt CAD firm</i></u> (see also <i>IPRU(INV) 9</i>) <i>OPS firm</i> ...
...
<i>Personal investment firm*</i>	...	<i>Category A firm</i> <i>Category A1 firm</i> <i>Category A2 firm</i> <i>Category A3 firm</i> ... <i>Category B3 firm</i> <u><i>Exempt CAD firm</i></u> ...
<i>Securities and futures firm*</i>	<i>IPRU(INV) 1 and either 3 or 409</i> ...	<i>IPRU(INV) 3:</i> ... <i>Energy market participant</i> ... <i>IPRU(INV) 409:</i> <u><i>Exempt CAD firm</i></u> <i>Category A</i> <i>Category B</i> <i>Category C</i> <i>Category D</i> <i>Category D – corporate finance advisory firm</i>
...		

...

Fig App 1.7 G Figure 1: Determination of a firm's prudential category - general

...



...

App 1.8 Notes to Figures 1 and 2

App 1.8.1 G Table Note 1

Chapter of IPRU(INV) that requirement on permission requires the firm to comply with	Firm's prudential category
...	
Chapter 10	<i>Securities and futures firm</i>
...	

**CAPITAL REQUIREMENTS DIRECTIVE (CONSEQUENTIAL AMENDMENTS)
(NO 2) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Capital Requirements Directive (Consequential Amendments) (No 2) Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

...

- 1.1.3A G This sourcebook does not apply to *BIPRU investment firms* except as ~~provided in~~ follows:
- (1) it does apply to certain *exempt BIPRU commodities firms*; and
 - (2) chapter TP of *BIPRU* ~~applying~~ applies parts of *IPRU(INV)* to certain *BIPRU investment firms* on a transitional basis.

...

- 1.2.2 R (1) ...
- (2) *IPRU(INV)* does not apply to:
- (a) ...
 - (b) ...
 - (c) a *BIPRU investment firm* (unless it is an *exempt BIPRU commodities firm*).

...

...

- 3-1 R ...
- G An *exempt BIPRU commodities firm* is subject to the non-capital requirements of *GENPRU* and *BIPRU* as indicated in *BIPRU* TP 15.

The following text is all new and is not underlined.

After *IPRU(INV)* 3-1A G, insert 3-1B to 3-1D as follows:

- 3-1B R The provisions on concentrated risk in this chapter do not apply to an *exempt BIPRU commodities firm* which applies the *large exposure* requirements in *BIPRU 10*.
- G *BIPRU 10* applies to an *exempt BIPRU commodities firm* unless it qualifies for exemption under *BIPRU TP 16*.
- 3-1C G The table in *IPRU(INV) 3-1D G* sets out the parts of the *Handbook* containing provisions on *large exposure* or concentrated risk which apply to a *securities and futures firm*.
- 3-1D G Table

Applicability of the provisions to securities and futures firms

This table belongs to *IPRU(INV) 3-1C G*

(1)	(2)	(3)
Type of securities and futures firm	Whether conditions in <i>BIPRU TP 16</i> are satisfied	Part of Handbook applicable for large exposure or concentrated risk requirements
<i>Energy market participant</i> (which is an <i>exempt BIPRU commodities firm</i>) with a <i>waiver</i> from <i>IPRU(INV) 3</i>	Yes	Not applicable
	No	<i>BIPRU 10</i> applies
<i>Energy market participant</i> (which is an <i>exempt BIPRU commodities firm</i>) to which <i>IPRU(INV) 3</i> applies	Yes	<i>IPRU(INV) 3</i> applies
	No	<i>BIPRU 10</i> applies
<i>Oil market participant</i> (which is an <i>exempt BIPRU commodities firm</i>) if it is a member of a <i>recognised investment exchange</i> or a <i>designated investment exchange</i> which is, under the rules of that exchange, entitled to trade with other members to which <i>IPRU(INV) 3</i> applies	Yes	<i>IPRU(INV) 3</i> applies
	No	<i>BIPRU 10</i> applies
Other <i>oil market participant</i> (which is an <i>exempt BIPRU commodities firm</i>) to which <i>IPRU(INV) 3</i> does not apply	Yes	Not applicable
	No	<i>BIPRU 10</i> applies
<i>Exempt BIPRU commodities firm</i>	Yes	<i>IPRU(INV) 3</i> applies

which is not an <i>energy market participant</i> or <i>oil market participant</i>	No	<i>BIPRU</i> 10 applies
<i>Securities and futures firm</i> (which is not a <i>MiFID investment firm</i>)	Not applicable	<i>IPRU(INV)</i> 3 applies

...

3-60 FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY

...

Exempt BIPRU commodities firms

3-60(9) G An exempt BIPRU commodities firm should determine whether it is a broad scope firm or one of the other categories in this rule.

...

Appendix 1 – Glossary of Terms for IPRU(INV) 3

Delete the following definitions; the text is not shown struck through:

oil

oil collective scheme

oil investment

oil market investment activity

oil market participant

securities and futures firm

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

Appendix 13(1) - Defined terms for Chapter 13

Delete the following definitions; the text is not shown struck through:

investment management firm

personal investment firm

securities and futures firm

Annex B

Amendments to the Supervision manual (SUP)

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

...

SUP Appendix 1

App 1.3 Prudential categories and sub-categories

App 1.3.1 G Prudential categories and sub-categories used in the Prudential sourcebooks and the Supervision manual

Prudential categories (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub- categories
...		
<i>Securities and futures firm*</i>	...	<i>IPRU(INV) 3:</i> ... <u><i>Exempt BIPRU commodities firm</i></u> ...
...		

...

FIFTH MOTOR INSURANCE DIRECTIVE INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Subject to (2), this instrument comes into force on 11 June 2007.
- (2) The amendment to the defined term 'State of the risk' in Annex A to this instrument comes into force when and if HM Treasury amend paragraph 6(3) of Schedule 12 to the Act in a way which corresponds with that amendment.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOB) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fifth Motor Insurance Directive Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Glossary of definitions

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

...

claims representative a person appointed by a motor vehicle liability insurer to satisfy the requirements of *threshold condition 2A* or ~~COB 6.8.20R~~ ICOB 7.6.2R.

...

Fifth Motor Insurance Directive the European Parliament and Council Directive of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and European Parliament and Council Directive 2006/26/EC relating to insurance against civil liability in respect of the use of vehicles (No 2005/14/EC).

...

injured party (in ICOB 7.6)

~~a person who claims damages as a result of any loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than his usual EEA State of residence which is caused by the use of a motor vehicle insured and normally based in an EEA State.~~

a resident of the EEA entitled to compensation in respect of any loss or injury caused by vehicles.

[Note: article 1(2) of Directive 72/166/EC (First Motor Insurance Directive)]

...

motor vehicle liability claims handling rules ICOB 7.6.8R to ICOB 7.6.11G.

...

normally based (in ICOB) (in relation to a vehicle):

(a) the territory of the EEA State of which the vehicle bears a registration plate; or

- (b) in cases where no registration is required for the type of vehicle, but the vehicle bears an insurance plate or a distinguishing sign analogous to a registration plate, the territory of the EEA State in which the insurance plate or the sign is issued; or
- (c) in cases where neither registration plate nor insurance plate nor distinguishing sign is required for the type of vehicle, the territory of the EEA State in which the keeper of the vehicle is permanently resident.

[Note: article 1(4) of Directive 72/166/EC (First Motor Insurance Directive)]

...

State of the risk

(in accordance with paragraph 6(3) of Schedule 12 to the Act (Transfer schemes: certificates)) (in relation to the EEA State in which a risk is situated):

- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), the EEA State in which the building is situated;
- (b) if the insurance relates to a vehicle of any type, the EEA State of registration;
- (ba) if the insurance relates to a vehicle dispatched from one EEA State to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery, the EEA State of destination (and not, as provided by sub-paragraph (b), the EEA State of registration);

[Note: article 4(4)(4a) of the Fifth Motor Insurance Directive]

- (c) ...

...

vehicle

any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer whether or not coupled.

[Note: article 1(1) of Council Directive 72/166/EEC (First Motor Insurance Directive)]

...

Annex B

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

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

...

Purpose

- 1.1.2 G (1) ...
- (2) *ICOB* implements, in part, provisions contained in a number of EC directives:
- (a) ...
- ...
- (e) the Fourth and the Fifth Motor Insurance Directives, in respect of claims made by injured parties ~~EEA resident~~ arising from a motor accidents in the EEA ~~but outside his country of residence~~.

...

Motor vehicles normally based in the UK

- 1.3.13 R Notwithstanding anything in this section, the motor vehicle liability claims handling rules apply to a motor vehicle liability insurer in respect of a vehicle normally based in the United Kingdom.

...

- 7.1.5 G All of this chapter, except *ICOB* 7.6, applies to *claims* made by *retail customers*. Part of *ICOB* 7.3, all of *ICOB* 7.4 and all of *ICOB* 7.7 apply to *claims* made by *commercial customers*. *ICOB* 7.6 applies to certain claims by injured parties arising from ~~an~~ accidents occurring in ~~an~~ the EEA State other than the EEA State of residence of the injured party, involving the use of a vehicle-vehicles. ~~insured and normally based in an EEA State.~~

Purpose

- 7.1.6 G (1) ...
...
(3) The purpose of *ICOB 7.6* is to transpose certain requirements of the *Fourth Motor Insurance Directive* and the *Fifth Motor Insurance Directive*.
...
- 7.6 Motor vehicle liability insurers: claims representatives and claims handling rules
Motor vehicle liability insurers: claims representatives
- 7.6.1 G ...
...
- 7.6.3 R (1) When a *motor vehicle liability insurer for which the United Kingdom is the Home State* appoints a *claims representative*, it must give the *MIIC*, and each other *information centre*, the *claims representative's* name, business address, telephone number and effective date of appointment within ten *business days* of that appointment being made.
(2) ...
[Note: article 5(2) of the *Fourth Motor Insurance Directive*]
- 7.6.4 R A *motor vehicle liability insurer for which the United Kingdom is the Home State* must ensure that each *claims representative* is:
(1) resident or established in the *EEA State* for which it is appointed;
(2) capable of examining cases in the official language or languages of the *EEA State* of residence of the *injured party*;

- (3) responsible for, and has sufficient delegated authority from the *motor vehicle liability insurer* for which it is appointed, to be able to:
- (a) handle and settle;
 - (b) collect all information, and take all measures, reasonably necessary to negotiate a settlement of; and
 - (c) represent, or arrange appropriate representation for, the *motor vehicle liability insurer* (whether in negotiations, in court or otherwise) in relation to;

claims, by an injured party arising from an accident occurring in a *EEA State* other than the *EEA State* of residence of the *injured party*, and caused by the use of a *vehicle insured through an establishment, and normally based, in an EEA State other than the EEA State of residence of the injured party.* ~~involving the use of a vehicle insured and normally based in an EEA State.~~

[Note: article 1(1) and (2) and Article 4(1), (4) and (5) of the Fourth Motor Insurance Directive]

...

Motor vehicle liability ~~insurers~~: claims handling rules

- 7.6.8 R (1) Within three *months* of a receipt of a *claim* for *damages caused by a vehicle normally based in the United Kingdom* from an *injured party*, or his representative, the *motor vehicle liability insurer* must (directly, or through a *claims representative*):

- (a) ...

...

- (4) ...

[Note: article 4(6) of the Fourth Motor Insurance Directive and Article 4(4)(4e, first paragraph) of the Fifth Motor Insurance Directive]

...

- 7.6.11 G (1) ~~ICOB 7.6.8R to ICOB 7.6.10R apply only to claims for damages for loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than an injured party's usual state of residence, which is caused by the use of a motor vehicle insured and normally based in an EEA State.~~
- (2) The rules and guidance at ICOB 7.6.1G to ICOB 7.6.10R are not intended to, and do not, restrict any rights which the injured party, or its motor vehicle liability insurer, or any other insurer acting on its behalf, may have and which would enable any of them to begin legal proceedings against the person causing the accident or that person's, or the ~~motor vehicle's~~ vehicle's, insurers.

...

ICOB TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>12</u>	<u>ICOB 7.6.8R to ICOB 7.6.11G</u>	<u>R</u>	<u>The amendments to these provisions made by the Fifth Motor Insurance Directive Instrument 2007 do not apply in relation to claims received by a motor vehicle liability insurer or a claims representative on or before 10 June 2007.</u>	<u>From 11 June 2007</u>	<u>11 June 2007</u>

**MORTGAGE LENDING AND ADMINISTRATION RETURN (MLAR):
REPORTING (AMENDMENT) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2007.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Mortgage Lending and Administration Return (MLAR): Reporting (Amendment) Instrument 2007.

By order of the Board
24 May 2007

Annex

Amendments to the Supervision manual (SUP)

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

...

16.7.12 R Reports from a bank established outside the EEA (see SUP 16.7.11R)

Content of report	Form or Return (Note 1)	Frequency	Due date
...			
Adequate information relating to <i>home finance providing activity and administering a home finance transaction</i>	<i>MLAR</i> (excluding <u>A1, A2, B1, C and J</u>)	Quarterly	<i>20 business days</i> after quarter end
...			

...

16.7.58 R Reports from a members' adviser (see SUP 16.7.57R)

Report	Return (Note 1)	Frequency	Due date
...			
Adequate information relating to <i>home finance providing activity and mortgage administering a home finance transaction</i>	<i>MLAR</i> (excluding <u>A1, A2, B1, C and J</u>)	Quarterly	<i>20 business days</i> after quarter end

...

...

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
(2007/2008) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance); and
 - (4) paragraph 17(1) of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2007.

Amendments to the Handbook

- D. The Unauthorised mutuals registration fees rules are amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Periodic Fees (Unauthorised Mutual Societies Registration) (2007/2008) Instrument 2007.

By order of the Board
24 May 2007

Annex

Amendments to the Unauthorised mutuals registration fees rules manual

In this Annex, an entire new section of text is being inserted. The place where the change will be made is indicated and the text is not underlined.

Delete existing Ann 1R and insert new Ann 1R as follows:

ANNEX 1R

PERIODIC FEES PAYABLE FOR THE PERIOD 1 APRIL 2007 TO 31 MARCH 2008

Part 1

Periodic fee payable by Registered Societies (on 30 June 2007)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic Fee	0 to 50	50
	> 50 to 100	95
	> 100 to 250	155
	> 250 to 1,000	210
	> 1,000	395

Part 2

Methods of payment of periodic fees

A periodic fee must be paid using either direct debit, credit transfer (BACS/CHAPS), cheque, switch or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.

**GLOSSARY (CONDUCT OF BUSINESS AND OTHER SOURCEBOOKS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the General Provisions (Powers exercised) of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Glossary (Conduct of Business and Other Sourcebooks) Instrument 2007.

By order of the Board
24 May 2007

Annex

Amendments to the Glossary of definitions

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

<i>abbreviated distance marketing information</i>	the information listed in COBS 6 Annex 2R (Abbreviated distance marketing information).
<i>basic advice</i>	see providing basic advice on a stakeholder product <u>the regulated activity, specified in article 52B of the Regulated Activities Order (Providing basic advice on stakeholder products) which is, in summary, providing advice on stakeholder products using a process that involves putting pre-scripted questions to a retail client.</u>
<i>cancellation rules</i>	COB 6.7(cancellation and withdrawal).
<i>CFPPFM</i>	the consumer-friendly version of a <i>firm's PPFM</i> , which must be produced pursuant to COBS 6.10.9A R20.4.5R .
<i>claim</i>	(1) ... (2) (in <i>ICOB</i> , <i>INSPRU</i> , <u><i>LLD</i></u> , <i>SUP</i> and <i>TC</i>) a claim under a <i>contract of insurance</i> .
<i>claims handling</i>	<u>(in <i>ICOB</i>) in relation to a claim under a non-investment insurance contract, carrying out the contract (by an insurer) or paying or declining to pay a claim on behalf of a member (by a managing agent).</u>
<i>client</i>	(1) (except in <i>PROF</i> in relation to a <i>home finance transaction</i>) has the meaning given in <i>COBS 3.2</i> , that is (in summary and without prejudice to the detailed effect of <i>COBS 3.2</i>) a person to whom a <i>firm</i> provides, intends to provide or has provided a service in the course of carrying on a <i>regulated activity</i> , or in the case of <i>MiFID business</i> or the equivalent business of a third country investment firm <u><i>MiFID</i> or equivalent third country business, an ancillary service;</u> (a) ...
<i>client agreement rules</i>	the rules in COBS 9 (Client agreements).
<i>cold call</i>	<u>a financial promotion made in the course of a personal visit, telephone conversation or other interactive dialogue:</u> (a) <u>which:</u>

- (i) was not initiated by the recipient of the *financial promotion*; and
 - (ii) does not take place in response to an express request from the recipient of the *financial promotion*; or
- (b) in relation to which it was not clear from all the circumstances when the call, visit or dialogue was initiated or requested, that during the course of the call, visit or dialogue, communications would be made concerning the kind of *controlled activities* and *controlled investments* to which the communications in fact made relate.

In this definition:

- (c) a *person* is not to be treated as expressly requesting a call, visit or dialogue:
- (i) because he omits to indicate that he does not wish to receive any or any further visits or calls or to engage in any or any further dialogue; or
 - (ii) because he agrees to standard terms that state that such visits, calls or dialogue will take place, unless he has signified clearly that, in addition to agreeing to the terms, he is willing for them to take place;
- (d) if a call, visit or dialogue is initiated or requested by a recipient (R), it is treated as also having been initiated or requested by any other *person* to whom it is made at the same time as it is made to R if that other recipient is a *close relative* of R or expected to *engage in any investment activity* jointly with R.

[Note: article 8 of the *Financial Promotion Order*]

common platform record-keeping requirements

the record-keeping requirements applicable to *common platform firms* set out in SYSC 9.

common platform requirements on financial crime

the requirements on *financial crime* applicable to *common platform firms* set out in SYSC 6.3.

communicated to a person inside the United Kingdom

communicated other than *communicated to a person outside the United Kingdom*.

communicated to a person outside

- (a) *made to a person* who receives it outside the *United Kingdom*; or

the United Kingdom

(b) directed only at persons outside the United Kingdom.

In this definition:

(c) If the conditions set out in (f)(i), (ii), (iii) and (iv) are met, a financial promotion directed from a place inside the United Kingdom will be regarded as directed only at persons outside the United Kingdom.

(d) If the conditions set out in (f)(iii) and (iv) are met, a financial promotion directed from a place outside the United Kingdom will be regarded as directed only at persons outside the United Kingdom.

(e) In any other case in which one or more of the conditions in (f)(i) to (v) is met, that fact will be taken into account in determining whether a financial promotion is directed only at persons outside the United Kingdom (but a financial promotion may still be regarded as directed only at persons outside the United Kingdom even if none of these conditions is met).

(f) The conditions are that:

(i) the financial promotion is accompanied by an indication that it is directed only at persons outside the United Kingdom;

(ii) the financial promotion is accompanied by an indication that it must not be acted upon by persons in the United Kingdom;

(iii) the financial promotion is not referred to in, or directly accessible from, any other financial promotion which is made to a person or directed at persons in the United Kingdom by the same communicator;

(iv) there are in place proper systems and procedures to prevent recipients in the United Kingdom (other than those to whom the financial promotion might otherwise lawfully have been made) engaging in the investment activity to which the financial promotion relates with the person directing the financial promotion, a close relative of his or a member of the same group;

(v) the financial promotion is included in:

(A) a website, newspaper, journal, magazine or periodical publication which is principally

accessed in or intended for a market outside the United Kingdom;

(B) a radio or television broadcast or teletext service transmitted principally for reception outside the United Kingdom.

<u>Consolidated Life Directive information</u>	<u>(in COBS) the Consolidated Life Directive information (COBS 13 Annex 1R).</u>
<i>controlled activity</i>	(in accordance with section 21(9) of the Act (t) ...; <u>or</u> (u) ... or (v) (in relation to COBS 5.2.4R and COBS 5.4.1R) also a marketing communication made by a MiFID investment firm or a third country investment firm that relates to an ancillary service.
<i>credit institution</i>	(1) (except in REC) (in accordance with Articles 4(1) and 107 of the BCD): ... (c) (except for the purposes of GENPRU, ELM, and BIPRU and IPRU(INV) (in so far as it relates to <u>exempt CAD firms</u>)) an institution within (2) that does not have the right to benefit from the mutual recognition arrangements under BCD is excluded; and ...
<i>CTF Regulations</i>	the Child Trust Fund Regulations 2004 (SI 2004/1450), as amended.
<i>detailed requirements on costs and associated charges</i>	(in COBS) the requirements of COBS 7.1.8R.
<i>direct offer financial promotion</i>	[delete existing definition and replace with the following] a <i>financial promotion</i> that contains: (a) an offer by the <i>firm</i> or another <i>person</i> to enter into a <i>controlled agreement</i> with any <i>person</i> who responds to the communication; or (b) an invitation to any <i>person</i> who responds to the communication to make an offer to the <i>firm</i> or another <i>person</i> to enter into a <i>controlled agreement</i> ;

and which specifies the manner of response or includes a form by which any response may be made.

In relation to *MiFID or equivalent third country business* "controlled agreement" includes an agreement to carry on an *ancillary service*.

directed at a *financial promotion* is directed at *persons* if it is addressed to *persons generally* (for example where it is contained in a television broadcast or web site).

- directed only at*
- (a) If all the conditions set out in (c) are met, a communication is to be regarded as "directed only at" a certain *group of persons*.
 - (b) In any other case in which one or more of those conditions are met, that fact is to be taken into account in determining whether the communication is "directed only at" a certain *group of persons* (but a communication may still be regarded as so directed even if none of the conditions in (c) are met).
 - (c) The conditions are that:
 - (i) the communication includes an indication of the description of *persons* to whom it is directed and an indication of the fact that the *investment* or service to which it relates is available only to such *persons*;
 - (ii) the communication includes an indication that *persons* of any other description should not rely upon it;
 - (iii) there are in place proper systems and procedures to prevent recipients other than *persons* to whom it is directed engaging in the investment activity, or participating in the *collective investment scheme*, to which the communication relates with the *person* directing the communication, a *close relative* of his or a member of the same *group*.

distance communications rules the ~~rules in COBS 6 (Distance communications)~~.

distance contract any contract concerning financial services, ~~the making or performance of which constitutes or is part of a regulated activity,~~ concluded between a ~~supplier~~ *firm* and a *consumer* under an organised distance sales or service provision scheme run by the ~~supplier~~ *firm* which, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more ~~means of distance communication~~ means of distance communication (that is, any means which, without the simultaneous physical presence

of the *firm* and the *consumer*, may be used for the distance marketing of a service between those parties) up to and including the time at which the contract is concluded.

A contract is not a distance contract if:

- (a) making or performing it does not constitute or form part of a regulated activity;
- (b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or
- (c) a consumer, and an intermediary acting for a product provider, are simultaneously physically present at some stage before the conclusion of the contract.

[~~Note: recitals 15 and 18 to, and articles 2(a) and (e) of, and recital 19 to the Distance Marketing Directive]~~

*distance
marketing
disclosure rules*

~~COBS 6.1.1R to COBS 6.1.4R.~~

*distance
marketing
information*

- (1) ~~(in COBS) the information listed in COBS 6 Annex 1R.~~
- (2) ~~(in MCOB) the information listed in MCOB 6 Annex 1R.~~

durable medium

- (a) paper; or
- (b) any instrument which enables the recipient to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored; ~~this includes, in~~ In particular, *durable medium* covers floppy disks, CD-ROMs, DVDs and ~~the hard drives of the recipient's personal computers on which the electronic mail is stored, but not it~~ excludes Internet websites, unless they such sites fulfil meet the criteria specified in the first sentence of this definition paragraph.

~~(in relation to MiFID business or equivalent business of a or equivalent third country business investment firm, if the relevant rule implements the MiFID implementing Directive) the instrument used must be:~~

- (i) appropriate to the context in which the business is to be carried on; and
- (ii) specifically chosen by the consumer recipient when offered the choice between that instrument and paper.

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as appropriate to

the context in which the business between the *firm* and the *client* is, or is to be, carried on if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of the carrying on of that business is sufficient.

[**Note:** article 2(f) and Recital 20 of the *Distance Marketing Directive* and article 2(12) of the *Insurance Mediation Directive* and articles 2(2), 3(1) and 3(3) of the *MIFID implementing Directive*]

ECA provider ~~an *electronic commerce activity provider*; that is, a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*.~~

ECO ~~The E-Commerce Directive sourcebook.~~

EEA territorial scope rule ~~COBS Appendix 1 Annex 1, Part 32 paragraph 1(1) (which provides that the territorial scope of COBS is modified to the extent necessary to be compatible with European law).~~

electronic commerce activity provider ~~[delete existing definition and replace with the following]~~
(in COBS) a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*.

energy market participant a *firm*:

(a) ...

(b) which is not an *authorised professional firm*, bank, *BIPRU investment firm* (unless it is an *exempt BIPRU commodities firm*), *building society*, *credit union*, *friendly society*, *ICVC*, *insurer*, ~~*ISD investment firm*~~ *MiFID investment firm* (unless it is an *exempt BIPRU commodities firm*), *media firm*, *oil market participant*, ...

excess surplus a *firm* will have an excess surplus in a *with-profits fund* if, and to the extent that:

- (a) the *regulatory surplus* (or, in the case of a *realistic basis life firm*, the excess of *realistic assets* over *realistic liabilities*) in that *with-profits fund*; and
- (b) any other financial resources applied to, or expected to be applied to, that *with-profits fund*;

exceed:

- (c) the amount required to meet the higher of any regulatory capital requirement or the *firm's individual capital assessment* (at the *firm's* own risk appetite) for existing business; and

- (d) any further amount necessary to support the new business plans of that *with-profits fund*.

excluded communication

the following types of communication (a *firm* may rely on more than one of the paragraphs in relation to the same *financial promotion*):

- (a) a *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were *communicated* by an *unauthorised person*, or which originates outside the *United Kingdom* and is not capable of having an effect in the *United Kingdom* (within the meaning of s.21(3) of the *Act*);
- (b) a *financial promotion* from outside the *United Kingdom* that would be exempt under articles 30, 31, 32 or 33 of the *Financial Promotion Order* (Overseas communicators) if the office from which the *financial promotion* is *communicated* were a separate *unauthorised person*;
- (c) a *financial promotion* that is subject to, or exempted from, the *Takeover Code* or to the requirements relating to takeovers or related operations in another *EEA State*;
- (d) a personal quotation or illustration form; or
- (e) a "one-off" *financial promotion* that is not a *cold call*. If the conditions set out in (i) to (iii), below, are satisfied, a *financial promotion* is "one-off". If not, the fact that any one or more of these conditions is met is to be taken into account in determining if a *financial promotion* is "one-off". However, a *financial promotion* may be regarded as "one-off" even if none of the conditions are met. The conditions are that:
 - (i) the *financial promotion* is *communicated* only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;
 - (ii) the identity of the product or service to which the *financial promotion* relates has been determined having regard to the particular circumstances of the recipient;
 - (iii) the *financial promotion* is not part of an organised marketing campaign.

execution criteria

the criteria set out in *COBS 4211.2.6R*, that is:

- (a) ...

execution venue

for the purposes of the provisions relating to best execution in *COBS 4211.2*, execution venue means a *regulated market*, an *MTF*, a *systematic internaliser*, or a *market maker* or other liquidity provider or an entity that performs a similar function in a third country to the

functions performed by any of the foregoing.

[**Note:** article 44(1) of the *MiFID implementing Directive*]

execution-only transaction

a transaction *executed* by a *firm* upon the specific instructions of a *client* where the *firm* does not give *advice on investments* relating to the merits of the transaction and in relation to which the *rules* on assessment of appropriateness (*COBS 4.10*) do not apply.

~~*final transfer value*~~

[delete existing definition]

financial instrument

(1) (other than in (2) ~~and (3)~~) instruments specified in Section C of Annex I of *MiFID*, that is:

(a) *transferable securities*;

...

~~(2) (for the purposes of *BIPRU* and *GENPRU*) an instrument listed in Section B of the Annex to the *ISD*.~~

~~(3) (in *MAR* 1 and *MAR* 2, *DTR* 1, 2 and 3...~~

~~(2)~~

financial promotion

(1) an invitation or inducement to engage in investment activity that is communicated in the course of business;

[**Note:** section 21 of the *Act* (Restrictions on financial promotion)]

(2) (in relation to *COBS* 3.2.1R(3), *COBS* 4.3.1R, ~~5.2.4R~~ *COBS* 4.5.8R and *COBS* 4.7.1R ~~5.4.1R~~) (in addition to (1)) a marketing communication within the meaning of *MiFID* made by a *firm* in connection with its *MiFID investment firm* or equivalent third country business ~~a third country investment firm that relates to an ancillary service.~~

financial promotion rules

(1) (in relation to *COBS*) any or all of the *rules* in *COBS* 4 ~~and *COBS* 5~~ that impose requirements in relation to a *financial promotion* but only to the extent that they apply to a *financial promotion*.

(2) ...

~~revenue~~ HMRC allocated CTF

~~a CTF opened in accordance with Regulation~~ regulation 6 of the CTF Regulations.

image advertising

a communication that consists only of one or more of the following:

(a) the name of the *firm*;

(b) a logo or other image associated with the *firm*;

(c) a contact point; and

	(d) <u>a reference to the types of <i>regulated activities</i> provided by the <i>firm</i>, or to its fees or commissions.</u>
<i>individual capital assessment</i>	(in <i>INSPRU</i> and <i>COBS</i> 6-1220.2) an assessment by a <i>firm</i> of the adequacy of its capital resources undertaken as part of an assessment of the adequacy of the <i>firm's</i> overall financial resources carried out in accordance with <i>GENPRU</i> 1.2.
<i>information about designated investments</i>	the information required to be provided to a <i>retail client</i> by the rules in <i>COBS</i> 15.3 (Information about designated investments).
<i>information society service</i>	[delete existing definition and replace with the following] <u>an information society service, as defined by article 2(a) of the <i>E-Commerce Directive</i> and article 1(2) of the <i>Technical Standards and Regulations Directive (98/34/EC)</i>, which is in summary any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including the digital compression) and storage of data at the individual request of a service recipient.</u>
<i>insurance undertaking</i>	(1) <u>(except in <i>COBS</i>) an undertaking, or (in <i>CASS</i> 5 and <i>COMP</i>) a member, whether or not an <i>insurer</i>, which carries on <i>insurance business</i>;</u> (2) <u>(in <i>COBS</i>) an undertaking or a member which carries on <i>insurance business</i>.</u>
<i>investment management firm</i>	(1) ... whose <i>permission</i> does not include a <i>requirement</i> that it comply with <i>IPRU(INV)</i> 3 or <i>IPRU(INV)</i> 10 (Securities and futures firms) or <i>IPRU(INV)</i> 13 (Personal investment firms) and which is within (a), (b) or (c): ...
<i>key facts disclosure document</i>	a document required to be prepared by the rules in <i>COBS</i> 14 (Preparing product information) and to be provided to a <i>retail client</i> by the rules in <i>COBS</i> 15 (Providing product information).
<i>key facts scheme</i>	a <i>scheme</i> that is not: (a) a <i>simplified prospectus scheme</i> ; (b) a <i>qualified investor scheme</i> ; or (c) a recognised scheme under section 264 of the <i>Act</i> (Schemes constituted in other EEA States).
<i>key features document</i>	<u>a document prepared in accordance with the rules on preparing product information (<i>COBS</i> 13).</u>

key features illustration

information describing projected performance and the effect of charges prepared in accordance with the rules on preparing product information (COBS 13).

key features scheme

a scheme that is not:

- (a) a simplified prospectus scheme;
- (b) a qualified investor scheme; or
- (c) a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States).

life policy

[delete existing definition and replace with the following]

- (1) (in accordance with the definition of 'qualifying contract of insurance' in article 3(1) of the Regulated Activities Order) a long-term insurance contract (other than a reinsurance contract and a pure protection contract); and
 - (a) a long-term care insurance contract; and
 - (b) (in COBS) a pension policy;unless (2) or (3) apply.
- (2) In PERG (other than in relation to a firm's permission – see Note 5B to Table 1 in Annex 2, PERG 2) and for the purposes of the financial promotion rules in COBS 4, life policy does not include a long-term care insurance contract.
- (3) In relation to a firm's permission:
 - (a) (in accordance with the definition of 'qualifying contract of insurance' in article 3(1) of the Regulated Activities Order) a long-term insurance contract (other than a reinsurance contract and a pure protection contract);
 - (b) a long-term care insurance contract which is a pure protection contract; and
 - (c) a pension term assurance policy.

long-term care insurance contract

[delete existing definition and replace with the following]

a long-term insurance contract:

- (a) which provides, would provide at the policyholder's option, or is sold or held out as providing, benefits that are payable or provided if the policyholder's health deteriorates to the extent that he cannot live independently without assistance and that is not expected to change; and
- (b) under which the benefits are capable of being paid for

	<u>periodically for all or part of the period that the <i>policyholder</i> cannot live without assistance;</u>
	<u>where ‘benefits’ are services, accommodation or goods necessary or desirable for the continuing care of the <i>policyholder</i> because he cannot live independently without assistance.</u>
<u><i>made to; made only to; to whom it is made</i></u>	<u>a financial promotion is made to a person if it is addressed, whether orally or in legible form, to a particular <i>person</i> or <i>persons</i> (for example where it is contained in a telephone call or letter).</u>
<u><i>material insurance holding</i></u>	has the meaning in <i>GENPRU</i> 2.2.212R (Material holdings) <u>or, for an exempt CAD firm which is an investment management firm, in <i>IPRU(INV)</i> Table 5.2.2(1).</u>
<u><i>means of distance communication</i></u>	(in accordance with article 2(e) of the <i>Distance Marketing Directive</i>) any means used for the distance marketing of a service between parties which does not involve the simultaneous physical presence of those parties
<u><i>MiFID information rules</i></u>	[delete existing definition]
<u><i>MiFID or equivalent third country business</i></u>	<u><i>MiFID business</i> or the <i>equivalent business of a third country investment firm.</i></u>
<u><i>non-retail communication</i></u>	<u>a financial promotion and:</u> <ul style="list-style-type: none"> (a) <u>is made only to recipients who the firm reasonably believes are professional clients or eligible counterparties; or</u> (b) <u>may reasonably be regarded as directed only at recipients who are professional clients or eligible counterparties.</u>
<u><i>oil market participant</i></u>	a firm: <ul style="list-style-type: none"> (a) ... (b) which is not an <i>authorised professional firm, bank, BIPRU investment firm (unless it is an exempt BIPRU commodities firm), building society, credit union, friendly society, ICVC, insurer, ISD investment firm MiFID investment firm (unless it is an exempt BIPRU commodities firm), media firm, ...</i>
<u><i>open market option</i></u>	[delete existing definition]
<u><i>outsourcing</i></u>	(1) (except in <i>SYSC</i> 8, <i>COBS</i> 11.7 and the definition of <i>relevant person</i>) the use of a <i>person</i> to provide customised services to a <i>firm</i> other than: <ul style="list-style-type: none"> (a) a member of the <i>firm’s</i> governing body acting in his

capacity as such; or

(b) an individual employed by a *firm* under a contract of service.

(2) (in SYSC 8, COBS 11.7 and the definition of *relevant person*) an arrangement of any form between a *firm* and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the *firm* itself.

[**Note:** article 2(6) of the *MiFID implementing Directive*]

pension opt-out a transaction, resulting from ~~the decision of a decision made, with or without advice from a firm, by a customer~~ *retail client* who is an individual, to:

- (a) opt out of an *occupational pension scheme* of which he is a ~~current~~ member; or
- (b) decline to become a member of an *occupational pension scheme* which he is eligible to join, or ~~which he will become~~ eligible to join at the end of a waiting period;

in favour of a *stakeholder pension scheme* or ~~a personal pension scheme (including a self-invested personal pension scheme)~~.

pension transfer a transaction, resulting from ~~the decision of a decision made, with or without advice from a firm, by a customer~~ *retail client* who is an individual, to transfer deferred benefits from:

- (a) an *occupational pension scheme*; ~~or~~
- (b) an ~~individual pension contract~~ *individual pension contract* providing fixed or guaranteed benefits that replaced similar benefits under a *defined benefits pension scheme*; or
- (c) ~~(in COB 6.7 (cancellation and withdrawal) (in the cancellation rules (COBS 15)) a stakeholder pension scheme or a personal pension scheme),~~

to:

- (d) a *stakeholder pension scheme*; ~~or to~~
- (e) a *personal pension scheme* ~~(including a self-invested personal pension scheme)~~; or
- (f) ~~to any a deferred annuity policy (including a pension buy-out contract)~~ where the eventual benefits depend ~~in whole or in part~~ on investment performance in the period up to the *intended retirement date*.

pension wrapper (in the cancellation rules (COBS 15)) a SIPP, pension contract or personal pension product.

periodic information the information identified in the table in COBS 17.6 Ann 4.2 R(2), and if the *client* has not elected to receive *trade confirmation information*

on a transaction by transaction basis under *COBS* 176.3.3R, the information identified in column (2) of *COBS* 176 Ann 1R(4).

person with whom a relevant person has a family relationship

any of the following:

- (a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;
- (b) a child or stepchild of the relevant person;
- (c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned.

[**Note:** article 2(7) of the *MiFID implementing Directive*]

personal investment firm

- (1) ... whose *permission* does not include a *requirement* that it comply with *IPRU(INV)* 3 (Securities and futures firms); or 5 (Investment management firms) or 10 (Securities and futures firms), and which is within (a), (b) or (c):

...

personal pension scheme

- (a) ~~(in relation to a specified investment) the investment specified in article 82(2) of the *Regulated Activities Order* (Rights under a pension scheme) which is rights under a personal pension scheme in (b);~~
- (b) ~~(in relation to a scheme) (in accordance with article 3(1) of the *Regulated Activities Order*) a pension scheme or arrangement which: (i) is not an occupational pension scheme or stakeholder pension scheme; and which (ii) is comprised in one or more instruments or agreements having or capable of having effect so as to provide providing benefits to or in respect of people:~~
 - (a) ~~on retirement; death or~~
 - (b) ~~on having reached a particular age; or~~
 - (c) on termination of service in an employment.

policyholder advocate

the *person* appointed under *COBS* ~~6.13.8R~~20.2.42R to negotiate with a *firm* on its proposals for making a *retribution* of its *inherited estate*.

prescribed asset share methodology

the methodology described in *COBS* 20.2.5R for assessing maturity payments by reference to unsmoothed asset shares.

Principles and Practices of Financial Management

the Principles and Practices of Financial Management, containing *with-profits principles* and *with-profits practices*, which a *firm* carrying on *with-profits business* must establish, maintain and record under *COBS* ~~6.10~~20.3 (Principles and Practices of Financial Management).

<i>product provider</i>	(1) (except in <i>ICOB</i> and <i>COB</i>) a firm which is: ... (3) (in <i>COB</i>) a firm which is: (i) a long-term insurer ; (ii) a friendly society ; (iii) the operator of a regulated collective investment scheme or an investment trust savings scheme ; (iv) the operator of a personal pension scheme .
<i>providing basic advice on stakeholder products</i>	the regulated activity, specified in article 52B of the Regulated Activities Order (Providing basic advice on stakeholder products), which is in summary, advising on certain relatively low cost products by means of questions.
<i>provision rules</i>	(in <i>COBS</i>) the rules from <i>COBS</i> 15.2.1R to <i>COBS</i> 15.2.5R.
<i>retribution expert</i>	the expert appointed by a firm to satisfy its obligations under <i>COBS</i> 6.13.22R <u>20.2.47R (Reattribution expert).</u>
<i>recipient</i>	<u>the person to whom a communication is made or, in the case of a non-real time financial promotion which is directed at persons generally, any person who reads or hears the communication.</u>
<i>regulatory system</i>	the arrangements for regulating a firm or other person in or under the Act, including the <i>threshold conditions</i> , the <i>Principles</i> and other <i>rules</i> , the <i>Statements of Principle</i> , codes and <i>guidance</i> <u>and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the <i>MiFID implementing Directive</i> and the <i>MiFID implementing Regulation</i>.</u>
<i>reinsurance contract</i>	(in <i>COBS</i> , <i>ICOB</i> , <i>CASS 5</i> and <i>COMP</i>) a <i>contract of insurance</i> covering all or part of a risk to which a person is exposed under a <i>contract of insurance</i> .
<i>relevant competent authority</i>	<u>(in relation to a financial instrument) means the competent authority of the most relevant market in terms of liquidity for that financial instrument.</u> [Note: article 2(7) of <i>MiFID Regulation</i>]
<i>relevant investment</i>	(1) (in <i>COBS</i> 13 <u>2.4</u> , in relation to a <i>research recommendation</i> or a public appearance), a <i>designated investment</i> that is the subject of that <i>research recommendation</i> or public appearance, (2) (<u>other than</u> in <i>COBS</i> 4 or <i>COBS</i> 12.4 and <i>COBS</i> 5) otherwise (in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)): (a) a <i>contractually based investment</i> ;

- (b) a *pure protection contract*;
 - (c) a *general insurance contract*;
 - (d) rights to or interests in an *investment* falling within (a).
- (3) ~~[to follow]~~ (in COBS 4) a *specified investment* or a *controlled investment*.

relevant person

- (1) (in *COMP*) ...
- (2) any of the following:
 - (a) ...
 - (b) ...
 - (c) an *employee* of the *firm* or of an *appointed representative* (or where applicable, *tied agent*) of the *firm*; as well as any other natural person whose services are placed at the disposal and under the control of the *firm* or an *appointed representative* or *tied agent* of the *firm* and who is involved in the provision by the *firm* of *regulated activities*;
 - (d) a natural person who is directly involved in the provision of services to the *firm* or its *appointed representative* (or where applicable, *tied agent*) under an *outsourcing* arrangement for the purpose of the provision by the *firm* of *regulated activities*.

required percentage

the *required percentage* referred to in COBS 20.2.17R is, for each *with-profits fund*:

- (a) the percentage (if any) required in respect of that fund by:
 - (i) the *firm's* articles of association, registered rules or other equivalent instrument; or
 - (ii) a relevant order made by a court of competent jurisdiction;
- (b) if (a) does not apply, the percentage specified in the *firm's* PPFM, if that percentage reflects the *firm's* established practice;
- (c) if (a) and (b) do not apply, not less than 90 per cent.

requirement to disclose information before providing services

~~COBS 2.2.2R.~~

requirement to disclose information on costs and associated

~~(in COBS) the requirement in COBS 2.2.2R(1)(d).~~

charges

requirement to disclose information on designated investments and investment strategies

(in *COBS*) the requirement in *COBS* 2.2.2R(1)(b).

retail client

- (1) ...
- (2) (in relation to the provision of basic advice on a stakeholder product and in accordance with article 52B of the *RAO*) ~~the person to whom a firm provides basic advice on stakeholder products~~ any person who is advised by a firm on the merits of opening or buying a stakeholder product where the advice is given in the course of a business carried on by that firm and it is received by a person not acting in the course of a business carried on by him.

rule on voice telephony communications

~~*COBS* 6.1.9R.~~

scheme pension

[delete existing definition and replace with the following]

a scheme pension, as defined in paragraph 2 of Schedule 28 to the Finance Act 2004, which is in summary a pension payable until a pension scheme member's death, or until the later of the member's death and the end of a term not exceeding 10 years.

securities and futures firm

- (1) (except in *SUP* 16 and subject to *BIPRU* TP 1.3R (Revised definition of securities and futures firm for certain transitional purposes)) a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, *BIPRU* investment firm (unless it is an exempt *BIPRU* commodities firm), *ELMI*, ... and which is within (a), (b), (c), (d), (e), ~~(f)~~ or (g):

...

- (b) a firm whose permission includes a requirement that it comply with *IPRU(INV)* 3 ~~or 10~~ (Securities and futures firms);

...

- (f) an oil market participant;

- (g) an exempt *BIPRU* commodities firm.

	(2) (in <i>SUP</i> 16) as in (1) but excluding the words ' <i>BIPRU investment firm</i> (unless it is an <i>exempt BIPRU commodities firm</i>)' and (g).
<i>simplified prospectus</i>	(in relation to a <i>simplified prospectus scheme</i>) a marketing document containing information about the a <i>simplified prospectus scheme</i> , which complies with <i>COLL</i> 4.6.2R (Production and publication of simplified prospectus) and <i>COLL</i> 4.6.8R (Contents of the simplified prospectus).
<i>simplified prospectus scheme</i>	(a) a <i>UCITS scheme</i> that is not a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States); or (b) a <i>key facts features scheme</i> in respect of which a firm has chosen to produce a <i>simplified prospectus</i> has been, or will be, produced instead of a <i>key facts disclosure features document</i> (see <i>COBS</i> 14.2.3R(2) 13.1.3R (2)). whether or not the <i>units</i> are held within a <i>PEP, ISA</i> or <i>personal pension scheme</i>.
<i>small personal investment firm</i>	a <i>personal investment firm</i> : (a) which is not an <i>ISD investment firm</i> <i>MiFID investment firm</i> ; ...
<i>stakeholder pension scheme</i>	(a) (in relation to a <i>specified investment</i>) the <i>investment</i> specified in article 82(1) of the <i>Regulated Activities Order</i> (Rights under a pension scheme) which is rights under a stakeholder pension scheme in (b); (b) (in relation to a scheme) a scheme established in accordance with Part I that meets the conditions in section 1 of the Welfare Reform and Pensions Act 1999 and the Stakeholder Pension Schemes Regulations 2000 (S.I. 2000/1403), or article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.
<i>statutory status disclosure statement</i>	the statutory status disclosure statement required by <i>GEN</i> 4 (Statutory status disclosure).
<i>suitability report</i>	a report which a <i>firm</i> must provide to its <i>client</i> under <i>COBS</i> 109.4 (Suitability reports) which, among other things, explains why the <i>firm</i> has concluded that a recommended transaction is suitable for the <i>client</i> .
<i>third party prospectus</i>	a communication made by a <i>firm</i> if the communication is a prospectus that has been drawn up and published in accordance with the <i>Prospectus Directive</i> and the <i>firm</i> is not responsible under that directive for the information given in the prospectus. <u>[Note: recital 52 to the <i>MiFID implementing Directive</i>]</u>

<i>trade confirmation information</i>	the information identified in column (1) of the table in <i>COBS 176</i> Ann 1R(4).
<i>transfer value analysis</i>	<p>an analysis performed to make a comparison between of the benefits which are likely (on reasonable assumptions) to be paid under an <i>occupational pension scheme</i> and those benefits afforded by: a <i>personal pension contract</i> or a <i>pension buy-out contract</i>.</p> <p>(a) <u>a <i>stakeholder pension scheme</i>; or</u></p> <p>(b) <u>a <i>personal pension scheme</i>; or</u></p> <p>(c) <u>a deferred annuity <i>policy</i> where the eventual benefits depend in whole or in part on investment performance in the period up to the <i>intended retirement date</i>.</u></p>
<i>voice telephony communication</i>	includes a telephone call.
<u><i>with-profits committee</i></u>	<u>a committee of the <i>governing body</i>, including non-executive members of the <i>governing body</i> and possibly some external non-directors with appropriate skills and experience.</u>
<i>with-profits fund</i>	<p>(1) for the purposes of <i>COB</i> (except in <i>INSPRU</i>):</p> <p>(a) ...</p> <p>(b) ...</p> <p>(2) (for the purposes of <i>INSPRU</i>) ...</p>
<i>with-profits practices</i>	the with-profits practices that a <i>firm</i> must establish, maintain and record under <i>COBS 6.1020.3</i> (Principles and Practices of Financial Management).
<i>with-profits principles</i>	the with-profits principles that a <i>firm</i> must establish, maintain and record under <i>COBS 6.1020.3</i> (Principles and Practices of Financial Management).
<u><i>wrapper</i></u>	<u>a <i>PEP, ISA</i> or <i>CTF</i>.</u>

CONDUCT OF BUSINESS SOURCEBOOK INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1)
 - (a) section 138 (General rule-making power)
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 145 (Financial promotions rules);
 - (d) section 149 (Evidential provisions);
 - (e) section 156 (General supplementary powers);
 - (f) section 157(1) (Guidance);
 - (g) section 213 (The compensation scheme);
 - (h) section 214 (General);
 - (i) section 226 (Compulsory jurisdiction); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FSA's Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on:
- (1) 24 May 2007, in respect of paragraph D; and
 - (2) 1 November 2007, for all other purposes.

Revocation of the Conduct of Business Sourcebook (MiFID Transposition) Instrument 2007

- D. The Conduct of Business Sourcebook (MiFID Transposition) Instrument 2007 (FSA 2007/3) is revoked in its entirety.

Revocation of the Conduct of Business sourcebook (COB)

- E. The provisions of the Conduct of Business sourcebook (COB) are revoked.

Making the New Conduct of Business sourcebook (COBS)

- F. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument.

Revocation of the Electronic Commerce Directive sourcebook (ECO)

- G. The provisions of the Electronic Commerce Directive sourcebook (ECO) are revoked.

Notes

- H. In the Annex to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

- I. This instrument may be cited as the Conduct of Business Sourcebook Instrument 2007.
- J. The sourcebook in the Annex to this instrument (including its schedules) may be cited as the Conduct of Business sourcebook (or COBS).

By order of the Board
24 May 2007

Annex

The Conduct of Business sourcebook (COBS)

This Annex makes the new Conduct of Business sourcebook (COBS). All the text is new and is therefore not shown underlined. This Annex contains the following sections of COBS:

Chapter	Chapter Title	Sections made
1	Application	Section 1.1
2	Conduct of business obligations	Sections 2.1 to 2.4
3	Client categorisation	Sections 3.1 to 3.8
4	Communicating with clients, including financial promotions	Sections 4.1 to 4.11
5	Distance communications	Sections 5.1 to 5.2
6	Information about the firm, its services and remuneration	Section 6.1
7	Insurance mediation	Sections 7.1 to 7.2
8	Client agreements	Section 8.1
9	Suitability (including basic advice)	Sections 9.1 to 9.3, and 9.5 to 9.6 (Section 9.4 to follow)
10	Appropriateness (for non-advised services)	Sections 10.1 to 10.7
11	Dealing and managing	Sections 11.1 to 11.5, and 11.7 (Section 11.6 to follow)
12	Investment research	Sections 12.1 to 12.4
13	Preparing product information	Sections 13.1 to 13.3
14	Providing product information	Sections 14.1 and 14.3 (Section 14.2 to follow)
15	Cancellation	Sections 15.1 to 15.5
16	Reporting information to clients	Sections 16.1 to 16.6
17	Claims handling for long-term care insurance	Section 17.1
18	[Specialist regimes]	[To follow]
19	Pensions – supplementary provisions	Sections 19.1 to 19.4
20	With-profits	Sections 20.1 to 20.4
Transitional Provisions and Schedules		

1 Application

1.1 The general application rule

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

(1) *accepting deposits*;

(2) *designated investment business*;

(3) *long-term insurance business* in relation to *life policies*;

and activities connected with them.

Modifications to the general application rule

1.1.2 R The *general application rule* is modified in *COBS 1 Ann 1* according to the activities of a *firm* (Part 1), its location (Part 2) and certain temporary provisions (Part 2A).

1.1.3 R The *general rule* is also modified in the chapters to this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

Guidance

1.1.4 G *Guidance* on the application provisions is in *COBS 1 Ann 1* (Part 3).

1 Annex 1: Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application rule according to activities

1.	Eligible counterparty business																					
1.1	R	<p>The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> that is <i>MiFID</i> or <i>equivalent third country business</i>.</p> <table border="1"> <thead> <tr> <th>COBS provision</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td><i>COBS</i> 2 (other than <i>COBS</i> 2.4)</td> <td>Conduct of business obligations</td> </tr> <tr> <td><i>COBS</i> 4 (other than <i>COBS</i> 4.2.5R and <i>COBS</i> 4.2.6G)</td> <td>Communicating with clients including financial promotions</td> </tr> <tr> <td><i>COBS</i> 6.1</td> <td>Information about the firm, its services and remuneration</td> </tr> <tr> <td><i>COBS</i> 8</td> <td>Client agreements</td> </tr> <tr> <td><i>COBS</i> 10</td> <td>Appropriateness (for non-advised services)</td> </tr> <tr> <td><i>COBS</i> 11.2, <i>COBS</i> 11.3 and <i>COBS</i> 11.6</td> <td>Best execution, client order handling and use of dealing commission</td> </tr> <tr> <td><i>COBS</i> 12.3.1R to 12.3.3R</td> <td>Labelling of non-independent research</td> </tr> <tr> <td><i>COBS</i> 14.3</td> <td>Information about designated investments</td> </tr> <tr> <td><i>COBS</i> 16</td> <td>Reporting information to clients</td> </tr> </tbody> </table> <p>[Note: article 24(1) of <i>MiFID</i>]</p>	COBS provision	Description	<i>COBS</i> 2 (other than <i>COBS</i> 2.4)	Conduct of business obligations	<i>COBS</i> 4 (other than <i>COBS</i> 4.2.5R and <i>COBS</i> 4.2.6G)	Communicating with clients including financial promotions	<i>COBS</i> 6.1	Information about the firm, its services and remuneration	<i>COBS</i> 8	Client agreements	<i>COBS</i> 10	Appropriateness (for non-advised services)	<i>COBS</i> 11.2, <i>COBS</i> 11.3 and <i>COBS</i> 11.6	Best execution, client order handling and use of dealing commission	<i>COBS</i> 12.3.1R to 12.3.3R	Labelling of non-independent research	<i>COBS</i> 14.3	Information about designated investments	<i>COBS</i> 16	Reporting information to clients
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2.	Transactions between an MTF operator and its users																					
2.1	R	<p>The <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (Client limit orders) do not apply to a transaction between an operator of an <i>MTF</i> and a member or participant in relation to the use of the <i>MTF</i>.</p> <p>[Note: article 14(3) of <i>MiFID</i>]</p>																				
3.	Transactions concluded on an MTF																					
3.1	R	<p>The <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (client limit orders) do not apply to transactions concluded under the rules governing an <i>MTF</i> between members or participants of the <i>MTF</i> (where the transactions are <i>MiFID</i> or <i>equivalent third country business</i>). However, the member or</p>																				

		<p>participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on an <i>MTF</i>.</p> <p>[Note: article 14(3) of <i>MiFID</i>]</p>
4.	Transactions concluded on a regulated market	
4.1	R	<p>In relation to transactions concluded on a <i>regulated market</i> (where the transactions are <i>MiFID</i> or <i>equivalent third country business</i>), members and participants of the <i>regulated market</i> are not required to apply to each other the <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (client limit orders). However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on a <i>regulated market</i>.</p> <p>[Note: article 42(4) of <i>MiFID</i>]</p>
5.	Consumer credit products	
5.1	R	<p>If a <i>firm</i>, in relation to its <i>MiFID</i> business, offers an <i>investment service</i> as part of a financial product that is subject to other provisions of European Community legislation or common European standards related to <i>credit institutions</i> and consumer credits with respect to risk assessments of clients and/or information requirements, that service is not subject to the <i>rules</i> in this sourcebook that implement Article 19 of <i>MiFID</i>.</p> <p>[Note: article 19(9) of <i>MiFID</i>]</p>
5.2	G	<p>This exclusion for consumer credit products is intended to apply on a narrow basis in relation to cases in which the <i>investment service</i> is a part of another financial product. It does not apply where the <i>investment service</i> is the essential or leading part of the financial product. It also does not apply where the service provided is a combination of an <i>investment service</i> and an <i>ancillary service</i> (for example, granting a credit for the execution of an order where the credit is instrumental to the buying or the selling of a <i>financial instrument</i>.) The exclusion also does not apply in relation to the sale of a <i>financial instrument</i> for the purpose of enabling a <i>client</i> to invest money to repay his obligations under a loan, <i>mortgage</i> or <i>home reversion</i>.</p>

Part 2: Where?

Modifications to the general application rule according to location

1.	EEA territorial scope rule: compatibility with European law		
1.1	R	(1)	The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 3 for <i>guidance</i> on this).
		(2)	This <i>rule</i> overrides every other <i>rule</i> in this sourcebook.

1.2	R	<p>In addition to the <i>EEA territorial scope rule</i>, the effect of the <i>Electronic Commerce Directive</i> on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 7.3 of Part 3 for <i>guidance</i> on this).</p> <p>[Note: article 3(3) of, and Annex to, the <i>Electronic Commerce Directive</i>]</p>	
2.	Business with UK clients from overseas establishments		
2.1	R	(1)	This sourcebook applies to a <i>firm</i> which carries on business with a <i>client</i> in the <i>United Kingdom</i> from an establishment overseas.
		(2)	But the sourcebook does not apply to those activities if the office from which the activity is carried on were a separate <i>person</i> and the activity:
		(a)	would fall within the overseas <i>persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i> ; or
		(b)	would not be regarded as carried on in the <i>United Kingdom</i> .
2.2	G	<p>One of the effects of the <i>EEA territorial scope rule</i> is to override the application of this sourcebook to the overseas establishments of <i>EEA firms</i> in a number of cases, including circumstances covered by <i>MiFID</i>, the <i>Distance Marketing Directive</i> or the <i>Electronic Commerce Directive</i>. See Part 3 for <i>guidance</i> on this.</p>	

Part 2A: temporary provisions to be removed on making the Policy Statement for the conduct of business regime: non-MiFID deferred matters

1.	Matters not covered by the temporary provisions		
1.1	R	None of the other <i>rules</i> in this Part of the Annex affects the operation of:	
		(1)	<i>COBS</i> 4 (Communicating with clients including financial promotions) and <i>COBS</i> 11.7 (Personal transactions);
		(2)	any provision in this sourcebook to the extent that provision implements a European Directive; and
		(3)	any provision in this sourcebook to the extent that it extends the application of <i>rules</i> that implement <i>MiFID</i> to the <i>equivalent business of a third country investment firm</i> .
1.2	G	<p>For example, this Part would not affect the application of the provisions in this sourcebook that implement <i>MiFID</i> in relation to <i>MiFID or equivalent third country business</i>. This is the case even if such business falls within</p>	

		one of the categories listed below.	
		Temporary provisions for certain types of business (other than MiFID and equivalent third country business)	
1.3	R	Subject to paragraph 1.1R, this sourcebook does not apply to:	
		(1)	<i>corporate finance business</i> ;
		(2)	activities referred to in the <i>general application rule</i> related to:
		(a)	<i>commodity futures</i> ; or
		(b)	<i>commodity options</i> ; or
		(c)	<i>contracts for differences</i> related to an underlying <i>commodity</i> ; or
		(d)	other <i>futures</i> or <i>contracts for differences</i> which are not related to <i>commodities</i> , financial instruments or cash;
			which are not <i>energy market activities</i> or <i>oil market activities</i> ;
		(3)	<i>oil market activities</i> or <i>energy market activities</i> ;
		(4)	business relating to <i>contracts for differences</i> that are not of a type covered by section C(10) of Annex I to <i>MiFID</i> save that this does not affect the operation of <i>COBS 10</i> in relation to the matters covered in <i>COBS 10.1.2R</i> ;
		(5)	business to which chapter 11 (Trustee and depositary activities) or 12 (Lloyd's) of <i>COB</i> as it applied on 31 October 2006;
		(6)	the business of collective investment undertakings and the scheme management activities of the depositary or manager of a collective investment undertaking. This does not affect requirements relating to the distribution or marketing of <i>units</i> or <i>shares</i> in such undertakings;
		(7)	the business of an <i>OPS firm</i> ;
(8)	the business of an <i>authorised professional firm</i> ;		
(9)	the business of a <i>service company</i> or any other business falling within Article 25(2) of the <i>Regulated Activities Order</i> conducted for a <i>professional client</i> or an <i>eligible counterparty</i> ;		
(10)	<i>ICVCs</i> ; and		
(11)	<i>UCITS qualifiers</i> and <i>service companies</i> .		

Part 3: Guidance

1.	The main extensions and restrictions to the general application rule	
1.1	G	The <i>general application rule</i> is modified in Parts 1 to 2A of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this <i>rule</i> . For example, <i>COBS 4</i> (Communications to clients) and <i>COBS 5</i> (Financial promotion) have extended the application of the rule.
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the <i>general application rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the <i>general application rule</i> is likely to apply.
2.	The Single Market Directives and other directives	
2.1	G	This <i>guidance</i> provides a general overview only and is not comprehensive.
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non-UK element. The <i>EEA territorial scope rule</i> is unlikely to apply if a UK firm is doing business in a UK establishment for a client located in the United Kingdom in relation to a United Kingdom product. However, if there is a non-UK element, the <i>firm</i> should consider whether it is subject to the directive, whether the business it is performing is subject to the directive and whether the particular <i>rule</i> is within the scope of the directive. If the answer to all three questions is ‘yes’, the <i>EEA territorial scope rule</i> may change the effect of the <i>general application rule</i> .
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.
3.	MiFID: effect on territorial scope	
3.1	G	<i>PERG 13</i> contains general <i>guidance</i> on the <i>persons</i> and businesses to which <i>MiFID</i> applies.
3.2	G	This <i>guidance</i> concerns the <i>rules</i> within the scope of <i>MiFID</i> including those <i>rules</i> which are in the same subject area as the implementing <i>rules</i> . A <i>rule</i> is within the scope of <i>MiFID</i> if it is followed by a ‘Note:’ indicating the article of <i>MiFID</i> or the <i>MiFID implementing Directive</i> which it implements.
3.3	G	For a UK <i>MiFID investment firm</i> , <i>rules</i> in this sourcebook that are within the scope of <i>MiFID</i> generally apply to its <i>MiFID business</i> carried on from an establishment in the United Kingdom. They also generally apply to its <i>MiFID business</i> carried on from an establishment in another EEA State, but only where that business is not carried on within the territory of that State. (See articles 31(1) and 32(1) and (7) of <i>MiFID</i>)
3.4	G	For an EEA <i>MiFID investment firm</i> , <i>rules</i> in this sourcebook that are within the scope of <i>MiFID</i> generally apply only to its <i>MiFID business</i> if that

		business is carried on from an establishment in, and within the territory of, the <i>United Kingdom</i> . (See article 32(1) and (7) of <i>MiFID</i>)
3.5	G	However, the <i>rules on investment research and non-independent research (COBS 12.2 and 12.3)</i> and the <i>rules on personal transactions (COBS 11.7)</i> apply on a "home state" basis. This means that they apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> and do not apply to an <i>EEA MiFID investment firm</i> .
4.	Insurance Mediation Directive: effect on territorial scope	
4.1	G	The <i>Insurance Mediation Directive's</i> scope covers most <i>firms</i> carrying on most types of <i>insurance mediation</i> . The <i>rules</i> in this sourcebook within the Directive's scope are those relating to <i>life policies</i> that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis. The <i>rules</i> implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in <i>COBS 7 (Insurance mediation)</i> and <i>COBS 9 (Suitability (including basic advice))</i> .
4.2	G	In the <i>FSA's</i> view, the responsibility for these minimum requirements rests with the <i>Home State</i> , but a <i>Host State</i> is entitled to impose additional requirements in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:
	(1)	for a <i>UK firm</i> providing <i>passported activities</i> in another <i>EEA State</i> under the Directive, whether through a <i>branch</i> or <i>cross-border services</i> , the <i>rules</i> implementing the Directive's minimum requirements apply but the additional <i>rules</i> within the Directive's scope do not;
	(2)	for an <i>EEA firm</i> providing <i>passported activities</i> under the Directive in the <i>United Kingdom</i> , the <i>rules</i> implementing the Directive's minimum requirements do not apply, but the additional <i>rules</i> within the Directive's scope do apply unless the <i>Home State</i> imposes measures of like effect. (See recital 19 and article 12(5) of the <i>Insurance Mediation Directive</i>)
5.	Consolidated Life Directive: effect on territorial scope	
5.1	G	The <i>Consolidated Life Directive's</i> scope covers <i>long-term insurers</i> authorised under that Directive conducting <i>long-term insurance business</i> . The <i>rules</i> in this sourcebook within the Directive's scope are the <i>cancellation rules</i> and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>insurance contract</i> . The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the policyholder of the essential elements of the commitment.

5.2	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the <i>Consolidated Life Directive</i>)
6.	Distance Marketing Directive: effect on territorial scope	
6.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive's</i> scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The <i>rules</i> in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information, the <i>cancellation rules</i> and the other specific <i>rules</i> implementing the Directive contained in <i>COBS 5</i> (Distance communications).
6.2	G	In the <i>FSA's</i> view, the Directive places responsibility for requirements within the Directive's scope on the <i>Home State</i> except in relation to business conducted through a branch, in which case the responsibility rests with the <i>EEA State</i> in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the <i>Distance Marketing Directive</i>)
6.3	G	This means that relevant <i>rules</i> in this sourcebook will, in general, apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in the <i>United Kingdom</i> (whether the <i>firm</i> is a national of the <i>UK</i> or of any other <i>EEA</i> or non- <i>EEA</i> state).
6.4	G	Conversely, the relevant <i>rules</i> in this sourcebook will not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA state</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA state</i> .
6.5	G	In the <i>FSA's</i> view:
	(1)	the 'country of origin' basis of the Directive is in line with that of the <i>Electronic Commerce Directive</i> ; (See recital 6 of the <i>Distance Marketing Directive</i>)
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Consolidated Life Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and <i>cancellation rules</i> derived from the <i>Consolidated Life Directive</i> apply on a 'country of origin' basis rather than being based on the <i>state of the commitment</i> ; (See articles 4(1) and 16 of the <i>DMD</i> noting that the <i>DMD</i> was adopted after the <i>Consolidated Life Directive</i>)

		(3)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Insurance Mediation Directive</i> , the minimum information and other requirements in the <i>Insurance Mediation Directive</i> continue to be those applied by the 'Home State', but the minimum requirements in the <i>Distance Marketing Directive</i> and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the <i>IMD</i> was adopted after the <i>DMD</i> and is not expressed to be subject to it)
7.	Electronic Commerce Directive: effect on territorial scope		
7.1	G		The <i>Electronic Commerce Directive's</i> scope covers every <i>firm</i> carrying on an <i>electronic commerce activity</i> . Every <i>rule</i> in this sourcebook is within the Directive's scope.
7.2	G		A key element of the Directive is the ability of a <i>person</i> from one <i>EEA state</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA state</i> . Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA state</i> . Conversely, a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>Electronic Commerce Directive</i>)
7.3	G		The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the <i>FSA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under and carrying on an <i>electronic commerce activity</i> within the scope of the <i>Consolidated Life Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the 'general good'. Where the derogation applies, the <i>financial promotion rules</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm's</i> 'country of origin' applies rules of like effect) but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>Electronic Commerce Directive</i> ; Annex to European Commission Discussion Paper <i>MARKT/2541/03</i>)
7.4	G		In the <i>FSA's</i> view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
		(1)	is in line with the <i>Distance Marketing Directive</i> ; and
		(2)	overrides that of any other Directive discussed in this section to the extent that it is incompatible.
7.5	G		The 'derogations' in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 19 of the <i>IMD</i> , recital 6 of the <i>DMD</i> , article 3 and Annex of the <i>Electronic</i>

		<i>Commerce Directive</i>)	
8.	Investor Compensation Directive		
8.1	G	(1)	The <i>Investor Compensation Directive</i> generally requires <i>MiFID investment firms</i> to belong to a compensation scheme established in accordance with the Directive. The <i>rules</i> in this sourcebook that implement the Directive are those (i) requiring <i>MiFID investment firms</i> , including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided (<i>COBS 6.1.14R</i>) and (ii) restricting mention of the compensation scheme in advertising to factual references (<i>COBS 4.2.5R</i>).
		(2)	In the <i>FSA's</i> view, these matters are a <i>Home State</i> responsibility although a <i>Host State</i> may continue to apply its own rules in the 'general good'. Accordingly, these <i>rules</i> apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> but also apply in accordance with the <i>general application rule</i> to an <i>EEA MiFID investment firm</i> providing services in the <i>UK</i> whether through a <i>branch</i> or <i>cross-border services</i> unless its <i>Home State</i> applies rules of like effect.
9.	UCITS Directive: effect on territorial scope		
9.1	G	The <i>UCITS Directive</i> covers undertakings for collective investment in transferable securities (UCITS) meeting the requirements of the Directive, and their management companies and depositaries. The <i>rules</i> in this sourcebook within the Directive's scope are those in <i>COBS 14</i> (Providing product information to clients) relating to the distribution of a <i>simplified prospectus</i> by the management company. Those <i>rules</i> are the responsibility of the <i>Home State</i> of the UCITS. The Directive explicitly permits other <i>EEA States</i> in which a UCITS is marketed to continue to apply rules, including marketing and advertising rules, outside the field governed by the Directive. The Directive also applies certain rules derived from <i>MiFID</i> to management companies in relation to certain business activities. (See articles 1(6) and 44 of the <i>UCITS Directive</i>)	
9.2	G	Accordingly, the territorial scope of this sourcebook is modified so that:	
		(1)	the <i>rules</i> relating to the distribution of a <i>simplified prospectus</i> apply to the management company (<i>operator</i>) of a UCITS whose <i>Home State</i> is the <i>United Kingdom</i> when marketing in other <i>EEA States</i> ;
		(2)	those <i>rules</i> do not apply to a management company of a UCITS whose <i>Home State</i> is another <i>EEA State</i> when marketing in the <i>United Kingdom</i> ; other <i>rules</i> , such as the <i>financial promotion rules</i> and the information gathering and suitability rules (see <i>COBS 9 Suitability</i> (including basic advice)) continue to apply.

9.3	G	The Directive does not affect the territorial scope of <i>rules</i> as they apply to an intermediary selling a UCITS.
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2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client's best interests rule

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).
- (2) This *rule* applies in relation to *designated investment business* carried on:
- (a) for a *retail client*; and
 - (b) in relation to *MiFID* or *equivalent third country business*, for any other *client*.

[**Note:** Article 19(1) of *MiFID*]

Exclusion of liability

- 2.1.2 R A *firm* must not, in any communication relating to *designated investment business* seek to:
- (1) exclude or restrict; or
 - (2) rely on any exclusion or restriction of;
- any duty or liability it may have to a *client* under the *regulatory system*.
- 2.1.3 G (1) In order to comply with the *client's best interests rule*, a *firm* should not, in any communication to a *retail client* relating to *designated investment business*:
- (a) seek to exclude or restrict; or
 - (b) rely on any exclusion or restriction of;
- any duty or liability it may have to a *client* other than under the *regulatory system*, unless it is honest, fair and professional for it to do so.
- (2) The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

2.2 Information disclosure before providing services

- 2.2.1 R (1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:
- (a) the *firm* and its services;
 - (b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;
 - (c) execution venues; and
 - (d) costs and associated charges;
- so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) That information may be provided in a standardised format.
- (3) This *rule* applies in relation to *MiFID* or equivalent third country business.
- (4) The requirement to provide information about *designated investments* and proposed investment strategies also applies to a *firm* in relation to *designated investment business* other than *MiFID* or equivalent third country business carried on for a *retail client* in relation to a *derivative*, a *warrant* or *stock lending activity*.

[**Note:** Article 19(3) of *MiFID*]

- 2.2.2 G A *firm* to which the rule on providing appropriate information (*COBS* 2.2.1R) applies should also consider the *rules* on disclosing information about a *firm*, its services, costs and associated charges and *designated investments* in *COBS* 6.1 and *COBS* 14.

2.3 Inducements

Rule on inducements

- 2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of its *MiFID* or equivalent third-country business, another *ancillary service*, carried on for a *client* other than:
- (1) a fee, commission or non-monetary benefit paid or provided to or by

the *client* or a *person* on behalf of the *client*; or

- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:
 - (a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and
 - (b) in relation to *MiFID* or equivalent *third-country business*:
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, prior to the provision of the service; and
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or
- (3) proper fees which enable or are necessary for the provision of *designated investment business* or *ancillary services*, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the *firm's* duties to act honestly, fairly and professionally in accordance with the best interests of its *clients*.

[**Note:** article 26 of the *MiFID implementing Directive*]

2.3.2 R A *firm* will satisfy the disclosure obligation under this section if it:

- (1) discloses the essential arrangements relating to the fee, commission or non-monetary benefit in summary form;
- (2) undertakes to the *client* that further details will be disclosed on request; and
- (3) honours the undertaking in (2).

[**Note:** article 26 of the *MiFID implementing Directive*]

Guidance on inducements

2.3.3 G The obligation of a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* includes both the *client's best interests rule* and the duties under *Principles* 1 (integrity), 2 (skill, care and diligence) and 6 (customers' interests).

2.3.4 [intentionally blank]

- 2.3.5 G For the purposes of this section, a non-monetary benefit would include the direction or referral by a *firm* of an actual or potential item of *designated investment business* to another *person*, whether on its own initiative or on the instructions of an *associate*.
- 2.3.6 G For the purposes of this section, the receipt by an *investment firm* of a commission in connection with a *personal recommendation* or a general recommendation, in circumstances where the advice or recommendation is not biased as a result of the receipt of commission, should be considered as designed to enhance the quality of the recommendation to the *client*.
- [**Note:** recital 39 of *MiFID implementing Directive*]
- 2.3.7 G The fact that a fee, commission or non-monetary benefit is paid or provided to or by an *appointed representative* does not prevent the application of the *rule* on inducements.
- 2.3.8 G The *rule* on inducements is applicable to a *firm* and those acting on behalf of a *firm* in relation to the provision of an *investment service* or *ancillary service* to a *client*. Small gifts and minor hospitality received by an individual in their personal capacity below a level specified in the *firm's* conflict's of interest policy, will not be relevant for the purpose of the *rule* on inducements.
- 2.3.9 [intentionally blank]
- 2.3.10 [intentionally blank]
- 2.3.11 [intentionally blank]
- 2.3.12 [intentionally blank]
- 2.3.13 [intentionally blank]
- 2.3.14 [intentionally blank]
- 2.3.15 [intentionally blank]
- 2.3.16 [intentionally blank]

Record keeping: inducements

- 2.3.17 R (1) In relation to its *MiFID* or *equivalent third-country business*, a *firm* must make a record of each fee, commission or non-monetary benefit given to another *firm* that meets the criteria set out in *COBS* 2.3.1 R(2)(b)(ii) and must keep that record for at least five years from the date on which it was given.
- (2) [intentionally blank]

[**Note:** see article 51(3) of the *MiFID implementing Directive*]

2.4 Agent as client and reliance on others

2.4.1 R This section applies to a *firm* that is conducting *designated investment business* or *ancillary activities* or, in the case of *MiFID* or *equivalent third country business*, other *ancillary services*.

2.4.2 G This section is not relevant to the question of who is the *firm's* counterparty for prudential purposes and it does affect any obligation a *firm* may owe to any other *person* under the general law.

Agent as client

2.4.3 R (1) If a *firm* (F) is aware that a *person* (C1) with or for whom it is providing services is acting as agent for another *person* (C2) in relation to those services, C1, and not C2, is the *client* of F in respect of that business.

(2) Paragraph (1) does not apply if:

(a) F has agreed with C1 in writing to treat C2 as its *client*; or

(b) C1 is neither a *firm* nor an *overseas financial institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

If this is the case, C2 is the *client* of F in respect of that business and C1 is not.

(3) If there is an agreement under (2)(a) in relation to more than one C2 represented by C1, F may discharge any requirement to notify, obtain consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1 a single communication expressed to cover each C2, except that the following will be required for each C2:

(a) separate risk warnings required under this sourcebook;

(b) separate confirmations under the requirements on occasional reporting (*COBS* 16.3); and

(c) separate *periodic statements*.

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID* or *equivalent third country business*, receives an instruction to perform an *investment* or *ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

(a) a *MiFID investment firm* or a *third country investment firm*; or

- (b) an *investment firm* that is:
 - (i) a *firm* or authorised in another *EEA State*; and
 - (ii) subject to equivalent relevant requirements.
- (2) F1 may rely upon:
 - (a) any information about C transmitted to it by F2; and
 - (b) any recommendations in respect of the service or transaction that have been provided to C by F2.
- (3) F2 will remain responsible for:
 - (a) the completeness and accuracy of any information about C transmitted by it to F1; and
 - (b) the appropriateness for C of any advice or recommendations provided to C.
- (4) F1 will remain responsible for concluding the services or transaction based on any such information or recommendations in accordance with the applicable requirements under the *regulatory system*.

[**Note:** article 20 of *MiFID*]

- 2.4.5 G
- (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under *COBS 9* or *COBS 10*, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in *COBS 9* (excluding the *basic advice rules*) or equivalent requirements in another *EEA State* in performing that assessment.
 - (2) If F1 is required to perform an appropriateness assessment under *COBS 10*, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in *COBS 10.2* or equivalent requirements in another *EEA State* in performing that assessment.

Reliance on others: other situations

- 2.4.6 R
- (1) This *rule* applies if the *rule* on reliance on other *investment firms* (*COBS 2.4.4R*) does not apply.
 - (2) A *firm* will be taken to be in compliance with any *rule* in this sourcebook that requires it to obtain information to the extent it can show it was reasonable for it to rely on information provided to it in writing by another *person*.
- 2.4.7 E
- (1) In relying on *COBS 2.4.6R*, a *firm* should take reasonable steps to establish that the other *person* providing written information is not

connected with the *firm* and is competent to provide the information.

- (2) Compliance with (1) may be relied upon as tending to establish compliance with *COBS 2.4.6R*.
- (3) Contravention of (1) may be relied upon as tending to establish contravention of *COBS 2.4.6R*.

- 2.4.8 G It will generally be reasonable (in accordance with *COBS 2.4.6R(2)*) for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.
- 2.4.9 R Any information that a *rule* in *COBS* or *CASS* requires to be sent to a *client* may be sent to another *person* on the instruction of the *client* so long as the recipient is not connected to the *firm*.
- 2.4.10 R In the case of business that is not *MiFID* or equivalent *third country business*, if a *rule* in *COBS* or *CASS* requires information to be sent to a *client*, a *firm* need not send that information so long as it takes reasonable steps to establish that it has been or will be supplied by another *person*.

3 Client categorisation

3.1 Application

Scope

- 3.1.1 R The scope of this chapter is the same as that of the *rules* in the *Handbook* to which it relates.
- 3.1.2 G This chapter relates to parts of the *Handbook* whose application depends on whether a *person* is a *client*, a *retail client*, a *professional client* or an *eligible counterparty*. However, it does not apply to the extent that another part of the *Handbook* provides for a different approach to *client* categorisation. For example, a separate approach to *client* categorisation is set out in the definition of a *retail client* for a *firm* that is *providing basic advice on a stakeholder product*.
- 3.1.3 R The sections in this chapter on general notifications (*COBS 3.3*) and policies, procedures and records (*COBS 3.8*) do not apply in relation to a *firm* that is neither:
- (1) conducting *designated investment business*; nor
 - (2) in the case of *MiFID or equivalent third country business* providing an *ancillary service* that does not constitute *designated investment business*.

Mixed business

- 3.1.4 R If a *firm* conducts business for a *client* involving both:
- (1) *MiFID or equivalent third country business*; and
 - (2) other *regulated activities* subject to this chapter;
- it must categorise that *client* for such business in accordance with the provisions in this chapter that apply to *MiFID or equivalent third country business*.
- 3.1.5 G
- (1) For example, the requirement concerning mixed business will apply if a *MiFID investment firm* advises a *client* on whether to invest in a *scheme* or a *life policy*. This is because the former is within the scope of *MiFID* and the latter is not. In such a case, the *MiFID client* categorisation requirements prevail.
 - (2) The requirement does not apply where the *MiFID or equivalent third country business* is provided separately from the other *regulated activities*. Where this is the case, in accordance with *Principle 7* (communications with clients) the basis on which the different

activities will be performed, including any differences in the categorisations that apply, should be made clear to the *client*.

3.2 Clients

General definition

- 3.2.1 R (1) A *person* to whom a *firm* provides, intends to provide or has provided:
- (a) a service in the course of carrying on a *regulated activity*; or
 - (b) in the case of *MiFID* or equivalent third country business, an *ancillary service*,
- is a "client" of that *firm*;
- (2) A "client" includes a potential client.
- (3) In relation to the *financial promotion rules*, a *person* to whom a *financial promotion* is or is likely to be *communicated* is a "client" of a *firm* that *communicates* or *approves* it.
- (4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* or *MiFID* (see sections 39 and 39A of the *Act* and *SUP* 12.3.5R).

[**Note:** article 4(1)(10) of *MiFID*]

- 3.2.2 G A *corporate finance contact* or a *venture capital contact* is not a *client* under the first limb of the general definition. This is because a *firm* does not provide a service to such a contact. However, it will be a *client* under the third limb of the general definition for the purposes of the *financial promotion rules* if the *firm* *communicates* or *approves* a *financial promotion* that is or is likely to be *communicated* to such a contact.

Who is the client?

- 3.2.3 R (1) If a *firm* provides services to a *person* that is acting as an agent, the identity of its client will be determined in accordance with the *rule* on agents as clients (see *COBS* 2.4.3R).
- (2) In relation to a *firm* establishing, operating or winding up a *personal pension scheme* or a *stakeholder pension scheme*, a member or beneficiary of that scheme is a *client* of the *firm*.
- (3) If a *firm* that does not fall within (2) provides services to a *person* that is acting as the trustee of a trust, that *person* will be the *firm's*

client and the underlying beneficiaries of the trust will not.

- (4) In relation to business that is neither *MiFID* or equivalent third country business, if a *firm* provides services to a *collective investment scheme* that does not have separate legal personality, that *collective investment scheme* will be the *firm's client*.
- (5) If a *firm* provides services relating to a contribution to or interest in a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF* or in relation to the *communication* or *approval* of a *financial promotion*), the *firm's* only *client* is:
 - (a) the *registered contact*, if there is one;
 - (b) otherwise, the *person* to whom the annual statement must be sent in accordance with Regulation 10 of the *CTF Regulations*.

3.3 General notifications

3.3.1 R In relation to *MiFID* or equivalent third country business, a *firm* must:

- (1) notify a new *client* of its categorisation as a *retail client*, *professional client*, or *eligible counterparty* in accordance with this chapter; and
- (2) prior to the provision of services, inform a *client* in a *durable medium* about:
 - (a) any right that *client* has to request a different categorisation; and
 - (b) any limitations to the level of *client* protection that such a different categorisation would entail.

[**Note:** paragraph 2 of section I of annex II to *MiFID* and articles 28(1) and (2) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

3.3.2 G This chapter requires a *firm* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection (see *COBS 3.7.1R*). A *firm* must therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation whether or not the *firm* will agree to such requests. However, a *firm* need only notify a *client* of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests.

3.4 Retail clients

3.4.1 R A *retail client* is a *client* who is not a *professional client* or an *eligible*

counterparty.

[**Note:** article 4(1)(12) of *MiFID*]

- 3.4.2 R If a *firm* provides services relating to a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF*), the *firm's client* is a *retail client*, even if it would otherwise be categorised as a *professional client* or an *eligible counterparty* under this chapter.

3.5 Professional clients

- 3.5.1 R A *professional client* is a *client* that is either a *per se professional client* or an *elective professional client*.

[**Note:** article 4(1)(11) of *MiFID*]

Per se professional clients

- 3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

- (1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an *EEA State* or a third country and whether or not authorised by reference to a directive:
 - (a) a *credit institution*;
 - (b) an *investment firm*;
 - (c) any other authorised or regulated financial institution;
 - (d) an insurance company;
 - (e) a collective investment scheme or the management company of such a scheme;
 - (f) a pension fund or the management company of a pension fund;
 - (g) a commodity or commodity derivatives dealer;
 - (h) a local;
 - (i) any other institutional investor;
- (2) in relation to *MiFID* or *equivalent third country business*, a large undertaking meeting two of the following size requirements on a

company basis:

- (a) balance sheet total of EUR 20,000,000;
 - (b) net turnover of EUR 40,000,000;
 - (c) own funds of EUR 2,000,000;
- (3) in relation to business that is not *MiFID* or *equivalent third country business*, a large undertaking meeting either of the following conditions:
- (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);
 - (b) a large undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:
 - (i) a balance sheet total of EUR 12,500,000;
 - (ii) a net turnover of EUR 25,000,000;
 - (iii) an average number of employees during the year of 250;
- (4) a national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECP, the EIB) or another similar international organisation;
- (5) another institutional investor whose main activity is to invest in *financial instruments* (in relation to the *firm's MiFID* or *equivalent third country business*) or *designated investments* (in relation to the *firm's* other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

[**Note:** first paragraph of section I of annex II to *MiFID*]

Elective professional clients

- 3.5.3 R A *firm* may treat a *client* as an *elective professional client* if it complies with (1) and (3) and, where applicable, (2):
- (1) the *firm* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved (the “qualitative test”);

- (2) in relation to *MiFID or equivalent third country business*, in the course of that assessment, at least two of the following criteria are satisfied:
- (a) the *client* has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (b) the size of the *client's financial instrument* portfolio, defined as including cash deposits and *financial instruments*, exceeds EUR 500,000;
 - (c) the *client* works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged;

(the “quantitative test”); and

- (3) the following procedure is followed:
- (a) the *client* must state in writing to the *firm* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;
 - (b) the *firm* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
 - (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[**Note:** first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to *MiFID*]

- 3.5.4 R If the *client* is an entity, the qualitative test should be performed in relation to the *person* authorised to carry out transactions on its behalf.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

- 3.5.5 G The fitness test applied to managers and directors of entities licensed under directives in the financial field is an example of the assessment of expertise and knowledge involved in the qualitative test.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

- 3.5.6 R Before deciding to accept a request for re-categorisation as an *elective professional client*, a *firm* must take all reasonable steps to ensure that the *client* requesting to be treated as an *elective professional client* satisfies the qualitative test and, where applicable, the quantitative test.

[**Note:** second paragraph of section II.2 of annex II to *MiFID*]

- 3.5.7 G An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*.

[**Note:** second paragraph of section II.1 of annex II to *MiFID*]

- 3.5.8 G *Professional clients* are responsible for keeping the *firm* informed about any change that could affect their current categorisation.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]

- 3.5.9 R (1) If a *firm* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as an *elective professional client*, the *firm* must take the appropriate action.
- (2) Where the appropriate action involves re-categorising that *client* as a *retail client*, the *firm* must notify that *client* of its new categorisation.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID* and article 28(1) of the *MiFID implementing Directive*]

3.6 Eligible counterparties

- 3.6.1 R (1) An *eligible counterparty* is a *client* that is either a *per se eligible counterparty* or an *elective eligible counterparty*.
- (2) In relation to *MiFID* or *equivalent third country business*, a *client* can only be an *eligible counterparty* in relation to *eligible counterparty business*.

[**Note:** article 24(1) of *MiFID*]

Per se eligible counterparties

- 3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:
- (1) an *investment firm*;
 - (2) a *credit institution*;
 - (3) an *insurance company*;
 - (4) a *collective investment scheme* authorised under the *UCITS Directive* or its management company;
 - (5) a *pension fund* or its management company;

- (6) another financial institution authorised or regulated under European Community legislation or the national law of an *EEA State*;
- (7) an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive;
- (8) a national government or its corresponding office, including a public body that deals with the public debt;
- (9) a central bank;
- (10) a supranational organisation.

[Note: first paragraph of article 24(2) and first paragraph of article 24(4) of *MiFID*]

- 3.6.3 G For the purpose of *COBS* 3.6.2R(6), a financial institution includes regulated institutions in the securities, banking and insurance sectors.

Elective eligible counterparties

- 3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* if:

- (1) the *client* is an undertaking and:
 - (a) is a *per se professional client* (except for a *client* that is only a *per se professional client* because it is an institutional investor under *COBS* 3.5.2R(5)); or
 - (b) requests such categorisation and is an *elective professional client*, but only in respect of the services or transactions for which it could be treated as a *professional client*; and
- (2) the *firm* has, in relation to *MiFID* or equivalent third country business, obtained express confirmation from the prospective counterparty that it agrees to be treated as an *eligible counterparty*.

[Note: article 24(3) and the second paragraph of article 24(4) of *MiFID* and article 50(1) of the *MiFID implementing Directive*]

- 3.6.5 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an *EEA State* provided the above conditions and requirements are satisfied.

- 3.6.6 R A *firm* may obtain a prospective counterparty's confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

[Note: second paragraph of article 24(3) of *MiFID*]

Client and firm located in different jurisdictions

- 3.6.7 R In the case of *MiFID* or equivalent third country business, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.

[**Note:** first paragraph of article 24(3) of *MiFID*]

3.7 Providing clients with a higher level of protection

- 3.7.1 R A *firm* must allow a *professional client* or an *eligible counterparty* to request re-categorisation as a *client* that benefits from a higher degree of protection.

[**Note:** second paragraph of article 24(2) of, and the second paragraph of section I of annex II to, *MiFID* and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

- 3.7.2 G It is the responsibility of a *professional client* or *eligible counterparty* to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

[**Note:** third paragraph of section I and fourth paragraph of section II.2 of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

- 3.7.3 R A *firm* may, either on its own initiative or at the request of the *client* concerned:

- (1) treat as a *professional client* or a *retail client* a *client* that might otherwise be categorised as a *per se eligible counterparty*;
- (2) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*;

and if it does so, the *client* will be re-categorised accordingly. Where applicable, this re-categorisation is subject to the requirement for a written agreement in *COBS 3.7.5R*.

[**Note:** second paragraph of article 24(2) of, and second paragraph of section I of annex II to, *MiFID* and article 28(3) and the second paragraph of article 50(2) of the *MiFID implementing Directive*]

- 3.7.4 R If a *per se eligible counterparty* requests treatment as a *client* whose business with the *firm* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *firm* agrees to that request, the *firm* must treat that *eligible counterparty* as a *professional client*.

[**Note:** first paragraph of article 50(2) of the *MiFID implementing Directive*]

- 3.7.5 R (1) If, in relation to *MiFID* or equivalent third country business a *per se* professional client or a *per se* eligible counterparty requests treatment as a *retail client*, the *client* will be classified as a *retail client* if it enters into a written agreement with the *firm* to the effect that it will not be treated as a *professional client* or *eligible counterparty* for the purposes of the applicable conduct of business regime.
- (2) This agreement must specify the scope of the re-categorisation, such as whether it applies to one or more particular services or transactions, to one or more types of product or transaction or to one or more *rules*.

[**Note:** fourth paragraph of section I of annex II to *MiFID* and second paragraph of article 50(2) of the *MiFID implementing Directive*]

- 3.7.6 G (1) In accordance with *Principle 7* (communications with *clients*) if a *firm* at its own initiative re-categorises a *client* in accordance with this section, it should notify that *client* of its new category under this section.
- (2) If the *firm* already has an agreement with the *client*, it should also consider any contractual requirements concerning the amendment of that agreement.

- 3.7.7 G The ways in which a *client* may be provided with additional protections under this section include re-categorisation:
- (1) on a general basis; or
 - (2) on a trade by trade basis; or
 - (3) in respect of one or more specified *rules*; or
 - (4) in respect of one or more particular services or transactions; or
 - (5) in respect of one or more types of product or transaction.

[**Note:** second paragraph of article 24(2) of *MiFID*]

- 3.7.8 G Re-categorising a *client* as a *retail client* under this section does not necessarily mean it will become an *eligible complainant* under *DISP*.

3.8 Policies, procedures and records

Policies and procedures

- 3.8.1 R A *firm* must implement appropriate written internal policies and procedures to categorise its *clients*.

[**Note:** fourth paragraph of section II.2 of annex II to *MiFID*]

Records

- 3.8.2 R (1) A *firm* must make a record of the form of each notice provided and each agreement entered into under this chapter. This record must be made at the time that standard form is first used and retained for the relevant period after the *firm* ceases to carry on business with *clients* who were provided with that form.
- (2) A *firm* must make a record in relation to each *client* of:
- (a) the categorisation established for the *client* under this chapter, including sufficient information to support that categorisation;
 - (b) evidence of despatch to the *client* of any notice required under this chapter and if such notice differs from the relevant standard form, a copy of the actual notice provided; and
 - (c) a copy of any agreement entered into with the *client* under this chapter.

This record must be made at the time of categorisation and should be retained for the relevant period after the *firm* ceases to carry on business with or for that *client*.

- (3) The relevant periods are:
- (a) indefinitely, in relation to a *pension transfer, pension opt-out* or *FSAVC*;
 - (b) at least five years, in relation to a *life policy* or *pension contract*;
 - (c) five years in relation to *MiFID* or *equivalent third country business*; and
 - (d) three years in any other case.

[**Note:** article 51(3) of the *MiFID implementing Directive*]

- 3.8.3 G If a *firm* provides the same form of notice to more than one *client*, it need not maintain a separate copy of it for each *client*, provided it keeps evidence of despatch of the notice to each *client*.

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

- 4.1.1 R This chapter applies to a *firm*:
- (1) communicating with a *client* in relation to its *designated investment business*;
 - (2) *communicating* or *approving* a *financial promotion* other than:
 - (a) a *financial promotion* of *qualifying credit*, a *home purchase plan* or a *home reversion plan*; or
 - (b) a *financial promotion* in respect of a *non-investment insurance contract*; or
 - (c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms* may not *communicate* or *approve* such promotions).
- 4.1.2 G This chapter applies in relation to an *authorised professional firm* in accordance with *COBS* 18 (Specialist regimes).
- 4.1.3 G A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).
[**Note:** see section 39 of the *Act*]
- 4.1.4 G (1) In *COBS* 4.3.1R, *COBS* 4.5.8R and *COBS* 4.7.1R, the defined terms "*financial promotion*" and "*direct offer financial promotion*" include, in relation to *MiFID* or *equivalent third country business*, all communications that are marketing communications within the meaning of *MiFID*.
- (2) In the case of *MiFID* or *equivalent third country business*, certain requirements in this chapter are subject to an exemption for the communication of a *third party prospectus* in certain circumstances. This has a similar effect to the exemption in article 70(1)(c) of the *Financial Promotion Order*, which is referred to in the definition of an *excluded communication*.
- 4.1.5 G (1) A *firm* communicating with an *eligible counterparty* should have regard to the application of *COBS* to *eligible counterparty business*

(COBS 1 Annex 1 Part 1).

- (2) This chapter does not apply in relation to communicating with an *eligible counterparty* but elements of the requirements in *PRIN* may apply.

4.1.6 G Approving a *financial promotion* without *communicating* it is not *MiFID* or *equivalent third country business*. *Communicating a financial promotion* to a *person* other than a *client* is also not *MiFID* or *equivalent third country business*. Further *guidance* on what amounts to *MiFID* *business* may be found in *PERG* 13.

4.1.7 G A reference in this chapter to *MiFID* or *equivalent third country business* includes a reference to communications that occur before an agreement to perform services in relation to *MiFID* or *equivalent third country business*.

[**Note:** see recital 82 to the *MiFID* *implementing Directive*]

Where? General position

- 4.1.8 R (1) In relation to communications by a *firm* to a *client* in relation to its *designated investment business* this chapter applies in accordance with the *general application rule* and the *rule* on business with *UK clients* from an overseas establishment (*COBS* 1 Annex 1 Part 2 paragraph 2.1R).
- (2) In addition, the *financial promotion rules* apply to a *firm* in relation to:
- (a) the *communication* of a *financial promotion* to a *person* inside the *United Kingdom*;
 - (b) the *communication* of a *cold call* to a *person* outside the *United Kingdom*, unless:
 - (i) it is made from a place outside the *United Kingdom*; and
 - (ii) it is made for the purposes of a business which is carried on outside the *United Kingdom* and which is not carried on in the *United Kingdom*; and
 - (c) the *approval* of a *financial promotion* for *communication* to a *person* inside the *United Kingdom*.

Where? Modifications to comply with EU law

- 4.1.9 G (1) The *EEA territorial scope rule* modifies the general territorial scope of the *rules* in this chapter to the extent necessary to be compatible with European law. This means that in a number of cases, the *rules* in this chapter will apply to *communications* made by *UK firms* to *persons* located outside the *United Kingdom* and will not apply to *communications* made to *persons* inside the *United Kingdom* by *EEA*

firms. Further *guidance* on this is located in *COBS 1 Annex 1*.

- (2) One effect of the *EEA territorial scope rule* is that the *rules* in this chapter will not generally apply to a *simplified prospectus* that relates to a *simplified prospectus scheme* from another EEA state.
- (3) The *financial promotion rules* do not apply to incoming communications in relation to the *MiFID business* of an *investment firm* from another EEA State that are, in its *home member state*, regulated under *MiFID* in another EEA State. For the purpose of article 36 of the *Financial Promotion Order* the *FSA* does not make any *rules* in relation to such incoming communications.

4.1.10 G *Firms* should note the territorial scope of this chapter is also affected by:

- (1) the disapplication for *financial promotions* originating outside the *United Kingdom* that are not capable of having an effect within the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see the defined term “*excluded communication*”);
- (2) the exemptions for overseas communicators (see the defined term “*excluded communication*”); and
- (3) the *rules* on *financial promotions* with an overseas element (see *COBS 4.9*).

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

- 4.2.1 R
- (1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
 - (2) This *rule* applies in relation to:
 - (a) a communication by the *firm* to a *client* in relation to *designated investment business* other than a *third party prospectus*;
 - (b) a *financial promotion communicated* by the *firm* that is not:
 - (i) an *excluded communication*;
 - (ii) a *non-retail communication*;
 - (iii) a *third party prospectus*; and
 - (c) a *financial promotion* approved by the *firm*.

[**Note:** article 19(2) of *MiFID* and recital 52 to the *MiFID implementing*

Directive]

4.2.2 G The *fair, clear and not misleading rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. So a communication addressed to a *professional client* may not need to include the same information, or be presented in the same way, as a communication addressed to a *retail client*.

4.2.3 G Section 397 of the *Act* creates a criminal offence relating to certain misleading statements and practices.

Fair, clear and not misleading financial promotions

4.2.4 G A *firm* should ensure that a *financial promotion*:

- (1) for a product or service that places a *client's* capital at risk makes this clear;
- (2) that quotes a yield figure gives a balanced impression of both the short and long term prospects for the *investment*;
- (3) that promotes an *investment* or service whose charging structure is complex, or in relation to which the *firm* will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;
- (4) that names the *FSA* as its regulator and refers to matters not regulated by the *FSA* makes clear that those matters are not regulated by the *FSA*;
- (5) that offers *packaged products* or *stakeholder products* not produced by the *firm*, gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.

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

4.3 Financial promotions to be identifiable as such

4.3.1 R (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[**Note:** article 19(2) of *MiFID*]

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

extent that a *financial promotion* is a *third party prospectus*.

- (3) In the case of a *financial promotion* that does not relate to the *firm's MiFID or equivalent third country business*, this rule applies to *communicating* or *approving* a *financial promotion* but does not apply:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which *PR 3.3* applies;
 - (c) if it is *image advertising*;
 - (d) if it is a *non-retail communication*;
 - (e) to the extent that it relates to a *deposit* or to a *pure protection contract* that is a *long-term care insurance contract*.

4.4 Compensation information

- 4.4.1 R A *firm* must ensure that any reference in advertising to an investor compensation scheme established under the *ICD* is limited to a factual reference to the scheme.
[**Note:** article 10(3) of the *Investor Compensation Directive*]
- 4.4.2 G The Credit Institutions (Protection of Deposits) Regulations 1995 may also apply in relation to a communication with a *client*.

4.5 Communicating with retail clients

Application

- 4.5.1 R (1) Subject to (2) and (3), this section applies to a *firm* in relation to:
- (a) the provision of information in relation to its *designated investment business*; and
 - (b) the *communication* or *approval* of a *financial promotion*;
- where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- (2) This section does not apply in relation to a communication that is made by a *firm* in relation to its *MiFID or equivalent third country business*:

- (a) to the extent that it is a *third party prospectus*; or
 - (b) if it is *image advertising*.
- (3) This section does not apply in relation to a communication that is not made by a *firm* in relation to its *MiFID or equivalent third country business*:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which *PR 3.3* applies;
 - (c) if it is *image advertising*.

General rule

- 4.5.2 R A *firm* must ensure that information:
- (1) includes the name of the *firm*;
 - (2) is accurate and in particular does not emphasise any potential benefits of *relevant business* or a *relevant investment* without also giving a fair and prominent indication of any relevant risks;
 - (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
 - (4) does not disguise, diminish or obscure important items, statements or warnings.

[**Note:** article 27(2) of the *MiFID implementing Directive*]

- 4.5.3 G The name of the *firm* may be a trading name or shortened version of the legal name of the *firm*, provided the *retail client* can identify the *firm* communicating the information.
- 4.5.4 G In deciding whether, and how, to communicate information to a particular target audience, a *firm* should take into account the nature of the product or business, the risks involved, the *client's* commitment, the likely information needs of the average recipient, and the role of the information in the sales process.
- 4.5.5 G When communicating information, a *firm* should consider whether omission of any relevant fact will result in information being insufficient, unclear, unfair or misleading.

Comparative information

- 4.5.6 R (1) If information compares *relevant business, relevant investments, or*

persons who carry on relevant business, a firm must ensure that:

- (a) the comparison is meaningful and presented in a fair and balanced way; and
 - (b) in relation to *MiFID or equivalent third country business*;
 - (i) the sources of the information used for the comparison are specified; and
 - (ii) the key facts and assumptions used to make the comparison are included.
- (2) In this *rule*, in relation to *MiFID or equivalent third country business ancillary services* are to be regarded as *relevant business*.

[**Note:** article 27(3) of the *MiFID implementing Directive*]

Referring to tax

- 4.5.7 R (1) If any information refers to a particular tax treatment, a *firm* must ensure that it prominently states that the tax treatment depends on the individual circumstances of each *client* and may be subject to change in future.
- [**Note:** article 27(7) of the *MiFID implementing Directive*]
- (2) This *rule* applies in relation to *MiFID or equivalent third country business* or, otherwise, to a *financial promotion*. However, it does not apply to a *financial promotion* to the extent that it relates to:
- (a) a *deposit* other than a *cash deposit ISA* or a *cash deposit CTF*;
or
 - (b) a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

- 4.5.8 R (1) A *firm* must ensure that information contained in a *financial promotion* is consistent with any information the *firm* provides to a *retail client* in the course of carrying on *designated investment business* or, in the case of *MiFID or equivalent third country business, ancillary services*.
- [**Note:** article 29(7) of the *MiFID implementing Directive*]
- (2) This *rule* does not apply to a *financial promotion* to the extent that it relates to:
- (a) a *deposit*; or
 - (b) a *pure protection contract* that is a *long-term care insurance*

contract.

4.6 Past, simulated past and future performance

Application

- 4.6.1 R (1) Subject to (2) and (3), this section applies:
- (a) in the case of *MiFID or equivalent third country business*, in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*; and
 - (b) in relation to *approving or communicating a financial promotion*.
- (2) This section does not apply in relation to a communication by a *firm* in relation to its *MiFID or equivalent third country business*:
- (a) to the extent that the communication is a *third party prospectus*; or
 - (b) if it is *image advertising*.
- (3) This section does not apply in relation to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which *PR 3.3* applies;
 - (c) if it is *image advertising*;
 - (d) to the extent that it relates to a *deposit* that is not a *structured deposit*;
 - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

Past performance

- 4.6.2 R A *firm* must ensure that information that contains an indication of past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:
- (1) that indication is not the most prominent feature of the communication;
 - (2) the information includes appropriate performance information which

covers at least the immediately preceding five years, or the whole period for which the investment has been offered, the financial index has been established, or the service has been provided if less than five years, or such longer period as the *firm* may decide, and in every case that performance information must be based on and show complete 12-month periods;

- (3) the reference period and the source of information are clearly stated;
- (4) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- (5) if the indication relies on figures denominated in a currency other than that of the *EEA State* in which the *retail client* is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;
- (6) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed.

[**Note:** article 27(4) of the *MiFID implementing Directive*]

- 4.6.3 G The obligations relating to describing performance should be interpreted in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey. For example, a periodic statement in relation to *managing investments* that is sent in accordance with the *rules* on reporting information to *clients* (see *COBS 16*) may include past performance as its most prominent feature.
- 4.6.4 G If a *financial promotion* includes information referring to the past performance of a *packaged product*, a *firm* will comply with the *rule* on appropriate performance information (*COBS 4.6.2R(2)*) if the *financial promotion* includes, in the case of a *scheme*, unit-linked *life policy*, unit-linked *personal pension scheme* or unit-linked *stakeholder pension scheme* (other than a unitised with-profits *life policy* or *stakeholder pension scheme*) past performance information calculated and presented in accordance with the table in *COBS 4.6.4AG*.
- 4.6.4A G This Table belongs to *COBS 4.6.4G*

Percentage growth					
[Fund name]	Quarter/ Year - Quarter/ Year pgr%				

Notes:

1. The table should show performance information for five (or if performance information for fewer than five is available, all) complete 12-month periods, the most recent of which ends with the last full quarter preceding the date on which the *firm* first *communicates* or *approves* the *financial promotion*.
2. For products with performance data for fewer than five 12-month periods, *firms* should clearly indicate that performance data does not exist for the relevant periods.
3. No allowance should be made for tax recoveries on income for *pension contracts*, *ISAs* or *PEPs*.
4. pgr is the percentage growth rate for the year, where:

$$\text{pgr} = ((P1 - P0)/P0) * 100$$
and rounded to the nearest 0.1%, with exact 0.05% rounded to the nearest even 0.1%; and where P0 is the price at the start of the 12-month period and P1 is the price on the same day in the following 12-month period.
5. The prices should allow for any net distributions to be reinvested.
6. The price at P1 must be adjusted for any charges since the date of P0 which are based on a proportion of the fund and are levied by the cancellation of units.
7. The *firm* should use single pricing, or (if this is not available) bid to bid prices, unless the *firm* has reasonable grounds to be satisfied that another basis would better reflect the past performance of the fund.

- 4.6.4B G (1) The *firm* should present the information referred to in *COBS 4.6.4G* no less prominently than any other past performance information.

- (2) This *guidance* does not apply to a *prospectus* or *simplified prospectus* drawn up in accordance with *COLL*.

- 4.6.5 G
- (1) In relation to a *packaged product* (other than a *scheme*, a unit-linked *life policy*, unit-linked *personal pension scheme* or a unit-linked *stakeholder pension scheme* (that is not a unitised with-profits *life policy* or *stakeholder pension scheme*)), the information should be given on:
 - (a) an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other *investments*; or
 - (b) an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of *units*; or
 - (c) a single pricing basis with allowance for charges.
 - (2) If the pricing policy of the *investment* has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.

Simulated past performance

- 4.6.6 R
- A *firm* must ensure that information that contains an indication of simulated past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:
- (1) it relates to an investment or a financial index;
 - (2) the simulated past performance is based on the actual past performance of one or more investments or financial indices which are the same as, or underlie, the investment concerned;
 - (3) in respect of the actual past performance, the conditions set out in paragraphs (1) to (3), (5) and (6) of the *rule* on past performance (*COBS 4.6.2R*) are complied with; and
 - (4) the information contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

[**Note:** article 27(5) of the *MiFID implementing Directive*]

Future performance

- 4.6.7 R
- (1) A *firm* must ensure that information that contains an indication of future performance of *relevant business*, a *relevant investment*, a *structured deposit* or a financial index, satisfies the following conditions:

- (a) it is not based on and does not refer to simulated past performance;
 - (b) it is based on reasonable assumptions supported by objective data;
 - (c) it discloses the effect of commissions, fees or other charges if the indication is based on gross performance; and
 - (d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.
- (2) Other than in relation to *MiFID* or equivalent third country business, this rule only applies to *financial promotions* that relate to a *financial instrument* (or a financial index that relates exclusively to *financial instruments*) or a *structured deposit*.

[**Note:** article 27(6) of the *MiFID implementing Directive*]

- 4.6.8 G A *firm* should not provide information on future performance if it is not able to obtain the objective data needed to comply with the rule on future performance. For example, objective data in relation to *EIS shares* may be difficult to obtain.

4.7 Direct offer financial promotions

- 4.7.1 R (1) Subject to (3) and (4), a *firm* must ensure that a *direct offer financial promotion* that is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client* contains:
- (a) such of the information referred to in the rules on information disclosure (*COBS* 6.1.4R, *COBS* 6.1.6R, *COBS* 6.1.7R, *COBS* 6.1.9R, *COBS* 14.3.2R, *COBS* 14.3.3R, *COBS* 14.3.4R and *COBS* 14.3.5R) as is relevant to that offer or invitation; and
- [**Note:** article 29(8) of the *MiFID implementing Directive*, the rules listed implement Articles 30 to 33 of the *MiFID implementing Directive*]
- (b) if it does not relate to *MiFID* or equivalent third country business, additional appropriate information about the *relevant business* and *relevant investments* so that the *client* is reasonably able to understand the nature and risks of the *relevant business* and *relevant investments* and consequently to take investment decisions on an informed basis.
- (2) This rule does not require the information in (1) to be included in a *direct offer financial promotion* if, in order to respond to an offer or invitation contained in it, the *retail client* must refer to another document or documents, which, alone or in combination, contain that

information.

- (3) This *rule* does not apply in relation to a communication made by a *firm* in relation to *MiFID or equivalent third country business*:
 - (a) to the extent that it is a *third party prospectus*;
 - (b) if it is *image advertising*.
- (4) This section does not apply in relation to a communication that is not made by a *firm* in relation to *MiFID or equivalent third country business*:
 - (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which *PR 3.3* applies;
 - (c) if it is *image advertising*;
 - (d) to the extent that it relates to a *deposit* that is not a *cash deposit ISA* or *cash deposit CTF*;
 - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.
- (5) In this *rule*, in relation to *MiFID or equivalent third country business ancillary services* are to be regarded as *relevant business*.

Guidance

- 4.7.2 G Although *COBS 4.7.1R(1)(b)* does not apply in relation to *MiFID or equivalent third country business*, similar requirements may apply under *COBS 2.2*.
- 4.7.3 G *COBS 4.7.1R(2)* allows a *firm* to *communicate a direct offer financial promotion* that does not contain all the information required by *COBS 4.7.1R(1)*, if the *firm* can demonstrate that the *client* has referred to the required information before the *client* makes or accepts an offer in response to the *direct offer financial promotion*.
- 4.7.4 G In order to enable a *client* to make an informed assessment of a *relevant investment* or *relevant business*, a *firm* may wish to include in a *direct offer financial promotion*:
 - (1) a summary of the taxation of any *investment* to which it relates and the taxation consequences for the average member of the group to whom it is directed or by whom it is likely to be received; and
 - (2) a statement that the recipient should seek a *personal recommendation* if he has any doubt about the suitability of the *investments* or services being promoted.

4.8 Cold calls and other promotions that are not in writing

Application

- 4.8.1 R This section applies to a *firm* in relation to a *financial promotion* that is not in writing, but it does not apply:
- (1) to the extent that the *financial promotion* is an *excluded communication*;
 - (2) if the *financial promotion* is *image advertising*;
 - (3) to the extent that the *financial promotion* relates to a *deposit*;
 - (4) to the extent that the *financial promotion* relates to a *pure protection contract* that is a *long-term care insurance contract*.

Restriction on cold calling

- 4.8.2 R A *firm* must not make a *cold call* unless:
- (1) the recipient has an established existing client relationship with the *firm* and the relationship is such that the recipient envisages receiving *cold calls*; or
 - (2) the *cold call* relates to a generally marketable *packaged product* which is not:
 - (a) a *higher volatility fund*; or
 - (b) a *life policy* with a link (including a potential link) to a *higher volatility fund*; or
 - (3) the *cold call* relates to a *controlled activity* to be carried on by an *authorised person* or *exempt person* and the only *controlled investments* involved or which reasonably could be involved are:
 - (a) *readily realisable securities* (other than warrants); and
 - (b) generally marketable non-g geared *packaged products*.

Promotions that are not in writing

- 4.8.3 R A *firm* must not initiate a non-written *financial promotion communicated* to a particular *person* outside the *firm's* premises, unless the *person communicating* it:
- (1) only does so at an appropriate time of the day;
 - (2) identifies himself and the *firm* he represents at the outset and makes

- clear the purpose of the communication;
- (3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
- (4) gives a contact point to any *client* with whom he arranges an appointment.

4.9 Financial promotions with an overseas element

Application

- 4.9.1 R (1) Subject to (2) and (3), this section applies to *financial promotions* that relate to the business of an *overseas person*.
- (2) This section does not apply to a *firm* in relation to its *MiFID or equivalent third country business*.
- (3) This section does not apply to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which *PR 3.3* applies;
 - (c) if it is *image advertising*;
 - (d) to the extent that it relates to a *deposit*;
 - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.
- 4.9.2 G *Approving a financial promotion for communication by an unauthorised person is not MiFID or equivalent third country business.*

Financial promotions for the business of an overseas person

- 4.9.3 R A *firm* must not *communicate or approve a financial promotion* which relates to a particular *relevant investment or relevant business* of an *overseas person*, unless:
- (1) the *financial promotion* makes clear which *firm* has *approved or communicated* it and, where relevant, explains:
 - (a) that the *rules* made under the *Act* for the protection of *retail clients* do not apply;

- (b) the extent and level to which the *compensation scheme* will be available, or if the scheme will not be available, a statement to that effect; and
 - (c) if the communicator wishes, the protection or compensation available under another system of regulation; and
- (2) the *firm* has no reason to doubt that the *overseas person* will deal with *retail clients* in the *United Kingdom* in an honest and reliable way.

Financial promotions for an overseas long-term insurer

- 4.9.4 R A *firm* must not *communicate* or *approve* a *financial promotion* to enter into a *life policy* with a *person* who is not:
- (1) an *authorised person*; or
 - (2) an *exempt person* who is exempt in relation to *effecting or carrying out contracts of insurance* of the *class* to which the *financial promotion* relates; or
 - (3) an *overseas long-term insurer* that is entitled under the law of its home country or territory to carry on there *insurance business* of the *class* to which the *financial promotion* relates.
- 4.9.5 R A *financial promotion* for an *overseas long-term insurer*, which has no establishment in the *United Kingdom*, must include:
- (1) the full name of the *overseas long-term insurer*, the country where it is registered, and, if different, the country where its head office is situated;
 - (2) a prominent statement that 'holders of policies issued by the company will not be protected by the Financial Services Compensation Scheme if the company becomes unable to meet its liabilities to them'; and
 - (3) if any trustee, investment manager or *United Kingdom* agent of the *overseas long-term insurer* is named which is not independent of the *overseas long-term insurer*, a prominent statement of that fact.
- 4.9.6 R A *financial promotion* for an *overseas long-term insurer* which is authorised to carry on *long-term insurance business* in any country or territory listed in paragraph (c) of the Glossary definition of *overseas long-term insurer* must also include:
- (1) the full name of any trustee of property of any description which is retained by the *overseas long-term insurer* in respect of the promoted contracts;
 - (2) an indication whether the investment of such property (or any part of it) is managed by the *overseas long-term insurer* or by another *person*

and the full name of any *investment manager*;

- (3) the registered office of any such trustee and of any *investment manager* and of his principal office (if different); and
- (4) where any *person* in the *United Kingdom* takes, or may take, any steps on behalf of the *overseas long-term insurer* to enter into a promoted contract, the following details:
 - (a) the full name of the *overseas long-term insurer*;
 - (b) the registered office, head office or principal place of business of that *person* in the *United Kingdom*; and
 - (c) if there is more than one such *person*, the principal or main *person* in the *United Kingdom*.

- 4.9.7 R If a *financial promotion* relates to a *life policy* with an *overseas long-term insurer* but does not name the *overseas long-term insurer* by giving its full name or its business name:
- (1) it must include the following prominent statement: "This financial promotion relates to an insurance company which does not, and is not authorised to, carry on in any part of the United Kingdom the class of insurance business to which this promotion relates. This means that the management and solvency of the company are not supervised by the Financial Services Authority. Holders of policies issued by the company will not have the right to complain to the Financial Ombudsman Service if they have a complaint against the company and will not be protected by the Financial Services Compensation Scheme if the company should become unable to meet its liabilities to them"; and
 - (2) if it also refers to other *investments*, it must make this clear.

4.10 Systems and controls and approving and communicating financial promotions

Systems and controls

- 4.10.1 G The *rules* in SYSC 3 and SYSC 4 require a *firm* that communicates with a *client* in relation to *designated investment business*, or *communicates* or *approves a financial promotion*, to put in place systems and controls or policies and procedures in order to comply with the *rules* in this chapter.

Approving financial promotions

- 4.10.2 R (1) Before a *firm* *approves a financial promotion* for *communication* by an *unauthorised person*, it must confirm that the *financial promotion*

complies with the *financial promotion rules*.

- (2) If, at any time after a *firm* has complied with (1), a *firm* becomes aware that a *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.
- (3) When *approving* a *financial promotion*, the *firm* must confirm compliance with the *financial promotion rules* that would have applied if the *financial promotion* had been communicated by a *firm* other than in relation to *MiFID* or *equivalent third country business*.

- 4.10.3 G (1) Section 21(1) of the *Act* (Restrictions on financial promotion) prohibits an *unauthorised person* from *communicating* a *financial promotion*, in the course of business, unless an exemption applies or the *financial promotion* is *approved* by a *firm*. Many of the *rules* in this chapter apply when a *firm* *approves* a *financial promotion* in the same way as when a *firm* *communicates* a *financial promotion* itself.
- (2) A *firm* may also wish to *approve* a *financial promotion* that it *communicates* itself. This would ensure that an *unauthorised person* who then also *communicates* the *financial promotion* to another *person* will not contravene the restriction on *financial promotion* in the *Act* (section 21).
 - (3) *Approving* a *financial promotion* for *communication* by an *unauthorised person* is not *MiFID* or *equivalent third country business*.
 - (4) A *firm* may not *approve* a *financial promotion* relating to an *unregulated collective investment scheme* unless the *firm* would be able to *communicate* the promotion without breaching section 238(1) of the *Act* (see section 240 of the *Act*). The exemptions from that section in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended from time to time) are relevant.

4.10.4 R A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

4.10.5 R If a *firm* *approves* a *financial promotion* in circumstances in which one or more of the *financial promotion rules*, or the prohibition on approval of promotions for *collective investment schemes* in section 240(1) of the *Act* (Restriction on approval), are expressly disapplied, the *approval* must be given on terms that it is limited to those circumstances.

4.10.6 G For example, if a *firm approves a financial promotion for communication to a professional client or an eligible counterparty*, the *approval* must be limited to *communication to such persons*.

4.10.7 G If an *approval* is limited, and an *unauthorised person communicates the financial promotion to persons not covered by the approval*, the *unauthorised person* may commit an offence under the restriction on financial promotion in the *Act* (section 21). A *firm* giving a limited *approval* may wish to notify the *unauthorised person* accordingly.

Communicating financial promotions

4.10.8 G If a *firm* continues to *communicate a financial promotion* when the *financial promotion* no longer complies with the *rules* in this chapter, it will breach those *rules*.

4.10.9 G A *financial promotion* which is clearly only relevant at a particular date will not cease to comply with the *financial promotion rules* merely because the passage of time has rendered it out-of-date; an example would be a dated analyst's report.

Relying on another firm's confirmation of compliance

4.10.10 R (1) A *firm* (A) will not contravene any of the *financial promotion rules* if it *communicates a financial promotion* which has been produced by another *person* and:

(a) A takes reasonable care to establish that another *firm* (B) has confirmed that the *financial promotion* complies with the *financial promotion rules*;

(b) A takes reasonable care to establish that it *communicates the financial promotion* only to recipients of the type for whom it was intended at the time B carried out the confirmation exercise; and

(c) so far as A is, or ought reasonably to be, aware:

(i) the *financial promotion* has not ceased to be fair, clear and not misleading since that time; and

(ii) B has not withdrawn the *financial promotion*.

(2) This *rule* does not apply in relation to *MiFID* or equivalent *third country business*.

4.10.11 G A *firm* should inform anyone relying on its confirmation of compliance if it becomes aware that the *financial promotion* no longer complies with the *rules* in this chapter.

4.11 Record keeping: financial promotion

- 4.11.1 R (1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
- (2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (3) A *firm* must retain the record in relation to a *financial promotion* relating to:
- (a) a *pension transfer, pension opt-out* or *FSAVC*, indefinitely;
 - (b) a *life policy, OPS, SSAS, personal pension scheme* or *stakeholder pension scheme*, for six years;
 - (c) *MiFID* or *equivalent third country business*, for five years; and
 - (d) any other case, for three years.
- (4) This *rule* does not apply in relation to a communication that is made by a *firm* in relation to its *MiFID* or *equivalent third country business*:
- (a) to the extent that the communication is a *third party prospectus*; or
 - (b) if it is *image advertising*.
- (5) This *rule* does not apply in relation to a communication that is not made by a *firm* in relation to *MiFID* or *equivalent third country business*:
- (a) to the extent that it is an *excluded communication*;
 - (b) to the extent that it is a prospectus advertisement to which *PR 3.3* applies;
 - (c) if it is *image advertising*;
 - (d) to the extent that it relates to a *deposit*;
 - (e) to the extent that it relates to a *pure protection contract* that is a *long-term care insurance contract*.

[**Note:** see article 51(3) of the *MiFID implementing Directive*]

- 4.11.2 G A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.

- 4.11.3 G If the *financial promotion* includes market information that is updated continuously in line with the relevant market, the record-keeping *rules* do not require a firm to record that information.

5 Distance communications

5.1 The distance marketing disclosure rules

The distance marketing disclosure rules

- 5.1.1 R A *firm* must provide a *consumer* with the distance marketing information (COBS 5 Annex 1R) in good time before the *consumer* is bound by a *distance contract* or offer.

[**Note:** article 3(1) of the *Distance Marketing Directive*]

- 5.1.2 R A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[**Note:** article 3(2) of the *Distance Marketing Directive*]

- 5.1.3 R When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[**Note:** article 3(3)(a) of the *Distance Marketing Directive*]

- 5.1.4 R A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[**Note:** article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

- 5.1.5 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (COBS 5.1.1R to COBS 5.1.4R) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(1) of the *Distance Marketing Directive*]

- 5.1.6 G A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Exception: distance contract as a stage in the provision of another service

- 5.1.7 R This section does not apply to a *distance contract* to deal as agent, advise or arrange, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[**Note:** recital 19 to the *Distance Marketing Directive*]

Exception: successive operations

- 5.1.8 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

- 5.1.9 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* (*COBS 5.1.1R* to *COBS 5.1.4R*) will only apply:
- (1) when the first operation is performed; and
 - (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

- 5.1.10 G In this section:
- (1) 'initial service agreement' includes the opening of a bank account and the concluding of a portfolio management contract;
 - (2) 'operations' includes the deposit or withdrawal of funds to or from a bank account and transactions made within the framework of a portfolio management contract; and
 - (3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the *rules* in this section apply. The subscription to new *units* of the same *collective investment scheme* is considered to be one of 'successive operations of the same nature'.

[**Note:** recital 17 of the *Distance Marketing Directive*]

- 5.1.11 G In the *FSA*'s view, other examples of:
- (1) 'initial service agreement' include:
 - (a) subscribing to an *investment trust savings scheme*; or

- (b) concluding a *life policy, personal pension scheme* or *stakeholder pension scheme* that includes a pre-selected option providing for future increases or decreases in regular *premiums* or payments; and
- (2) 'operations' include:
 - (a) successive purchases or sales of *shares* under an *investment trust savings scheme*; and
 - (b) subsequent index-linked changes to premiums or increases or decreases to pension contributions following fluctuations in salary.

Exception: voice telephony communications

- 5.1.12 R In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (*COBS 5 Annex 2R*) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information (*COBS 5 Annex 1R*) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

[**Note:** articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: means of distance communication not enabling disclosure

- 5.1.13 R A *firm* may provide the distance marketing information (*COBS 5 Annex 1R*) and the contractual terms and conditions in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before the *consumer* is bound by any *distance contract* or offer.

[**Note:** article 5(2) of the *Distance Marketing Directive*]

Distance marketing: other provisions

- 5.1.14 R If, at any time during the contractual relationship, a *consumer* that is a party to a *distance contract* asks a *firm*:
- (1) for a paper copy of the terms and conditions of that contract; or
 - (2) to change the means of distance communication used;
- the *firm* must provide that paper copy or change the means of distance communication used, unless (in the latter case) that would be incompatible with the contract or the nature of the service provided.

[**Note:** article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

5.1.15 R (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

(2) This *rule* does not apply to the tacit renewal of a *distance contract*.

[**Note:** article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer's rights

5.1.16 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

5.1.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

5.2 E-Commerce

Application

5.2.1 R This section applies to a *firm* that is an *electronic commerce activity provider*.

Information about the electronic commerce activity provider and its products or services

5.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

(1) its name;

(2) the geographic address at which it is established;

(3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;

(4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *FSA register* and includes its *FSA register* number;

(5) if it is a *professional firm*, or a *person* regulated by the equivalent of a

designated professional body in another *EEA State*:

- (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

- 5.2.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

- 5.2.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

- 5.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 5.2.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means; and
- (4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[**Note:** articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

- 5.2.7 R For the purposes of *COBS 5.2.6R(3)*, an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

[**Note:** article 11(1) of the *E-Commerce Directive*]

- 5.2.8 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

- 5.2.9 R The requirements relating to the placing and receipt of orders (*COBS 5.2.6R*) do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** article 10(4) and 11(3) of the *E-Commerce Directive*]

COBS 5 Annex 1R: Distance marketing information

This Annex belongs to COBS 5.1.1R (The distance marketing disclosure rules)

Information about the firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's</i> EEA State of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
(3)	Where the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant to the <i>consumer's</i> relations with that professional.
(4)	An appropriate statutory status disclosure statement (<i>GEN</i> 4), a statement that the <i>firm</i> is on the <i>FSA Register</i> and its <i>FSA</i> registration number.
Information about the financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related fees, charges and expenses, and all taxes paid through the <i>firm</i> or, where an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(7)	Where relevant, notice indicating that the service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.
(8)	Notice of the possibility that other taxes or costs may exist that are not paid via the <i>firm</i> or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <i>firm's</i> offer applies as it stands.
(10)	The arrangements for payment and performance.
(11)	Details of any specific additional cost to the <i>consumer</i> for using a means of distance communication.
Information about the contract	

(12)	The existence or absence of a right to cancel or withdraw under the cancellation rules (<i>COBS 15</i>) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , as well as the consequences of not exercising the right to cancel or withdraw.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel or withdraw, including the address to which any cancellation or withdrawal notice should be sent.
(16)	The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(17)	Any contractual clause on the law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Information about redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities.
[Note: Recitals 21 and 23 to, and article 3(1) of, the <i>Distance Marketing Directive</i>]	

COBS 5 Annex 2R: Abbreviated distance marketing disclosure

This Annex belongs to COBS 5.1.12R

(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid via the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes and/or costs may exist that are not paid via the <i>firm</i> or imposed by him.
(5)	The existence or absence of a right to cancel or withdraw in accordance with the cancellation rules (COBS 15) and, where the right to cancel or withdraw exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay on the basis of the cancellation rules.
(6)	That other information is available on request and what the nature of that information is.
	[Note: article 3(3)(b) of the <i>Distance Marketing Directive</i>]

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information

Application

- 6.1.1 R (1) This section applies to a *firm* that carries on *designated investment business* for:
- (a) a *retail client*; and
 - (b) in the case of *MiFID or equivalent third country business*, a *client*.
- (2) If expressly provided, this section also applies to *ancillary services* not covered by (1), but only in the course of *MiFID or equivalent third country business* carried on with or for a *client*.
- 6.1.2 R If a *firm* provides *basic advice on stakeholder products* in accordance with the *basic advice rules*, this section does not apply to that service.
- 6.1.3 G This section imposes requirements relating to disclosure of information to *clients* that are additional to the general requirement in *COBS 2.2*.

Information about a firm and its services

- 6.1.4 R A *firm* must provide a *retail client* with the following general information, if relevant:
- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
 - (2) in the case of *MiFID or equivalent third country business*, the languages in which the *client* may communicate with the *firm*, and receive documents and other information from the *firm*;
 - (3) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
 - (4) a statement of the fact that the *firm* is authorised and the name of the *competent authority* that has authorised it;
 - (5) in the case of *MiFID or equivalent third country business*, the contact address of the *competent authority* that has authorised the *firm*;
 - (6) if the *firm* is acting through an *appointed representative* or, where applicable, a *tied agent*, a statement of this fact specifying

the *EEA State* in which that *appointed representative* or *tied agent* is registered;

- (7) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules* on reporting to *clients* on the provision of services (*COBS 16*);
- (8)
 - (a) in the case of a *common platform firm* or a *third country investment firm*, a description, which may be provided in summary form, of the *conflicts of interest policy*;
 - (b) other than in the case of a *common platform firm*, when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;
- (9) in the case of a *common platform firm*, at any time that the *client* requests it, further details of the *conflicts of interest policy*.

[**Note:** article 30(1) of the *MiFID implementing Directive*]

- 6.1.5 G A *firm* disclosing details of its authorisation should refer to the appropriate forms of words set out in *GEN 4 Ann 1R*.
- 6.1.6 R
 - (1) A *firm* that *manages investments* for a *client* must establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the *client* and the types of *designated investments* included in the *client* portfolio, so as to enable the *client* to assess the *firm's* performance.
 - (2) If a *firm* proposes to *manage investments* for a *retail client*, the *firm* must provide the *client* with such of the following information as is applicable:
 - (a) information on the method and frequency of valuation of the *designated investments* in the *client* portfolio;
 - (b) details of any delegation of the discretionary management of all or part of the *designated investments* or funds in the *client* portfolio;
 - (c) a specification of any benchmark against which the performance of the *client* portfolio will be compared;
 - (d) the types of *designated investments* that may be included in the *client* portfolio and types of transaction that may be carried out in those *designated investments*, including any limits; and

- (e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

[**Note:** articles 30(2) and (3) of the *MiFID implementing Directive*]

Information concerning safeguarding of designated investments belonging to clients and client money

- 6.1.7 R (1) A *firm* that holds *designated investments* or *client money* for a *retail client* subject to the *MiFID custody chapter* or the *MiFID client money chapter* and any *third country investment firm* that holds *designated investments* or *client money* for a *retail client* must provide that *client* with the following information:
- (a) if applicable,
 - (i) that the *designated investments* or *client money* of that *client* may be held by a third party on behalf of the *firm*;
 - (ii) the responsibility of the *firm* under the applicable national law for any acts or omissions of the third party; and
 - (iii) the consequences for the *client* of the insolvency of the third party;
 - (b) if applicable, that the *designated investments* belonging to the *retail client* may be held in an omnibus account by a third party and a prominent warning of the resulting risks;
 - (c) if it is not possible under national law for *designated investments* belonging to a *client* held with a third party to be separately identifiable from the proprietary *designated investments* of that third party or of the *firm*, that fact and a prominent warning of the resulting risks;
 - (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of a *EEA State*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;
 - (e) a summary description of the steps which it takes to ensure the protection of any *designated investments* belonging to the *client* or *client money* it holds, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the *firm* by virtue of its activities in an *EEA State*.

- (2) A *firm* that holds *designated investments* or *client money* for a *retail client* must inform the client:
 - (a) if applicable, about the existence and the terms of any security interest or lien which the *firm* has or may have over the *client's designated investments* or *client money*, or any right of set-off it holds in relation to the *client's designated investments* or *client money*; and
 - (b) if applicable, that a depositary may have a security interest or lien over, or right of set-off in relation to those instruments or money.
- (3) A *firm* within (1) must also, before entering into *securities financing transactions* in relation to *designated investments* held by it on behalf of a *retail client*, or before otherwise using such *designated investments* for its own account or the account of another *client*, in good time before the use of those *designated investments* provide the *client*, in a *durable medium*, with clear, full and accurate information on the obligations and responsibilities of the *firm* with respect to the use of those *designated investments*, including the terms for their restitution, and on the risks involved.
- (4) A *firm* within (1) that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(e) and (2)(a) and (b).

[**Note:** articles 29(3), 30(1)(g) and 32 of the *MiFID implementing Directive*]

- 6.1.8 G Paragraphs (1), (3) and (4) of *COBS 6.1.7R* apply in relation to *MiFID* or *equivalent third country business* and also to *firms* that have elected to comply with the *custody rules* in the *MiFID custody chapter* or the *client money rules* in the *MiFID client money chapter*.

Information about costs and associated charges

- 6.1.9 R A *firm* must provide a *retail client* with information on costs and associated charges including, if applicable:
- (1) the total price to be paid by the *client* in connection with the *designated investment* or the *designated investment business* or *ancillary service*, including all related fees, commissions, charges and expenses, and all taxes payable via the *firm* or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the *client* can verify it. The commissions charged by the *firm* must be itemised separately in every case;
 - (2) if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the

currency involved and the applicable currency conversion rates and costs;

- (3) notice of the possibility that other costs, including taxes, related to transactions in connection with the *designated investment* or the *designated investment business* may arise for the *client* that are not paid via the *firm* or imposed by it; and
- (4) the arrangements for payment or other performance.

[**Note:** article 33 of the *MiFID implementing Directive*]

- 6.1.10 G The *rules* on inducements in *COBS 2.3* may also require a *firm* to disclose information to a *client* in relation to benefits provided to the *firm*.

Timing of disclosure

- 6.1.11 R (1) A *firm* must provide a *client* with the information required by this section in good time before the provision of *designated investment business* or *ancillary services* unless otherwise provided by this *rule*.
- (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* or *ancillary services* if:
- (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a *means of distance communication* which prevented the *firm* from doing so; and
 - (b) in any case where the *rule on voice telephony communications* does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

[**Note:** article 29(2), 29(3) and 29(5) of the *MiFID implementing Directive*]

- 6.1.12 G A *firm* should take into account *COBS 8.1.3R(1)*, which requires earlier disclosure of some items of information covered in this section.

Medium of disclosure

- 6.1.13 R Except where expressly provided, a *firm* must provide the information required by this section in a *durable medium* or via a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

[**Note:** article 29(4) of the *MiFID implementing Directive*]

Keeping the client up to date

- 6.1.14 R (1) A *firm* must notify a *client* in good time about any material change to the information provided under this section which is relevant to a service that the *firm* is providing to that *client*.
- (2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[**Note:** article 29(6) of the *MiFID implementing Directive*]

Existing clients

- 6.1.15 G (1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the disclosure *rules* in this chapter in relation to each transaction.

[**Note:** recital 50 to the *MiFID implementing Directive*]

- (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.

Compensation information

- 6.1.16 R (1) A *firm* carrying on *MiFID business* must make available to a *client*, who has used or intends to use those services, information necessary for the identification of the *compensation scheme* or any other investor-compensation scheme of which the *firm* is a member (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.
- (2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the *EEA State* pursuant to article 2 (3) of the *ICD*.
- (3) A *firm* must provide, on the *client's* request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.
- (4) The information provided for in this *rule* must be made available in a *durable medium* or via a website if the *website conditions* are satisfied in the official language or languages of the *EEA State*.

[**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

Record keeping: information about the firm and compensation information

- 6.1.17 G *Firms* are reminded of the general record-keeping requirements in SYSC 3.2 and SYSC 9.

7 Insurance mediation

7.1 Application

- 7.1.1 R This chapter applies to a *firm* carrying on *insurance mediation* in relation to a *life policy*, but only if the *State of the commitment* is an *EEA State*.

[**Note:** articles 1 and 12 (4) and (5) of the *Insurance Mediation Directive*]

7.2 Information to be provided by the insurance intermediary

- 7.2.1 R (1) Prior to the conclusion of any initial *life policy* and, if necessary, on amendment or renewal, a *firm* must provide a *client* with at least the following information:
- (a) its name and address;
 - (b) the fact that it is registered on the *FSA register* and its *FSA register* number (or, if it is not on the *FSA register*, the register in which it has been included and the means for verifying that it has been registered);
 - (c) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
 - (d) whether a given *insurance undertaking* (other than a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing more than 10% of the voting rights or capital in the *firm*; and
 - (e) the procedures which allow a *client* and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*.
- (2) In addition, a *firm* must inform a *client*, concerning the *life policy* that is provided, whether:
- (a) it gives advice on the basis of a fair analysis of the market; or
 - (b) it is contractually obliged to conduct its *insurance mediation* business exclusively with one or more *insurance undertakings* and, if that is the case, that the *client* can request the names of those *insurance undertakings*; or

(c) it is not contractually obliged to conduct its *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market and, if that is the case, that the *client* can request the names of the *insurance undertakings* with which the *firm* may and does conduct business.

(3) If a *client* asks a *firm* to provide the names of the *insurance undertakings* with which the *firm* conducts, or may conduct, business (COBS 7.2.1R (2)), the *firm* must provide it.

[**Note:** article 12(1) of the *Insurance Mediation Directive*]

7.2.2 [intentionally blank]

Fair analysis for advised sales

7.2.3 R When a *firm* informs a *client* that it gives advice on the basis of a fair analysis of the market, it must give that advice on the basis of an analysis of a sufficiently large number of *life policies* available on the market to enable the *firm* to make a recommendation, in accordance with professional criteria, regarding which *life policy* would be adequate to meet the *client's* needs.

[**Note:** article 12(2) of the *Insurance Mediation Directive*]

Specifying demands and needs

7.2.4 R (1) Prior to the conclusion of any specific *life policy*, a *firm* must at least specify, in particular on the basis of the information provided by the *client*, the demands and needs of that *client*. Those demands and needs must be modulated according to the complexity of the relevant *policy*.

(2) This *rule* does not apply when a *firm* makes a *personal recommendation* in relation to a *life policy*.

[**Note:** article 12(3) of the *Insurance Mediation Directive*]

7.2.5 G *Firms* are reminded that they are obliged to take reasonable steps to ensure that a *personal recommendation* is suitable for the *client* and that, whenever a *personal recommendation* relates to a *life policy*, a *suitability report* is required (COBS 9).

Means of communication to clients

7.2.6 R All information to be provided to a *client* in accordance with the *rules* in this chapter must be communicated:

(1) in a *durable medium* available and accessible to the *client*;

- (2) in a clear and accurate manner, comprehensible to the *client*; and
- (3) in an official language of the *State of the commitment* or in any other language agreed by the parties.

[**Note:** article 13(1) of the *Insurance Mediation Directive*]

Additional requirement: telephone selling

- 7.2.7 R In the case of telephone selling, the prior information given to a *client* must be in accordance with the distance marketing disclosure *rules* (*COBS 5.1*). Moreover, information must be provided to the *client* in accordance with the means of communication to clients *rule* (*COBS 7.2.6R*) immediately after the conclusion of the *life policy*.

[**Note:** article 13(3) of the *Insurance Mediation Directive*]

Exceptions: client request or immediate cover

- 7.2.8 R The information referred to in the means of communication to clients *rule* (*COBS 7.2.6R*) may be provided orally where the *client* requests it, or where immediate cover is necessary. In those cases, the information must be provided to the *client* in accordance with that *rule* immediately after the conclusion of the *life policy*.

[**Note:** article 13(2) of the *Insurance Mediation Directive*]

8 Client agreements

8.1 Client agreements: designated investment business

Providing a client agreement

- 8.1.1 R (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for:
- (a) a *retail client*; and
 - (b) in relation to *MiFID or equivalent third country business*, a *professional client*.
- (2) If expressly provided, this chapter also applies to a *firm* in relation to other *ancillary services* carried on for a *client*, but only in relation to its *MiFID or equivalent third country business*.
- (3) But this chapter does not apply to a *firm* to the extent that it is *effecting contracts of insurance* in relation to a *life policy* issued or to be issued by the *firm* as principal.
- 8.1.2 R If a *firm* carries on *designated investment business*, other than *advising on investments*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential rights and obligations of the *firm* and the *client*.
- [**Note:** article 39 of the *MiFID implementing Directive*]
- 8.1.3 R (1) A *firm* must, in good time before a *retail client* is bound by any agreement relating to *designated investment business* or *ancillary services* or before the provision of those services, whichever is the earlier, provide that *client* with:
- (a) the terms of any such agreement; and
 - (b) the information about the *firm* and its services relating to that agreement or to those services required by *COBS 6.1.4R*, including information on communications, conflicts of interest and authorised status.
- (2) A *firm* must provide the agreement and information in a *durable medium* or, where the *website conditions* are satisfied, otherwise via a website.
- (3) A *firm* may provide the agreement and the information immediately after the *client* is bound by any such agreement if:
- (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a

means of distance communication which prevented the *firm* from doing so; and

- (b) if the *rule* on voice telephony communications (*COBS* 5.1.12R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if he were a *consumer*.
- (4) (a) A *firm* must notify a *client* in good time about any material change to the information provided under this *rule* which is relevant to a service that the *firm* is providing to that *client*.
- (b) A *firm* must provide the notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

[**Note:** article 29(1), (4), (5) and (6) of the *MiFID implementing Directive*]

Record keeping: client agreements

- 8.1.4 R (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.
- (2) The record must be maintained for at least whichever is the longer of:
- (a) 5 years; or
 - (b) the duration of the relationship with the *client*; or
 - (c) in the case of a record relating to a *pension transfer*, *pension opt-out* or *FSAVC*, indefinitely.

[**Note:** article 19(7) of *MiFID* and article 51(1) of the *MiFID implementing Directive*. See article 51(3) of the *MiFID implementing Directive*]

- 8.1.5 R For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[**Note:** article 19(7) of *MiFID* and article 39 of the *MiFID implementing Directive*]

- 8.1.6 G When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule* and the *rules* on disclosure of information to a *client* before providing services and the *rules* on distance communications (principally in *COBS* 2.2, 5, 6 and 13).

9 Suitability (including basic advice)

9.1 Application and purpose provisions

Making personal recommendations

- 9.1.1 R This chapter applies to a *firm* which makes a *personal recommendation* in relation to a *designated investment*.

Providing basic advice on a stakeholder product

- 9.1.2 R If a *firm* makes a *personal recommendation* in relation to a *stakeholder product*, other than in the course of *MiFID* or *equivalent third country business*, it may choose to give *basic advice* under the *rules* in section 9.6 of this chapter instead of the *rules* in the remainder of this chapter.

Managing investments

- 9.1.3 R This chapter applies to a *firm* which *manages investments*.

Business which is not MiFID or equivalent third country business

- 9.1.4 R In respect of the business of a *firm* which is not *MiFID* or *equivalent third country business*, this chapter applies only if:

- (1) the *client* is a *retail client*; or
- (2) the *firm* is managing the assets of an *occupational pension scheme*, *stakeholder pension scheme* or *personal pension scheme*.

Life policies for professional clients

- 9.1.5 R If the *firm* makes a *personal recommendation* to a *professional client* to take out a *life policy*, this chapter applies only those *rules* which implement the requirements of the *Insurance Mediation Directive*.
- 9.1.6 G If a *rule* implements a requirement of the *Insurance Mediation Directive*, a Note follows the *rule* indicating which provision is being implemented. *COBS* 7 (Insurance mediation) contains further *rules* implementing the *Insurance Mediation Directive*.
- 9.1.7 G The effect of these application *rules* and the fact that the *Insurance Mediation Directive* does not apply to an *insurer* (unless it is involved in mediation activities) is that this chapter does not apply to an *insurer* when it is making a *personal recommendation* to a *professional client* to take out a *life policy*.

Related rules

- 9.1.8 G For a *firm* making *personal recommendations* in relation to pensions, *COBS* 19 contains additional provisions relevant to assessing suitability and the

contents of *suitability reports*.

- 9.1.9 G *COBS 7* (Insurance mediation) contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

Assessing suitability: the obligations

- 9.2.1 R (1) A *firm* must take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*.
- (2) When making the *personal recommendation* or *managing his investments*, the *firm* must obtain the necessary information regarding the *client's*:
- (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
 - (b) financial situation; and
 - (c) investment objectives;

so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for him.

[**Note:** article 19(4) of *MiFID*, article 12(2) of the *Insurance Mediation Directive*]

- 9.2.2 R (1) A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
- (a) meets his investment objectives;
 - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

- (3) The information regarding the financial situation of a *client* must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

[**Note:** articles 35(1), (3) and (4) of the *MiFID implementing Directive*]

- 9.2.3 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:
- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
 - (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
 - (3) the level of education, profession or relevant former profession of the *client*.

[**Note:** article 37(1) of the *MiFID implementing Directive*]

- 9.2.4 R A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

[**Note:** article 37(2) of the *MiFID implementing Directive*]

- 9.2.5 R A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 37(3) of the *MiFID implementing Directive*]

- 9.2.6 R If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to trade for him.

[**Note:** article 35(5) of the *MiFID implementing Directive*]

- 9.2.7 G Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *clients' best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see *COBS 10, Appropriateness (for non-advised services)*).

Professional clients (MiFID and equivalent third country business)

- 9.2.8 R (1) If a *firm* makes a *personal recommendation* or *manages investments* for a *professional client* in the course of *MiFID* or *equivalent third country business*, it is entitled to assume that, in relation to the products, transactions and services for which the *professional client* is so classified, the *client* has the necessary level of experience and knowledge for the purposes of *COBS 9.2.2R(1)(c)*.
- (2) If the service consists of making a *personal recommendation* to a *per se professional client*, the *firm* is entitled to assume that the *client* is able financially to bear any related investment risks consistent with his investment objectives for the purposes of *COBS 9.2.2R(1)(b)*.

[**Note:** article 35(2) of the *MiFID implementing Directive*]

Friendly society life policies

- 9.2.9 R (1) When recommending a small *friendly society life policy*, a *firm*, for the purpose of assessing suitability, need only obtain details of the net income and expenditure of the *client* and his dependants.
- (2) A *friendly society life policy* is small if the *premium*:
- (a) does not exceed £50 a year; or
 - (b) if payable weekly, £1 a week.
- (3) The *firm* must keep for five years a record of the reasons why the recommendation is considered suitable.

9.3 Guidance on assessing suitability

- 9.3.1 G (1) A transaction may be unsuitable for a *client* because of the risks of the *designated investments* involved, the type of transaction, the characteristics of the order or the frequency of the trading.
- (2) In the case of *managing investments*, a transaction might also be unsuitable if it would result in an unsuitable portfolio.

[**Note:** recital 57 to the *MiFID implementing Directive*]

Churning and switching

- 9.3.2 G (1) A series of transactions that are each suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the *client*.
- (2) A *firm* should have regard to the *client's* agreed investment strategy in determining the frequency of transactions. This would include, for example, the need to switch a *client* within or between *packaged*

products.

[**Note:** recital 57 to the *MiFID implementing Directive*]

Income withdrawals and short-term annuities

- 9.3.3 G When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*, it should consider all the relevant circumstances including:
- (1) the *client's investment* objectives, need for tax-free cash and state of health;
 - (2) current and future income requirements, existing pension assets and the relative importance of the plan, given the *client's* financial circumstances;
 - (3) the *client's* attitude to risk, ensuring that any discrepancy is clearly explained between his attitude to an *income withdrawal* or purchase of a *short-term annuity* and other *investments*.

Loans and mortgages

- 9.3.4 G When considering the suitability of a particular *investment* product which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a *firm* should take account of the suitability of the overall transaction. The *firm* should also have regard to any applicable suitability *rules* in *MCOB*.

9.4 Suitability reports

[intentionally blank]

9.5 Record keeping and retention periods for suitability records

- 9.5.1 G For its *MiFID business*, a *firm* is required to keep orderly records of its business and internal organisation (see *SYSC 9*, General rules on record-keeping). For other business, a *firm* is required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (see *SYSC 3*, Systems and controls). The records may be expected to reflect the different effect of the *rules* in this chapter depending on whether the *client* is a *retail client* or a *professional client*: for example, in respect of the information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.
- 9.5.2 R The *firm* must retain its records relating to suitability for a minimum of the following periods:
- (1) if relating to a *pension transfer*, *pension opt-out* or *FSAVC*,

indefinitely;

- (2) if relating to a *life policy, pension contract or stakeholder pension scheme*, five years;
- (3) if relating to *MiFID or equivalent third country business*, five years; and
- (4) in any other case, three years.

9.5.3 R A *firm* need not retain its records relating to suitability if:

- (1) the *client* does not proceed with the recommendation; and
- (2) they do not relate to *MiFID or equivalent third country business*.

9.6 Special rules for providing basic advice on a stakeholder product

9.6.1 G When a *firm* gives *basic advice*, it may choose to comply with the *rules* in this section instead of the other *rules* in this chapter (*COBS 9.1.2R*).

Requirements on first contact

9.6.2 R If a *firm's* first contact with a *retail client* is not face to face, it must tell the *client* at the outset:

- (1) (if the communication is initiated by or on behalf of a *firm*), the name of the *firm* and the commercial purpose of the communication;
- (2) [intentionally blank]
- (3) that the *firm* will provide the *retail client* with *basic advice* without carrying out a full assessment of the *retail client's* needs and circumstances; and
- (4) that such information will be confirmed in writing.

Sales process

9.6.3 R When a *firm* gives *basic advice* to a *retail client*, it must do so using a sales process that includes putting pre-scripted questions to the *client*.

9.6.4 R When a *firm* gives *basic advice* to a *retail client* it must not:

- (1) describe or recommend a *smoothed linked long term stakeholder product*; or
- (2) describe fund choice, or recommend a particular fund, if a *stakeholder product* offers a choice of funds; or

- (3) recommend the level of contributions required to be made to a *stakeholder pension scheme* to achieve a specific income in retirement; or
 - (4) recommend or agree that a *client* makes a contribution to an *ISA* which exceeds the HM Revenue & Customs *ISA* limits.
- 9.6.5 R (1) If a *firm* starts the sales process for a *stakeholder product* that is not a *deposit-based stakeholder product*, it must not depart from that process unless it has advised the *retail client* that it will not provide *basic advice* on *stakeholder products* during the period of departure. A *firm* that does that must not provide *basic advice* during the departure period.
- (2) Before a *firm* returns to the sales process for *stakeholder products*, it must tell the *retail client* that that process is about to recommence.

Suitability

- 9.6.6 R A *firm* must only recommend a *stakeholder product* to a *retail client* if:
- (1) it has taken reasonable steps to assess the *client's* answers to the scripted questions and any other facts, circumstances or information disclosed by the *client* during the sales process;
 - (2) (unless the relevant product is a *deposit-based stakeholder product*) having done so, it has reasonable grounds for believing that the *stakeholder product* is suitable for the *client*; and
 - (3) the *firm* reasonably believes that the *client* understands the *firm's* advice and the basis on which it was provided.
- 9.6.7 G The Annex to this chapter gives *guidance* on the steps a *firm* could take to help it meet these suitability obligations.
- 9.6.8 R (1) If a *firm* advises a *retail client* to acquire a *stakeholder product*, it must ensure that, prior to the conclusion of the contract, its *representative*:
- (a) (unless the relevant product is a *deposit-based stakeholder product*) explains to the *client*, if necessary in summary form, but always in a way that will allow the *client* to make an informed decision about the *firm's* recommendation:
 - (i) the nature of the *stakeholder product*; and
 - (ii) the "aims", "commitment" and "risks" sections of the appropriate *key features document*;
 - (b) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:

- (i) the specific amount the *client* wishes to pay into the product; and
 - (ii) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and
- (c) informs the *client* that in determining any subsequent complaint, the *Ombudsman* may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the *client's* financial needs and circumstances not covered by the *firm's* sales process.
- (2) Notwithstanding (1)(b), a *firm* may provide the summary sheet (*COBS* 9.6.8R(1)(b)) as soon as reasonably practicable after the conclusion of the contract if the *client* asks it to do so, or the contract will be concluded using a means of distance communication that does not enable the provision of the summary sheet in a *durable medium* prior to the conclusion of the contract, but only if the *firm*:
- (a) reads the summary sheet to the *client* before it concludes the contract; and
 - (b) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.

Concluding the contract

- 9.6.9 R If a *firm* concludes a contract for a *stakeholder product* with or for a *retail client* it must provide a copy of the completed questions and answers to the *client* in a *durable medium* as soon as reasonably practicable afterwards.

Basic advice on stakeholder products: other issues

- 9.6.10 R A *firm* must ensure that none of its *representatives*:
- (1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or
 - (2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

Records

- 9.6.11 R A *firm* must record that it has chosen to give *basic advice* to a *retail client* and that record must be retained for at least five years from the date of the relevant *basic advice*.

This Annex gives *guidance* on the standards and requirements to which a *firm* may have regard in designing a sales process for *stakeholder products* and assumes that *firms* will provide *basic advice* to *retail clients* who have no practical knowledge of investing in *stakeholder products* or *investments*.

General Standards – all sales	
1.	A sales process for <i>stakeholder products</i> may allow the <i>representative</i> administering it to depart from scripted questions where this is desirable to enable the <i>retail client</i> to better understand the points that need to be made provided this is compatible with the <i>representative's</i> competence and the degree of support offered by the <i>firm's</i> software and other systems. A software-based system is more likely to provide an adaptable means of providing prompts and support for <i>representatives</i> which may accordingly support a more flexible sales process.
2.	Questions, statements and warnings provided should be short, simple and in plain language. Questions should address one issue at a time.
3.	The sales process should enable the <i>retail client</i> to exit freely and without pressure at any stage. It should also allow the <i>representative</i> to terminate the process at any stage if it appears unlikely (for affordability, mis-match, risk or other reasons) that there is a suitable product for the <i>retail client</i> .
4.	Where necessary the sales process should incorporate procedures to allow uncertainties in the <i>retail client's</i> answers to be addressed before proceeding and should generally reflect caution about proceeding if clarification or further information cannot be obtained during the process (for example if a <i>retail client</i> cannot confirm whether he or she is eligible for membership of an <i>occupational pension scheme</i>).
Preliminary - all sales	
5.	The <i>retail client</i> should be given the following preliminary information: <ul style="list-style-type: none"> (a) the <i>retail client</i> will only be given <i>basic advice</i> about <i>stakeholder products</i>; (b) <i>stakeholder products</i> are intended to provide a relatively simple and low-cost way of investing and saving; (c) [intentionally blank] (d) the <i>retail client</i> will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recommended to acquire a <i>stakeholder product</i>;

	<p>(e) the assessment of whether a <i>stakeholder product</i> is suitable will be made without a detailed assessment of the <i>retail client's</i> needs but will be based only on the information disclosed during the questioning process; and</p> <p>(f) the <i>retail client's</i> answers will be noted and, at the end of the process, if a recommendation to acquire a <i>stakeholder product</i> is made, the <i>retail client</i> will be provided with a copy of the completed questionnaire.</p>
6.	Following 5, the <i>retail client</i> should be asked if he or she wishes to proceed and, if not, the sales process should cease.
Affordability - all sales	
7.	If it appears that the <i>retail client</i> is unlikely to be able to afford a <i>stakeholder product</i> , the sale should be terminated and the <i>retail client</i> given an explanation together with a copy of the questions and answers completed to that point.
Financial Priorities and Debt - all sales	
8.	A <i>retail client</i> should be assessed to ascertain other possible financial priorities -for example, does the <i>retail client</i> need (a) insurance protection; (b) access to liquid cash to meet an emergency; or (c) to reduce existing debts? If appropriate, the <i>retail client</i> should be given an unambiguous warning about the desirability of meeting those priorities before acquiring a <i>stakeholder product</i> .
9.	A stronger warning about the desirability of addressing debt as a priority should be given if it appears that the <i>retail client</i> is significantly indebted, especially if there is a strong indication that the debt commitments may render any new commitment unaffordable in the short-term. For this purpose a <i>firm</i> should consider using a threshold or indicator to decide whether a <i>retail client</i> should be excluded on the basis of affordability. Examples may include where the <i>retail client</i> has (a) annual unsecured debt repayments in excess of 20% of gross annual income or (b) four or more active forms of unsecured debt or (c) has consistently reached his overdraft limit. A <i>firm</i> should review its chosen indicator or threshold regularly to ensure that it reflects prevailing economic conditions and takes account of industry best practice.
10.	A <i>firm</i> should clearly explain what it needs to know about a <i>retail client's</i> debt and consider using a range of alternative words (eg 'loans', 'student loans', 'borrowing' and 'other forms of credit') to ensure all relevant information is obtained. A <i>firm</i> may use a simple reckoner to assess <i>retail client</i> debt, but should be conscious of the nature of, and not give the impression that it is providing more than, <i>basic advice</i> .
11.	If a <i>firm</i> gives a warning about the desirability of meeting other priorities

	before acquiring a <i>stakeholder product</i> , or about affordability, it should also invite the <i>retail client</i> to consider terminating the sales process.
Saving and investment objectives - all sales (except establishing a stakeholder CTF)	
12.	<p>A <i>retail client's</i> savings and investment objectives, including the period over which the <i>retail client</i> wishes to save or invest, should be ascertained including whether the <i>retail client</i>:</p> <ul style="list-style-type: none"> (a) may need early access to some or all of the amount saved or invested; (b) wishes to save or invest for retirement; or (c) wants to accumulate a specific sum by a specific date.
13.	<p>If that information indicates that the <i>retail client's</i> objective is:</p> <ul style="list-style-type: none"> (a) to accumulate a specific sum by a specific date; (b) to save or invest only for the short term; or (c) early access may be required to the whole of the sum saved or invested; <p>the <i>firm</i> should not normally recommend a <i>CIS stakeholder product</i>, a <i>linked life stakeholder product</i>, a <i>stakeholder pension scheme</i> or topping up of a <i>stakeholder CTF</i>.</p>
Tolerance of risk - all sales	
14.	If a <i>retail client</i> is not willing to accept any risk of the capital value of an investment being reduced then <i>CIS stakeholder products</i> , <i>linked life stakeholder products</i> and <i>stakeholder CTFs</i> should not usually be recommended. However, a <i>firm</i> may, if appropriate, explain the effect of inflation on long-term savings especially in relation to pensions and invite the <i>retail client</i> to consider his attitude to risk in the light of that explanation.
15.	If a <i>retail client</i> is willing to accept the risk of capital reduction in some circumstances but not others then, before any recommendation to acquire a <i>CIS stakeholder product</i> or <i>linked life stakeholder product</i> is made, the <i>retail client</i> should be reminded of the other circumstances in which he or she is unwilling to accept risk to capital.
Stakeholder pensions	
16.	A <i>stakeholder pension scheme</i> should not be recommended, and the <i>retail client</i> should be advised to seek alternative or further advice, if it appears that the <i>retail client</i> :

	<p>(a) has or will have access to an <i>occupational pension scheme</i>; or</p> <p>(b) is likely to view income in retirement from state benefits as sufficient; or</p> <p>(c) already has a pension to which he or she could make further contributions; or</p> <p>(d) wishes to retire within five years.</p>
17.	It may also be appropriate to advise the <i>retail client</i> that other courses of action may be more beneficial than buying a <i>stakeholder pension scheme</i> (for example joining an <i>occupational pension scheme</i>).
18.	A <i>firm</i> designing a sales process for use in the workplace may take account of the benefits offered by the employer. If a <i>firm</i> recommends a <i>stakeholder pension scheme</i> on the basis of benefits provided by an employer, then it should explain the basis of the recommendation to the <i>retail client</i> and suggest that the <i>retail client</i> seek <i>advice</i> if he or she has any concerns.
19.	A <i>firm</i> should design its processes with a view to addressing the risk that <i>retail clients</i> will fail to appreciate the significance of questions about their pension provision and should accordingly incorporate a range of questions and information designed to foster the <i>retail client's</i> understanding of the issues and to elicit appropriate information.
20.	<i>Retail clients</i> should be told that a <i>stakeholder pension scheme</i> is life-styled and what this means.
21.	[intentionally blank]
ISAs	
22.	A <i>firm</i> should ascertain whether the <i>retail client</i> has already opened a mini or maxi <i>ISA</i> and, if so, whether it would be appropriate for the <i>retail client</i> to open a non- <i>ISA</i> version of the same product.

10 Appropriateness (for non-advised services)

10.1 Application and purpose provisions

- 10.1.1 R This chapter applies to a *firm* which provides *investment services* in the course of *MiFID* or *equivalent third country business* other than making a *personal recommendation* and *managing investments*.
- 10.1.2 R This chapter applies to a *firm* which *arranges* or *deals* in relation to a *derivative* or a *warrant* with or for a *retail client* and the *firm* is aware, or ought reasonably to be aware, that the application or order is in response to a *direct offer financial promotion*.
- 10.1.3 R This chapter applies to a *firm* which assesses appropriateness on behalf of another *MiFID investment firm* so that the other *firm* may rely on the assessment under *COBS 2.4.4R* (Reliance on other investment firms: MiFID and equivalent business).

Related rules

- 10.1.4 G A *firm* that is carrying on a *regulated activity* on a non-advised basis, whether or not the *rules* in this chapter apply to its activities, should also consider whether other *rules* in *COBS* apply. For example, a *firm* carrying on *insurance mediation activity* in relation to a *life policy* that does not involve the provision of advice, should have regard to *COBS 7* (Insurance mediation).

10.2 Assessing appropriateness: the obligations

- 10.2.1 R (1) When providing a service to which this chapter applies, a *firm* must ask the *client* to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the *firm* to assess whether the service or product envisaged is appropriate for the *client*.
- (2) When assessing appropriateness, a *firm*:
- (a) must determine whether the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;
 - (b) may assume that a *professional client* has the necessary experience and knowledge in order to understand the risks involved in relation to those particular *investment services* or transactions, or types of transaction or product, for which the *client* is classified as a *professional client*.

[**Note:** article 19(5) of *MiFID* and article 36 of the *MiFID implementing Directive*]

- 10.2.2 R The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client*, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:
- (1) the types of service, transaction and *designated investment* with which the *client* is familiar;
 - (2) the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out;
 - (3) the level of education, profession or relevant former profession of the *client*.

[**Note:** article 37(1) of the *MiFID implementing Directive*]

- 10.2.3 R A *firm* must not encourage a *client* not to provide information required for the purposes of its assessment of appropriateness.

[**Note:** article 37(2) of the *MiFID implementing Directive*]

- 10.2.4 R A *firm* is entitled to rely on the information provided by a *client* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

[**Note:** article 37(3) of the *MiFID implementing Directive*]

- 10.2.5 G When assessing appropriateness, a *firm* may use information it already has in its possession.

- 10.2.6 G Depending on the circumstances, a *firm* may be satisfied that the *client's* knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a *firm* may infer knowledge from experience.

- 10.2.7 G If, before assessing appropriateness, a *firm* seeks to increase the *client's* level of understanding of a service or product by providing information to him, relevant considerations are likely to include the nature and complexity of the information and the *client's* existing level of understanding.

- 10.2.8 G If a *firm* is satisfied that the *client* has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in *COBS 9* on suitability.

10.3 Warning the client

- 10.3.1 R (1) If a *firm* considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the *client*, the *firm* must warn the *client*.
- (2) This warning may be provided in a standardised format.
- [**Note:** article 19(5) of *MiFID*]
- 10.3.2 R (1) If the *client* elects not to provide the information to enable the *firm* to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the *firm* must warn the *client* that such a decision will not allow the *firm* to determine whether the service or product envisaged is appropriate for him.
- (2) This warning may be provided in a standardised format.
- [**Note:** article 19(5) of *MiFID*]
- 10.3.3 G If a *client* asks a *firm* to go ahead with a transaction, despite being given a warning by the *firm*, it is for the *firm* to consider whether to do so having regard to the circumstances.

10.4 Assessing appropriateness: when it need not be done

- 10.4.1 R (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if:
- (a) the service only consists of execution and/or the reception and transmission of *client* orders, with or without *ancillary services*, it relates to particular *financial instruments* and is provided at the initiative of the *client*;
 - (b) the *client* has been clearly informed (whether the warning is given in a standardised format or not) that in the provision of this service the *firm* is not required to assess the suitability of the instrument or service provided or offered and that therefore he does not benefit from the protection of the *rules* on assessing suitability; and
 - (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* are:
- (a) shares admitted to trading on a *regulated market* or an equivalent third country market (that is, one which is included in the list which is published by the European Commission and

updated periodically); or

- (b) money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a *derivative*); or
 - (c) *units* in a *scheme* authorised under the *UCITS directive*; or
 - (d) other non-complex *financial instruments*.
- (3) A *financial instrument* is non-complex if it satisfies the following criteria:
- (a) it is not a *derivative* or other security giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
 - (b) there are frequent opportunities to dispose of, redeem, or otherwise realise the instrument at prices that are publicly available to the market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
 - (c) it does not involve any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument; and
 - (d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument.

[**Note:** article 19(6) of *MiFID* and article 38 of the *MiFID implementing Directive*]

- 10.4.2 R If a *client* engages in a course of dealings involving a specific type of product or service through the services of a *firm*, the *firm* is not required to make a new assessment on the occasion of each separate transaction. A *firm* complies with the *rules* in this chapter provided that it makes the necessary appropriateness assessment before beginning that service.

[**Note:** recital 59 to the *MiFID implementing Directive*]

- 10.4.3 R A *client* who has engaged in a course of dealings involving a specific type of product or service beginning before 1 November 2007 is presumed to have the necessary experience and knowledge in order to understand the risks involved in relation to that specific type of product or service.

[**Note:** recital 59 of the *MiFID implementing Directive*]

10.5 Assessing appropriateness: guidance

The initiative of the client

- 10.5.1 G A service should be considered to be provided at the initiative of a *client* (see *COBS* 10.4.1R(1)(b)) unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that particular *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument* or specific transaction.

[**Note:** recital 30 to *MiFID*]

- 10.5.2 G A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion or offer of *financial instruments* made by any means that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[**Note:** recital 30 to *MiFID*]

Personalised communications

- 10.5.3 G
- (1) Communications to the world at large, such as those in newspapers or on billboards, are likely to be by their very nature general and therefore not personalised communications.
 - (2) Communications addressed to a *client* (such as, for example, an email, a telephone call or a letter), may or may not be personalised depending on the content.
 - (3) A communication is not personalised solely because it contains the name and address of the *client* or because a mailing list has been filtered.
 - (4) If a *firm* is satisfied that a communication does not contain any personalised content, it may wish to make clear that it does not intend the communication to be personalised and that the personal circumstances of the recipient have not been taken into account.

Equivalent third country markets

- 10.5.4 G [to insert the reference or hypertext link to the list of equivalent third country markets when available]

[**Note:** article 19(6) of *MiFID*]

Independent valuation systems

- 10.5.5 G The circumstances in which valuation systems will be independent of the issuer (see *COBS* 10.4.1R(3)(b)) include where they are overseen by a

depository that is regulated as a provider of depository services in a *EEA State*.

[**Note:** recital 61 to the *MiFID implementing Directive*]

10.6 When a firm need not assess appropriateness

- 10.6.1 G A *firm* need not assess appropriateness if it is receiving or transmitting an order in relation to which it has assessed suitability under *COBS 9* (Suitability (including basic advice)).
- 10.6.2 G A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* (see *COBS 2.4.5G* (Reliance on other investment firms: MiFID and equivalent business)).

10.7 Record keeping and retention periods for appropriateness records

- 10.7.1 G For its *MiFID business*, a *firm* is required to keep orderly records of its business and internal organisation (see *SYSC 9*, General rules on record-keeping). For other business, a *firm* is required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (see *SYSC 3*, Systems and controls). The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.
- 10.7.2 R The *firm* must retain its records relating to appropriateness for a minimum of five years.

11 Dealing and managing

11.1 Application

General application

11.1.1 R This chapter, other than the section on personal account dealing (*COBS* 11.7), applies in relation to:

(1) *MiFID* business carried on by a *MiFID* investment firm; and

(2) *equivalent business of a third country investment firm*.

11.1.2 R In this chapter, provisions marked "EU" apply to a *third country investment firm* as if they were rules.

11.1.3 [intentionally blank]

Application of section on personal account dealing

11.1.4 R The section on personal account dealing applies to the *designated investment business* of a *firm* in relation to activities carried on from an *establishment* in the *United Kingdom*.

11.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS 11.7*) to the extent necessary to be compatible with European law (see paragraph 1.1R of Part 3 of *COBS* 1 Ann 1). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

11.2 Best execution

Obligation to execute orders on terms most favourable to the client

11.2.1 R A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[**Note:** article 21 (1) of *MiFID*]

11.2.2 G The obligation to take all reasonable steps to obtain the best possible result for its *clients* (see *COBS* 11.2.1R) should apply to a *firm* which owes contractual or agency obligations to the *client*.

[**Note:** recital 33 to *MiFID*]

11.2.3 G Dealing on own account with *clients* by a *firm* should be considered as the

execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.

[**Note:** first sentence of recital 69 to the *MiFID implementing Directive*]

- 11.2.4 G If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

[**Note:** second sentence of recital 69 to the *MiFID implementing Directive*]

- 11.2.5 G The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

[**Note:** recital 70 to the *MiFID implementing Directive*]

Best execution criteria

- 11.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:
- (1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
 - (2) the characteristics of the *client* order;
 - (3) the characteristics of *financial instruments* that are the subject of that order;
 - (4) the characteristics of the *execution venues* to which that order can be directed.

[**Note:** article 44(1) of the *MiFID implementing Directive*]

Role of price

11.2.7 R Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[**Note:** paragraph 1 of article 44(3) of the *MiFID implementing Directive*]

11.2.8 G For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[**Note:** recital 67 to the *MiFID implementing Directive*]

11.2.9 G A *firm's* execution policy should determine the relative importance of each of the *execution factors* or establish a process by which the *firm* will determine the relative importance of the *execution factors*. The relative importance that the *firm* gives to those *execution factors* must be designed to obtain the best possible result for the execution of its *client* orders. Ordinarily, the *FSA* would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.

Delivering best execution where there are competing execution venues

11.2.10 R For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

[**Note:** article 44(3) of paragraph 2 of the *MiFID implementing Directive*]

11.2.11 G The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own

execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of commissions or fees. Nor is it intended to require a *firm* to compare the differences in its own commissions which are attributable to differences in the nature of the services that the *firm* provides to *clients*.

[**Note:** recital 71 to the *MiFID implementing Directive*]

11.2.12 R A *firm* must not structure or charge its commissions in such a way as to discriminate unfairly between *execution venues*.

[**Note:** article 44(4) of the *MiFID implementing Directive*]

11.2.13 G A *firm* would be considered to structure or charge its commissions in a way which discriminates unfairly between *execution venues* if it charges a different commission or spread to *clients* for execution on different *execution venues* and that difference does not reflect actual differences in the cost to the *firm* of executing on those venues.

[**Note:** recital 73 to the *MiFID implementing Directive*]

Requirement for order execution arrangements including an order execution policy

11.2.14 R A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

[**Note:** article 21(2) of *MiFID*]

11.2.15 R The order execution policy must include, in respect of each class of *financial instruments*, information on the different *execution venues* where the *firm* executes its *client* orders and the factors affecting the choice of *execution venue*. It must at least include those *execution venues* that enable the *firm* to obtain on a consistent basis the best possible result for the execution of *client* orders.

[**Note:** paragraph 1 of article 21(3) of *MiFID*]

- 11.2.16 G
- (1) When establishing its execution policy, a *firm* should determine the relative importance of the *execution factors*, or at least establish the process by which it determines the relative importance of these factors, so that it can deliver the best possible result to its *clients*.
 - (2) In order to give effect to that policy, a *firm* should select the *execution venues* that enable it to obtain on a consistent basis the best possible result for the execution of *client* orders.
 - (3) A *firm* should apply its execution policy to each *client* order that it executes with a view to obtaining the best possible result for the

client in accordance with that policy.

- (4) The obligation to take all reasonable steps to obtain the best possible result for the *client* should not be treated as requiring a *firm* to include in its execution policy all available *execution venues*.

[**Note:** recital 66 to the *MiFID implementing Directive*]

- 11.2.17 G The provisions of this section which provide that costs of execution include a *firm's* own commissions or fees charged to the *client* for the provision of an *investment service* should not apply for the purpose of determining what *execution venues* must be included in the *firm's* execution policy.

[**Note:** recital 72 to the *MiFID implementing Directive*]

- 11.2.18 G The provisions of this section as to execution policy are without prejudice to the general obligation of a *firm* to monitor the effectiveness of its order execution arrangements and policy and assess the *execution venues* in its execution policy on a regular basis.

[**Note:** recital 74 to the *MiFID implementing Directive*]

Following specific instructions from a client

- 11.2.19 R (1) Whenever there is a specific instruction from the *client*, the *firm* must execute the order following the specific instruction.

[**Note:** article 21(1) of *MiFID*]

- (2) A *firm* satisfies its obligation under this section to take all reasonable steps to obtain the best possible result for a *client* to the extent that it executes an order, or a specific aspect of an order, following specific instructions from the *client* relating to the order or the specific aspect of the order.

[**Note:** article 44(2) of the *MiFID implementing Directive*]

- 11.2.20 G When a *firm* executes an order following specific instructions from the *client*, it should be treated as having satisfied its best execution obligations only in respect of the part or aspect of the order to which the *client* instructions relate. The fact that the *client* has given specific instructions which cover one part or aspect of the order should not be treated as releasing the *firm* from its best execution obligations in respect of any other parts or aspects of the *client* order that are not covered by such instructions.

[**Note:** recital 68 to the *MiFID implementing Directive*]

- 11.2.21 G A *firm* should not induce a *client* to instruct it to execute an order in a particular way, by expressly indicating or implicitly suggesting the content of the instruction to the *client*, when the *firm* ought reasonably to know that an instruction to that effect is likely to prevent it from obtaining the best possible result for that *client*. However, this should not prevent a *firm*

inviting a *client* to choose between two or more specified trading venues, provided that those venues are consistent with the execution policy of the *firm*.

[**Note:** recital 68 to the *MiFID implementing Directive*]

Information about the order execution policy

11.2.22 R A *firm* must provide appropriate information to its *clients* on its order execution policy.

[**Note:** paragraph 2 of article 21(3) of *MiFID*]

11.2.23 R (1) A *firm* must provide a *retail client* with the following details on its execution policy in good time prior to the provision of the service:

- (a) an account of the relative importance the *firm* assigns, in accordance with the *execution criteria*, to the *execution factors*, or the process by which the *firm* determines the relative importance of those factors;
- (b) a list of the *execution venues* on which the *firm* places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of *client* orders;
- (c) a clear and prominent warning that any specific instructions from a *client* may prevent the *firm* from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions.

(2) This information must be provided in a *durable medium*, or by means of a website (where that does not constitute a *durable medium*) provided that the *website conditions* are satisfied.

[**Note:** article 46(2) of the *MiFID implementing Directive*]

11.2.24 R Where the order execution policy provides for the possibility that *client* orders may be executed outside a *regulated market* or an *MTF*, the *firm* must, in particular, inform its *clients* about this possibility.

[**Note:** paragraph 3 of article 21(3) of *MiFID*]

Client consent to execution policy and execution of orders outside a regulated market or MTF

11.2.25 R A *firm* must obtain the prior consent of its *clients* to the execution policy.

[**Note:** paragraph 2 of article 21 (3) of *MiFID*]

- 11.2.26 R A *firm* must obtain the prior express consent of its *clients* before proceeding to execute their orders outside a *regulated market* or an *MTF*. The *firm* may obtain this consent either in the form of a general agreement or in respect of individual transactions.

[**Note:** paragraph 3 of article 21(3) of *MiFID*]

Monitoring the effectiveness of execution arrangements and policy

- 11.2.27 R A *firm* must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

[**Note:** article 21(4) of *MiFID*]

Review of the order execution policy

- 11.2.28 R (1) A *firm* must review annually its execution policy, as well as its order execution arrangements.
- (2) This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[**Note:** article 46(1) of the *MiFID implementing Directive*]

Demonstration of execution of orders in accordance with execution policy

- 11.2.29 R A *firm* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

[**Note:** article 21(5) of *MiFID*]

Duty of portfolio managers and receivers and transmitters to act in clients' best interests

- 11.2.30 R A *firm* must, when providing the service of *portfolio management*, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

[**Note:** article 45(1) of *MiFID implementing Directive*]

- 11.2.31 R A *firm* must, when providing the service of reception and transmission of orders, comply with the obligation to act in accordance with the best interests of its *clients* when transmitting *client* orders to other entities for

execution.

[**Note:** article 45(2) of the *MiFID implementing Directive*]

- 11.2.32 R In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

[**Note:** article 45(3) of the *MiFID implementing Directive*]

- (1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for retail clients, to the requirement to determine the best possible result in terms of the total consideration (see *COBS 11.2.7R*).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

[**Note:** paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive*]

- (2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm* to comply with its obligations under this section when it places an order with, or transmits an order to, that entity for execution;

[**Note:** paragraph 1 of article 45(5) of the *MiFID implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with *COBS 11.2.32R(2)*;

[**Note:** paragraph 2 of article 45(5) of the *MiFID implementing Directive*]

- (4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

[**Note:** first paragraph of article 45(6) of the *MiFID implementing Directive*]

- (5) review the policy annually. This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

[**Note:** second paragraph of article 45(6) of the *MiFID implementing Directive*]

- 11.2.33 G This section is not intended to require a duplication of effort as to best execution between a *firm* which provides the service of reception and transmission of orders or *portfolio management* and any *firm* to which that *firm* transmits its orders for execution.

[**Note:** recital 75 to the *MiFID implementing Directive*]

- 11.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see *COBS* 11.2.30R to *COBS* 11.2.33G) will not apply when the *firm* which provides the service of *portfolio management* and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its *client's* portfolio. In those cases the requirements of this section for *firms* who execute orders apply (see *COBS* 11.2.1R to *COBS* 11.2.29R).

[**Note:** article 45(7) of the *MiFID implementing Directive*]

11.3 Client order handling

General principles

- 11.3.1 R (1) A *firm* which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.

[**Note:** paragraph 1 of article 22(1) of *MiFID*]

- (2) These procedures or arrangements must allow for the execution of otherwise comparable orders in accordance with the time of their reception by the *firm*.

[**Note:** paragraph 2 of article 22(1) of *MiFID*]

- 11.3.2 R A *firm* must satisfy the following conditions when carrying out *client* orders:

- (1) it must ensure that orders executed on behalf of *clients* are promptly and accurately recorded and allocated;
- (2) it must carry out otherwise comparable orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the *client* require otherwise; and
- (3) it must inform a *retail client* about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of

the difficulty.

[**Note:** article 47(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.3 G For the purposes of the provisions of this section, orders should not be treated as otherwise comparable if they are received by different media and it would not be practicable for them to be treated sequentially.

[**Note:** recital 78 to the *MiFID implementing Directive*]

- 11.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order, it must take all reasonable steps to ensure that any *client financial instruments* or *client* funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client*.

[**Note:** article 47(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.5 R A *firm* must not misuse information relating to pending *client* orders, and shall take all reasonable steps to prevent the misuse of such information by any of its *relevant persons*.

[**Note:** article 47(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.6 G Without prejudice to the *Market Abuse Directive*, for the purposes of the *rule* on the misuse of information (see *COBS 11.3.5R*), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that *market makers* or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

[**Note:** recital 78 to the *MiFID implementing Directive*]

Aggregation and allocation of orders

- 11.3.7 R A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:
- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;

- (2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
- (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

[**Note:** article 48(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.8 R If a *firm* aggregates a *client* order with one or more other orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy.

[**Note:** article 48(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

Aggregation and allocation of transactions for own account

- 11.3.9 R A *firm* which has aggregated transactions for own account with one or more *client* orders must not allocate the related trades in a way which is detrimental to a *client*.

[**Note:** article 49(1) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.10 R (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.
- (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[**Note:** article 49(2) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.11 R A *firm* must, as part of its order allocation policy, put in place procedures to prevent the reallocation, in a way that is detrimental to the *client*, of transactions for own account which are executed in combination with *client* orders.

[**Note:** article 49(3) of the *MiFID implementing Directive* and article 19(1) of *MiFID*]

- 11.3.12 G For the purposes of the provisions of this section, the reallocation of

transactions should be considered as detrimental to a *client* if, as an effect of that reallocation, unfair precedence is given to the *firm* or to any particular person.

[**Note:** recital 77 to the *MiFID implementing Directive*]

- 11.3.13 G In this section, carrying out *client* orders includes:
- (1) the *execution of orders on behalf of clients*;
 - (2) the placing of orders with other entities for execution that result from decisions to deal in *financial instruments* on behalf of *clients* when providing the service of *portfolio management*;
 - (3) the transmission of *client* orders to other entities for execution when providing the service of reception and transmission of orders.

11.4 Client limit orders

Obligation to make unexecuted client limit orders public

- 11.4.1 R Unless a *client* expressly instructs otherwise, a *firm* must, in the case of a *client limit order* in respect of shares admitted to trading on a *regulated market* which is not immediately executed under prevailing market conditions, take measures to facilitate the earliest possible execution of that order by making public immediately that *client limit order* in a manner which is easily accessible to other market participants.

[**Note:** article 22(2) of *MiFID*]

- 11.4.2 G In respect of transactions executed between *eligible counterparties*, the obligation to disclose *client limit orders* should only apply where the counterparty is explicitly sending a *limit order* to a *firm* for its execution.

[**Note:** recital 42 to *MiFID*]

How client limit orders may be made public

- 11.4.3 EU An *investment firm* shall be considered to disclose *client limit orders* that are not immediately executable if it transmits the order to a *regulated market* or *MTF* that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow.

[**Note:** article 31 of *MiFID Regulation*]

- 11.4.4 G *MAR 5.8.2EU* sets out the conditions required for an arrangement to make the order public under this section.

Orders that are large in scale

- 11.4.5 R The obligation to make public a *limit order* will not apply to a *limit order* that is large in scale compared with normal market size.
- [**Note:** article 22(2) of *MiFID*]
- 11.4.6 G *MAR 5.7.10EU* and *MAR 5.7.11EU* set out when an order shall be considered large in scale compared with normal market size.

11.5 Record keeping: client orders and transactions

Record keeping of client orders and decisions to deal

- 11.5.1 EU An *investment firm* shall, in relation to every order received from a *client*, and in relation to every decision to deal taken in providing the service of *portfolio management*, immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:
- (1) the name or other designation of the *client*;
 - (2) the name or other designation of any relevant person acting on behalf of the *client*;
 - (3) the details specified in point 4, 6, and in points 16 to 19, of Table 1 of Annex I;
 - (4) the nature of the order if other than buy or sell;
 - (5) the type of the order;
 - (6) any other details, conditions and particular instructions from the *client* that specify how the order must be carried out;
 - (7) the date and exact time of the receipt of the order, or of the decision to deal, by the *investment firm*.

[**Note:** article 7 of *MiFID Regulation*]

Record-keeping of transactions

- 11.5.2 EU Immediately after executing a *client* order, or, in the case of *investment firms* that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, *investment firms* shall record the following details of the transaction in question:
- (1) the name or other designation of the *client*;
 - (2) the details specified in points 2, 3, 4, 6, and in points 16 to 21, of Table 1 of Annex I;
 - (3) the total price, being the product of the unit price and the quantity;

- (4) the nature of the transaction if other than buy or sell;
- (5) the natural person who executed the transaction or who is responsible for the execution.

[**Note:** article 8(1) of *MiFID Regulation*]

11.5.3 EU If an *investment firm* transmits an order to another person for execution, the *investment firm* shall immediately record the following details after making the transmission:

- (1) the name or other designation of the *client* whose order has been transmitted;
- (2) the name or other designation of the person to whom the order was transmitted;
- (3) the terms of the order transmitted;
- (4) the date and exact time of transmission.

[**Note:** article 8(2) of *MiFID Regulation*]

11.5.4 EU Points 2, 3, 4, 6, 16 – 21 of Table 1 of Annex 1 of the MiFID Regulation

2.	Trading day	The trading day on which the transaction was executed.
3.	Trading time	The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
4.	Buy/sell indicator	Identifies whether the transaction was a buy or sell from the perspective of the reporting investment firm or, in the case of a report to a <i>client</i> , of the <i>client</i> .
6.	Instrument identification	This shall consist of: - a unique code to be decided by the competent authority (if any) to which the report is made identifying the <i>financial instrument</i> which is the subject of the transaction; - if the <i>financial instrument</i> in question does not have a unique identification code, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract.
16.	Unit price	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In

		the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
17.	Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included.
18.	Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the transaction.
19.	Quantity notation	An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
20.	Counterparty	<p>Identification of the counterparty to the transaction. That identification shall consist of:</p> <ul style="list-style-type: none"> - where the counterparty is an <i>investment firm</i>, a unique code for that firm, to be determined by the competent authority (if any) to which the report is made; - where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with Article 13(2); - where the counterparty is not an <i>investment firm</i>, a <i>regulated market</i>, an <i>MTF</i> or an entity acting as central counterparty, it should be identified as ‘customer/client’ of the <i>investment firm</i> which executed the transaction.
21.	Venue identification	<p>Identification of the venue where the transaction was executed. That identification shall consist in:</p> <ul style="list-style-type: none"> - where the venue is a trading venue: its unique harmonised identification code; - otherwise: the code ‘OTC’.

11.6 [intentionally blank]

11.7 Personal account dealing

Rule on personal account dealing

- 11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the *Market Abuse Directive* or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him on behalf of the *firm*:
- (1) entering into a *personal transaction* which meets at least one of the following criteria:
 - (a) that *person* is prohibited from entering into it under the *Market Abuse Directive*;
 - (b) it involves the misuse or improper disclosure of that confidential information;
 - (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID*;
 - (2) advising or procuring, other than in the proper course of his employment or contract for services, any other *person* to enter into a transaction in *designated investments* which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
 - (3) disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other *person* if the *relevant person* knows, or reasonably ought to know, that as a result of that disclosure that other *person* will or would be likely to take either of the following steps:
 - (a) to enter into a transaction in designated investments which, if a *personal transaction* of the *relevant person*, would be covered by (1) or a relevant provision;
 - (b) to advise or procure another *person* to enter into such a transaction.

[**Note:** article 12(1) of *MiFID implementing Directive*]

- 11.7.2 R For the purposes of this section, the relevant provisions are:
- (1) the *rules* on *personal transactions* undertaken by *financial analysts* in

COBS 12.2.5R(1) and (2);

- (2) the *rule* on the misuse of information relating to pending *client* orders in COBS 11.3.5R.

11.7.2 G The requirements of this section are without prejudice to article 3(a) of the *Market Abuse Directive* which prohibits any *person* who possesses inside information under article 2 of that directive from disclosing that information to any other *person* unless that disclosure is made in the normal course of the exercise of his employment, profession or duties.

11.7.3 G For the purposes of COBS 11.7.1 R(1)(c), any other obligation of the *firm* under *MiFID* refers to a *firm's* obligations under the *regulatory system* that are not owed to a *customer* and any of the *firm's* obligations under another *EEA States'* implementation of *MiFID* where it operates a *branch* in the *EEA*.

11.7.4 R The arrangements required under this section must in particular be designed to ensure that:

- (1) each *relevant person* covered by this section is aware of the restrictions on *personal transactions*, and of the measures established by the *firm* in connection with *personal transactions* and disclosure, in accordance with this section;
- (2) the *firm*:
 - (a) is informed promptly of any *personal transaction* entered into by a *relevant person*, either by notification of that transaction or by other procedures enabling the *firm* to identify such transactions; or
 - (b) in the case of *outsourcing* arrangements, ensures that the *service provider* to which the activity is *outsourced* maintains a record of *personal transactions* entered into by any *relevant person* and provides that information to the *firm* promptly on request;
- (3) a record is kept of the *personal transaction* notified to the *firm* or identified by it, including any authorisation or prohibition in connection with such a transaction.

[**Note:** article 12(2) of *MiFID implementing Directive*]

Disapplication of rule on personal account dealing

11.7.5 R This section does not apply to the following kinds of *personal transaction*:

- (1) *personal transactions* effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the *relevant person* or other *person* for whose account the transaction

is executed;

- (2) *personal transactions in units or shares* in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the *UCITS Directive* or are subject to supervision under the law of an *EEA State* which requires an equivalent level of risk spreading in their assets, where the *relevant person* and any other *person* for whose account the transactions are effected, are not involved in the management of that undertaking;
- (3) *personal transactions in life policies*.

[**Note:** article 12(3) of *MiFID implementing Directive*]

11.7.6 R For the purposes of this section, a *person* who is not:

- (1) a director, partner or equivalent, manager or *appointed representative* (or, where applicable, *a tied agent*) of the *firm*; or
- (2) a director, partner or equivalent, or manager of any *appointed representative* (or where applicable, *a tied agent*) of the *firm*;

will only be a *relevant person* to the extent that they are involved in the provision of *designated investment business*.

Successive personal transactions

11.7.7 R Where successive *personal transactions* are carried out on behalf of a *person* in accordance with prior instructions given by that *person*, the obligations under this section do not apply:

- (1) separately to each successive transaction if those instructions remain in force and unchanged; or
- (2) to the termination or withdrawal of such instructions, provided that any *financial instruments* which had previously been acquired pursuant to the instructions are not disposed of at the same time as the instructions terminate or are withdrawn.

Obligations under this section do apply in relation to a *personal transaction*, or the commencement of successive *personal transactions*, that are carried out on behalf of the same *person* if those instructions are changed or if new instructions are issued.

[**Note:** recital 17 to *MiFID implementing Directive*]

12 Investment research

12.1 Purpose and application

Purpose

- 12.1.1 G The purpose of this chapter is to implement the provisions of:
- (1) *MiFID* relating to the production and dissemination of *investment research* and *non-independent research*; and
 - (2) the *Market Abuse Directive* relating to the disclosures to be made in, and about, *research recommendations*.

Application: Who?

- 12.1.2 R This chapter applies in relation to:
- (1) *MiFID business* carried on by a *MiFID investment firm*; and
 - (2) *COBS 12.4* applies to all *firms*.

Application: Where?

- 12.1.3 G The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of *COBS 1 App 1*). This means that *COBS 12.2* and *COBS 12.3.4G* also apply to *passported activities* carried on by a *UK MiFID investment firm* from a *branch* in another *EEA state*, but do not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.

12.2 Investment research

Application

- 12.2.1 R This section applies to a *firm* which produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public, under its own responsibility or that of a member of its *group*.

[**Note:** article 25(1) of the *MiFID implementing Directive*]

- 12.2.2 G The concept of dissemination of *investment research* to *clients* or to the public is not intended to include dissemination exclusively to *persons* within the *group* of the *firm*.

[**Note:** recital 33 of the *MiFID implementing Directive*]

Measures and arrangements required for investment research

- 12.2.3 R A *firm* must ensure the implementation of all of the measures for managing conflicts of interest in SYSC 10.1.11R in relation to the *financial analysts* involved in the production of *investment research* and other *relevant persons* whose responsibilities or business interests may conflict with the interests of the *persons* to whom *investment research* is disseminated.

[**Note:** article 25 (1) of the *MiFID implementing Directive*]

- 12.2.4 G *Persons* whose responsibilities or business interests may reasonably be considered to conflict with the interests of the *persons* to whom *investment research* is disseminated include corporate finance personnel and *persons* involved in sales and trading on behalf of *clients* or the *firm*.

[**Note:** recital 30 of the *MiFID implementing Directive*]

- 12.2.5 R A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied:

- (1) if a *financial analyst* or other *relevant person* has knowledge of the likely timing or content of *investment research* which is not publicly available or available to *clients* and cannot readily be inferred from information that is so available, that *financial analyst* or other *relevant person* must not undertake *personal transactions* or trade on behalf of any other *person*, including the *firm*, other than as *market maker* acting in good faith and in the ordinary course of market making or in the execution of an unsolicited *client* order, in *financial instruments* to which the *investment research* relates, or in any *related financial instruments*, until the recipients of the *investment research* have had a reasonable opportunity to act on it;

[**Note:** article 25(2)(a) of the *MiFID implementing Directive*]

- (2) in circumstances not covered by (1), *financial analysts* and any other *relevant persons* involved in the production of *investment research* must not undertake *personal transactions* in *financial instruments* to which the *investment research* relates, or in any *related financial instrument*, contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the *firm's* legal or compliance function;

[**Note:** article 25(2)(b) of the *MiFID implementing Directive*]

- (3) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not accept inducements from those with a material interest in the subject matter of the *investment research*;

[**Note:** article 25(2)(c) of the *MiFID implementing Directive*]

- (4) the *firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not promise issuers favourable research coverage; and

[**Note:** article 25(2)(d) of the *MiFID implementing Directive*]

- (5) issuers, *relevant persons* other than *financial analysts*, and any other *persons* must not, before the dissemination of *investment research*, be permitted to review a draft of the *investment research* for the purpose of verifying the accuracy of factual statements made in that *investment research*, or for any other purpose other than verifying compliance with the *firm's* legal obligations, if the draft includes a recommendation or a target price.

[**Note:** article 25(2)(e) of the *MiFID implementing Directive*]

12.2.5A G *Firms* are reminded that they must also comply with *COBS* 11.7 (Rule on personal account dealing).

12.2.6 G Knowledge by a *financial analyst* or other *relevant person* that the *firm* intends to produce or disseminate *investment research* to its *clients* or to the public (including in circumstances where research material has not yet been written) could constitute knowledge of the likely timing and content of *investment research* under *COBS* 12.2.5R(1).

12.2.7 G For the purposes of *COBS* 12.2.5R(2):

- (1) current recommendations should be considered to be those recommendations contained in *investment research* which have not been withdrawn and which have not lapsed; and

[**Note:** recital 34 of the *MiFID implementing Directive*]

- (2) exceptional circumstances in which *financial analysts* and other *relevant persons* may, with prior written approval, undertake *personal transactions* in *financial instruments* to which *investment research* relates should include those circumstances where, for personal reasons relating to financial hardship, the *financial analyst* or other *relevant person* is required to liquidate a position.

[**Note:** recital 31 of the *MiFID implementing Directive*]

12.2.8 G Small gifts or minor hospitality below a level specified in the *firm's conflicts of interest policy* and mentioned in the description of that policy that is made available to *clients* in accordance with *COBS* 6.1.4R(8) should not be considered as inducements for the purposes of *COBS* 12.2.5R(3).

[**Note:** recital 32 of the *MiFID implementing Directive*]

12.2.9 G A *financial analyst* should not become involved in activities other than the

preparation of *investment research* where such involvement is inconsistent with the maintenance of the *financial analyst's* objectivity. The following should ordinarily be considered as inconsistent with the maintenance of a *financial analyst's* objectivity:

- (1) participating in investment banking activities such as corporate finance business and underwriting; or
- (2) participating in 'pitches' for new business or 'road shows' for new issues of *financial instruments*; or
- (3) being otherwise involved in the preparation of issuer marketing.

[**Note:** recital 36 of the *MiFID implementing Directive*]

Exemption from investment research measures and arrangements

- 12.2.10 R A *firm* which disseminates *investment research* produced by another *person* to the public or to *clients* is exempt from complying with the requirements in *COBS 12.2.3R* and *COBS 12.2.5R* if the following criteria are met:
- (1) the *person* that produces the *investment research* is not a member of the *group* to which the *firm* belongs;
 - (2) the *firm* does not substantially alter the recommendations within the *investment research*;
 - (3) the *firm* does not present the *investment research* as having been produced by it; and
 - (4) the *firm* verifies that the producer of the *investment research* is subject to requirements equivalent to those in *COBS 12.2.3R* and *COBS 12.2.5R* in relation to the production of that *investment research*, or has established a policy setting such requirements.

[**Note:** article 25(3) of the *MiFID implementing Directive*]

Means and timing of publication of investment research

- 12.2.11 G The *FSA* would expect a *firm's conflicts of interest policy* to provide for *investment research* to be published or distributed to its *clients* in an appropriate manner. For example, the *FSA* considers it will be:
- (1) appropriate for a *firm* to take reasonable steps to ensure that its *investment research* is published or distributed only through its usual *distribution channels*; and
 - (2) inappropriate for an *employee* (whether or not a *financial analyst*) to communicate the substance of any *investment research*, except as set out in the *firm's conflicts of interest policy*.
- 12.2.12 G The *FSA* would expect a *firm* to consider whether or not other business

activities of the *firm* could create the reasonable perception that its *investment research* may not be an impartial analysis of the market in, or the value or prospects of, a *financial instrument*. A *firm* would therefore be expected to consider whether its *conflicts of interest policy* should contain any restrictions on the timing of the publication of *investment research*. For example, a *firm* might consider whether it should restrict publication of relevant *investment research* around the time of an investment offering.

Investment research for internal use

- 12.2.13 G The *FSA* considers that the significant conflicts of interest which could arise are likely to mean it is inappropriate for a *financial analyst* or other *relevant person* to prepare *investment research* which is intended firstly for internal use for the *firm's* own advantage, and then for later publication to its *clients* (in circumstances in which it might reasonably be expected to have a material influence on its *clients'* investment decisions).

12.3 Non-independent research

Application

- 12.3.1 R This section applies to a *firm* that produces or disseminates *non-independent research*.

[**Note:** article 24(2) of the *MiFID implementing Directive*]

Labelling of non-independent research

- 12.3.2 R A *firm* which produces or disseminates non-independent research must ensure that it:
- (1) is clearly identified as a marketing communication; and
 - (2) contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it:
 - (a) has not been prepared in accordance with legal requirements designed to promote the independence of *investment research*; and
 - (b) is not subject to any prohibition on dealing ahead of the dissemination of *investment research*.

[**Note:** article 24(2) of the *MiFID implementing Directive*]

- 12.3.3 R The *financial promotion rules* apply to *non-independent research* as though it were a marketing communication.

[**Note:** article 24(2) of the *MiFID implementing Directive*]

Management of conflicts of interest in area of non-independent research

- 12.3.4 G In accordance with SYSC 10, a *firm* will be expected to take reasonable steps to identify and manage conflicts of interest which may arise in the production of *non-independent research*. Situations where conflicts of interest can arise include:
- (1) *relevant persons* trading in *financial instruments* that are the subject of *non-independent research* which they know the *firm* has published or intends to publish before *clients* have had a reasonable opportunity to act on it (other than when the *firm* is acting as *market maker* in good faith and in the ordinary course of market making, or in the execution of an unsolicited *client* order); and
 - (2) preparation of *non-independent research* which is intended firstly for internal use by the *firm* and then for later publication to *clients*.

12.4 Research recommendations: required disclosures

Application

- 12.4.1 R
- (1) This section applies to a *firm* that prepares or disseminates *research recommendations*.
 - (2) This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a *firm*.
 - (3) If a *firm* is a *media firm* subject to equivalent appropriate regulation, only *COBS* 12.4.2G, *COBS* 12.4.4R, *COBS* 12.4.15R and *COBS* 12.4.16R apply.

[**Note:** articles 2(4), 3(4), 5(5) of the *MAD Investment Recommendations Directive*]

- 12.4.2 G Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in *COBS* 12.4.1R(3). Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003.

Use of information barriers

- 12.4.3 G Obligations to disclose information do not require those producing *research recommendations* to breach effective information barriers put in place to prevent and avoid conflicts of interest.

[**Note:** recital 7 of the *MAD Investment Recommendations Directive*]

Fair presentation and disclosure

- 12.4.4 R A *firm* must take reasonable care:
- (1) to ensure that a *research recommendation* produced or disseminated by it is fairly presented; and
 - (2) to disclose its interests or indicate conflicts of interest concerning *relevant investments*.

[**Note:** article 6(5) of the *Market Abuse Directive*]

Identity of producers of recommendations

- 12.4.5 R (1) A *firm* must, in a *research recommendation* produced by it:
- (a) disclose clearly and prominently the identity of the *person* responsible for its production, and in particular:
 - (i) the name and job title of the individual who prepared the *research recommendation*; and
 - (ii) the name of the *firm*; and
 - (b) (where the *firm* is an *investment firm* or a *credit institution*) disclose the identity of the *competent authority* of the *firm*.
- (2) The requirements in (1) may be met for non-written *research recommendations* by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the *firm*.

[**Note:** article 2 of the *MAD Investment Recommendations Directive*]

General standard for fair presentation of recommendations

- 12.4.6 R (1) A *firm* must take reasonable care to ensure that:
- (a) facts in a *research recommendation* are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;
 - (b) its sources for a *research recommendation* are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;
 - (c) all projections, forecasts and price targets in a *research recommendation* are clearly labelled as such and the material assumptions made in producing or using them are indicated; and
 - (d) the substance of its *research recommendations* can be substantiated as reasonable, upon request by the *FSA*.

- (2) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they would be disproportionate.
- (3) A *firm* must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d).

[**Note:** article 3 of the *MAD Investment Recommendations Directive*]

Additional obligations in relation to fair presentation of recommendations

- 12.4.7 R (1) In addition a *firm* must take reasonable care to ensure that, in a *research recommendation*, at least:
- (a) all substantially material sources are indicated, including, if appropriate, the *issuer*, and in particular the *research recommendation* indicates whether the *research recommendation* has been disclosed to that *issuer* and amended following this disclosure before its dissemination;
 - (b) any basis of valuation or methodology used to evaluate a *security*, a *derivative* or an *issuer*, or to set a price target for a *security* or a *derivative*, is adequately summarised;
 - (c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the *security* or *derivative* to which the *research recommendation* relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
 - (d) reference is made to the planned frequency, if any, of updates of the *research recommendation* and to any major changes in the coverage policy previously announced;
 - (e) the date at which the *research recommendation* was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any *security* or *derivative* price mentioned; and
 - (f) if the substance of a *research recommendation* differs from the substance of an earlier *research recommendation*, concerning the same *security*, *derivative* or *issuer* issued during the 12-month period immediately preceding its release, this change and the date of the earlier *research recommendation* are indicated clearly and prominently.
- (2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that

information on an appropriate internet site of the *firm*) provided that there has been no change in the methodology or basis of valuation used.

- (3) In the case of a non-written *research recommendation*, the requirements of (1) do not apply to the extent that they would be disproportionate.

[**Note:** article 4 of the *MAD Investment Recommendations Directive*]

- 12.4.8 G The disclosures required under *COBS 12.4.7R(1)(e)* and (f) may, if the *firm* so chooses, be made by graphical means (for example by use of a line graph).

General standard for disclosure of interests and conflicts of interest

- 12.4.9 R (1) A *firm* must disclose, in a *research recommendation*:
- (a) all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular a significant financial interest in any *relevant investment* which is the subject of the *research recommendation*, or a significant conflict of interest with respect to a *relevant issuer*; and
 - (b) relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the *firm* who was involved in preparing the substance of the *research recommendation*, including, in particular, for a *firm* which is an *investment firm*, disclosure of whether his remuneration is tied to investment banking transactions performed by the *firm* or any *affiliated company*.
- (2) If the *firm* is a legal person, the information to be disclosed in accordance with (1) must at least include the following:
- (a) any interests or conflicts of interest of the *firm* or of an *affiliated company* that are accessible, or reasonably expected to be accessible, to the *persons* involved in the preparation of the substance of the *research recommendation*; and
 - (b) any interests or conflicts of interest of the *firm* or of *affiliated companies* known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* prior to its dissemination, other than *persons* whose only access to the *research recommendation* is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under this section.
- (3) If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the *research recommendation* distributed, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosures can be directly and

easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*).

- (4) The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they are disproportionate.

[**Note:** article 5 of the *MAD Investment Recommendations Directive*]

Additional obligations for producers of research recommendations in relation to disclosure of interests or conflicts of interest

- 12.4.10 R (1) A *research recommendation* produced by a *firm* must disclose clearly and prominently the following information on its interests and conflicts of interest:
- (a) major shareholdings that exist between it or any *affiliated company* on the one hand and the *relevant issuer* on the other hand, including at least:
 - (i) shareholdings exceeding 5% of the total issued share capital in the *relevant issuer* held by the *firm* or any *affiliated company*; or
 - (ii) shareholdings exceeding 5% of the total issued share capital of the *firm* or any *affiliated company* held by the *relevant issuer*;
 - (b) any other financial interests held by the *firm* or any *affiliated company* in relation to the *relevant issuer* which are significant in relation to the *research recommendation*;
 - (c) if applicable, a statement that the *firm* or any *affiliated company* is a *market maker* or liquidity provider in the securities of the *relevant issuer* or in any related *derivatives*;
 - (d) if applicable, a statement that the *firm* or any *affiliated company* has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of securities of the *relevant issuer* or in any related *derivatives*;
 - (e) if applicable, a statement that the *firm* or any *affiliated company* is party to any other agreement with the *relevant issuer* relating to the provision of investment banking services, provided that:
 - (i) this would not entail the disclosure of any confidential commercial information; and
 - (ii) the agreement has been in effect over the previous 12 months or has given rise during the same period to a payment or to the promise of payment; and

- (f) if applicable, a statement that the *firm* or any *affiliated company* is party to an agreement with the *relevant issuer* relating to the production of the *research recommendation*.
- (2) A *firm* must disclose, in general terms, in the *research recommendation* the effective organisational and administrative arrangements set up within the *firm* for the prevention and avoidance of conflicts of interest with respect to *research recommendations*, including information barriers.
- (3) In the case of an *investment firm* or a *credit institution*, if a legal or natural *person* working for the *firm* who is involved in the preparation of a *research recommendation*, receives or purchases *shares* of the *relevant issuer* prior to a public offering of those *shares*, the price at which the *shares* were acquired and the date of acquisition must also be disclosed in the *research recommendation*.
- (4) A *firm*, which is an *investment firm* or a *credit institution*, must publish the following information on a quarterly basis, and must disclose it in its *research recommendations*:
- (a) the proportion of all *research recommendations* published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and
- (b) the proportion of *relevant investments* in each of these categories, issued by *issuers* to which the *firm* supplied material investment banking services during the previous 12 months.
- (5) If the requirements under (1) to (4) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*, or, if relevant, to the *firm's conflicts of interest policy*).
- (6) In the case of non-written *research recommendations*, the requirements of (1) do not apply to the extent that they are disproportionate.

[**Note:** article 6 of the *MAD Investment Recommendations Directive*]

- 12.4.11 G Nothing in *COBS* 12.4.10R(1)(a) prevents a *firm* from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by *COBS* 12.4.10R(1)(a).
- 12.4.12 G *COBS* 12.4.10R(1)(a) and (b) only require a *firm* to aggregate its shareholdings with those of *affiliated companies* if they act in concert in relation to those shareholdings.
- 12.4.13 G In relation to companies limited by shares and incorporated in Great Britain,

the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985.

- 12.4.14 G The *FSA* considers that it is important for the proportions published in compliance with *COBS* 12.4.10R(4) to be consistent and meaningful to the recipients of the *research recommendations*. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended.

Identity of disseminators of recommendations

- 12.4.15 R If a *firm* disseminates a *research recommendation* produced by a third party, the *research recommendation* must identify the *firm* clearly and prominently.

[**Note:** article 7 of the *MAD Investment Recommendations Directive*]

General standard for dissemination of third party recommendations

- 12.4.16 R (1) If a *research recommendation* produced by a third party is substantially altered before dissemination by a *firm*:
- (a) the disseminated material must clearly describe that alteration in detail; and
 - (b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in *COBS* 12.4.5R to *COBS* 12.4.11G on producers must be met by the *firm*, to the extent of the substantial alteration.
- (2) A *firm* which disseminates a substantially altered *research recommendation* must have a formal written policy so that the *persons* receiving the information may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.
- (3) If a *firm* disseminates a summary of a *research recommendation* produced by a third party, it must:
- (a) ensure that the summary is fair, clear and not misleading;
 - (b) identify the source *research recommendation*; and
 - (c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source *research recommendation* can be directly and easily accessed by the public.

- (4) Paragraphs (1) and (2) do not apply to news reporting on *research recommendations* produced by a third party where the substance of the *research recommendation* is not altered.

[**Note:** article 8 of the *MAD Investment Recommendations Directive*]

Additional obligations for investment firms and credit institutions disseminating third party recommendations

- 12.4.17 R If a *firm*, which is an *investment firm* or a *credit institution*, disseminates a *research recommendation* produced by a third party:
- (1) the name of the *competent authority* of the *firm* must be clearly and prominently indicated on the disseminated material;
 - (2) if the producer of the *research recommendation* has not already disseminated it, the requirements in *COBS 12.4.10R* must be met by the *firm* as if it had produced the *research recommendation* itself; and
 - (3) if the *firm* has substantially altered the *research recommendation*, the requirements laid down in *COBS 12.4.4R* to *COBS 12.4.10R* must be met by the *firm* as if it had produced the *research recommendation* itself.

[**Note:** article 9 of the *MAD Investment Recommendations Directive*]

13 Preparing product information

13.1 The obligation to prepare product information

13.1.1 R A *firm* must prepare a *key features document* for each *packaged product*, *cash-deposit ISA* and *cash-deposit CTF* it produces, in good time before that *document* has to be provided.

13.1.2 R A *firm* must prepare the *Consolidated Life Directive information* for each *life policy* it effects, in good time before that information has to be provided.

[**Note:** article 36(1) of, and Annex III to, the *Consolidated Life Directive*]

Exceptions

13.1.3 R A *firm* is not required to prepare:

- (1) a *document*, if another *firm* has agreed to prepare it; or
- (2) a *key features document* for:
 - (a) a *unit* in a *simplified prospectus scheme*; or
 - (b) a *unit* in an *EEA simplified prospectus scheme*; or
 - (c) a *unit* in a *key features scheme*, if it prepares a *simplified prospectus*, or the information appears with due prominence in another *document*, instead; or
 - (d) a *stakeholder pension scheme*, or *personal pension scheme* that is not a *personal pension policy*, if the information appears with due prominence in another *document*; or
- (3) [intentionally blank]; or
- (4) the *Consolidated Life Directive information*, if the *policy* is a *reinsurance contract* or a *pure protection contract*.

13.1.4 R A single *document* prepared for more than one *key features scheme*, *simplified prospectus scheme* or *EEA simplified prospectus scheme* may combine more than one *key features document*, *simplified prospectus* or *EEA simplified prospectus*, or any combination of them, if the *schemes* are offered through a *funds supermarket service* and the *document* clearly describes the difference between the *schemes*.

13.2 Product information: production standards, form and contents

13.2.1 R The *documents* and information prepared in accordance with the *rules* in this

chapter must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that is capable of meeting the *website conditions*.

[**Note:** article 29(4) of the *MiFID implementing Directive*]

- 13.2.2 R A *key features document* must also:
- (1) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;
 - (2) display the *firm's* brand at least as prominently as any other;
 - (3) include the 'keyfacts' logo in a prominent position at the top of the *document*; and
 - (4) include the following statement in a prominent position:

"The Financial Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference".
- 13.2.3 G The *Consolidated Life Directive information* can be included in a *key features document* or any other *document*.
- 13.2.4 R The *documents* and information prepared in accordance with the *rules* in this chapter must not include anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that produced, or will produce, the product.

13.3 Contents of a key features document

General requirements

- 13.3.1 R A *key features document* must:
- (1) include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a *retail client* to be able to make an informed decision about whether to proceed; and
 - (2) explain:
 - (a) the arrangements for handling complaints about the product;
 - (b) that compensation might be available from the *FSCS* if the

firm cannot meet its liabilities in respect of the product (if applicable);

- (c) that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a *client* may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent;
- (d) (for a *CTF*) that *stakeholder CTFs*, *cash-deposit CTFs* and *share CTFs* are available and which type the *firm* is offering; and
- (e) (for a *personal pension scheme*) clearly and prominently, that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer.

Additional requirements for packaged products

13.3.2 R Table

A key features document for a packaged product must:		
(1)	include the title: 'key features of the [name of product]';	
(2)	describe the product in the order of the following headings, and by giving the following information under those headings:	
	Heading	Information to be given
	'Its aims'	A brief description of the product's aims
	'Your commitment' or 'Your investment'	What a <i>retail client</i> is committing to or investing in and any consequences of failing to maintain the commitment or investment
	'Risks'	The material risks associated with the product, including a description of the factors that may have an adverse effect on performance or are material to the decision to invest
	'Questions and Answers'	(in the form of questions and answers) the principle terms of the product, what it will do for a <i>retail client</i> and any other information necessary to enable a <i>retail client</i> to make an informed decision.

COBS 13 Annex 1R: The Consolidated Life Directive Information

This annex belongs to COBS 13.1.2R (The Consolidated Life Directive Information)

Information about the firm	
(1)	The <i>firm's</i> name and its legal form;
(2)	The name of the <i>EEA State</i> in which the head office and, where appropriate, agency or branch concluding the contract is situated; and
(3)	The address of the head office and, where appropriate, agency or branch concluding the contract.
Information about the commitment	
(4)	Definition of each benefit and each option;
(5)	Term of the contract;
(6)	Means of terminating the contract;
(7)	Means of payment of <i>premiums</i> and duration of payments;
(8)	Means of calculation and distribution of bonuses;
(9)	Indication of surrender and paid-up values and the extent to which they are guaranteed;
(10)	Information on the <i>premiums</i> for each benefit, both main benefits and supplementary benefits, where appropriate;
(11)	For unit-linked <i>policies</i> , definition of the units to which the benefits are linked;
(12)	Indication of the nature of the underlying assets for unit-linked <i>policies</i> ;
(13)	Arrangements for application of the cooling-off period;
(14)	General information on the tax arrangements applicable to the type of <i>policy</i> ;
(15)	The arrangements for handling complaints concerning contracts by <i>policyholders</i> , lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings; and
(16)	Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the <i>insurer</i> proposes to choose.
[Note: article 36(1) of, and Annex III to, the <i>Consolidated Life Directive</i>]	

14 Providing product information

14.1 Interpretation

14.1.1 R In this chapter:

- (1) '*retail client*' includes the trustee or *operator* of a *stakeholder pension scheme* or *personal pension scheme* and the trustee of a *money purchase occupational pension scheme*; and
- (2) 'sell' includes 'sell, personally recommend or arrange the sale of' in relation to a *designated investment* and equivalent activities in relation to a *cash-deposit ISA* and *cash-deposit CTF*.

14.2 Providing product information

[intentionally blank]

14.3 Information about designated investments

Application

14.3.1 R This section applies to a *firm* in relation to:

- (1) *MiFID* or *equivalent third country business*; and
- (2) the following *regulated activities* when carried on for a *retail client*:
 - (a) making a *personal recommendation* about a *designated investment*; or
 - (b) *managing investments* that are *designated investments*; or
 - (c) *arranging (bringing about)* or *executing a deal* in a *warrant* or *derivative*; or
 - (d) engaging in *stock lending activity*.

Providing a description of the nature and risks of designated investments

14.3.2 R A *firm* must provide a *client* with a general description of the nature and risks of *designated investments*, taking into account, in particular, the *client's* categorisation as a *retail client* or a *professional client*. That description must:

- (1) explain the nature of the specific type of *designated investment*

concerned, as well as the risks particular to that specific type of *designated investment*, in sufficient detail to enable the *client* to take investment decisions on an informed basis; and

- (2) include, where relevant to the specific type of *designated investment* concerned and the status and level of knowledge of the *client*, the following elements:
- (a) the risks associated with that type of *designated investment* including an explanation of leverage and its effects and the risk of losing the entire investment;
 - (b) the volatility of the price of *designated investments* and any limitations on the available market for such investments;
 - (c) the fact that an investor might assume, as a result of transactions in such *designated investments*, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the *designated investments*; and
 - (d) any margin requirements or similar obligations, applicable to *designated investments* of that type.

[**Note:** article 31(1) and (2) of the *MiFID implementing Directive*]

- 14.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Directive*, that *firm* must inform the *retail client* where that prospectus is made available to the public.

[**Note:** article 31(3) of the *MiFID implementing Directive*]

- 14.3.4 R Where the risks associated with a *designated investment* composed of two or more different *designated investments* or services are likely to be greater than the risks associated with any of the components, a *firm* must provide an adequate description of the components of that *designated investment* and the way in which its interaction increases the risks.

[**Note:** article 31(4) of the *MiFID implementing Directive*]

- 14.3.5 R In the case of a *designated investment* that incorporates a guarantee by a third party, the information about the guarantee must include sufficient detail about the guarantor and the guarantee to enable the *retail client* to make a fair assessment of the guarantee.

[**Note:** article 31(5) of the *MiFID implementing Directive*]

Satisfying the provision rules

- 14.3.6 G (1) A *firm* need not treat each of several transactions in respect of the same type of *financial instrument* as a new or different service and so does not need to comply with the provision rules (COBS 14.3.2R to COBS 14.3.5R) in relation to each transaction.
- (2) But a *firm* should ensure that the *client* has received all relevant information in relation to a transaction, such as details of product charges that differ from those already disclosed.

[**Note:** in respect of (1), recital 50 to to the *MiFID implementing Directive*]

- 14.3.7 G Providing a *key features document* or *simplified prospectus* may satisfy the requirements of the *rules* in this section.

Product information: form

- 14.3.8 R The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that is capable of meeting the *website conditions*.

[**Note:** article 29(4) of the *MiFID implementing Directive*]

The timing rules

- 14.3.9 R (1) The information to be provided in accordance with the *rules* in this section must be provided in good time before a *firm* carries on *designated investment business* or *ancillary services* with or for a *retail client*.
- (2) A *firm* may provide that information immediately after it begins to carry on that business if:
- (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a means of distance communication which prevented the *firm* from complying with that *rule*; and
 - (b) in any case where the *rule* on voice telephony communications (COBS 5.1.12R) does not otherwise apply, the *firm* complies with that *rule* as if the *client* was a *consumer*.

[**Note:** article 29(2) and (5) of the *MiFID implementing Directive*]

Keeping the client up-to-date

- 14.3.10 R A *firm* must notify a *client* in good time about any material change to the information provided under the *rules* in this section which is relevant to a service that the *firm* is providing to that *client*. That notification must be given in a *durable medium* if the information to which it relates is given in a

durable medium.

[**Note:** article 29(6) of the *MiFID implementing Directive*]

Information about UCITS schemes

14.3.11 R If a *firm* provides a *client* with a *simplified prospectus* or an *EEA simplified prospectus* that meets the requirements of article 28 of the *UCITS Directive*, it will have provided appropriate information for the purpose of the requirement to disclose information on:

- (1) *designated investments* and investment strategies (*COBS 2.2.2R(1)(b)*); and
- (2) costs and associated charges (*COBS 2.2.2R(1)(d)* and *COBS 7.1.8R*);

in relation to the costs and associated charges in respect of the *UCITS scheme* itself, including the exit and entry commissions.

[**Note:** article 34 of the *MiFID implementing Directive*]

14.3.12 G A *simplified prospectus* provides sufficient information in relation to the costs and associated charges in respect of the *UCITS scheme* itself. However, a *firm* distributing *units* in a *UCITS scheme* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS scheme*.

[**Note:** recital 55 to the *MiFID implementing Directive*]

15 Cancellation

15.1 Application

- 15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:
- (1) most providers of retail financial products that are based on *deposits* or *designated investments*; and
 - (2) *firms* that enter into *distance contracts* with *consumers* that relate to *accepting deposits* or *designated investment business*.

15.2 The right to cancel

Cancellable contracts

- 15.2.1 R A *consumer* has a right to cancel any of the following contracts with a *firm*:

Cancellable contract	Cancellation period	Supplementary provisions
Life and pensions:		
<ul style="list-style-type: none">• a <i>life policy</i> (including a <i>pension annuity</i>, a <i>pension policy</i> or within a <i>wrapper</i>)• a contract to join a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i>• a <i>pension contract</i>• a contract for a <i>pension transfer</i>• a contract to vary an existing <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> by exercising, for the first time, an option to make <i>income withdrawals</i>,	30 calendar days	<p>For a <i>life policy</i> effected when opening or transferring a <i>wrapper</i>, the 30 calendar day right to cancel applies to the entire arrangement</p> <p>For a contract to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> within a <i>pension wrapper</i>, the cancellation right for 'non-life/pensions (advised but not at a distance)' below may apply</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>

Cash deposit ISAs:		
• a contract for a <i>cash deposit ISA</i>	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)
Non-life/pensions (advised but not at a distance): a non- <i>distance contract</i> ...		
<ul style="list-style-type: none"> • to <i>buy</i> a <i>unit</i> in a <i>regulated collective investment scheme</i> (including within a <i>wrapper</i> or <i>pension wrapper</i>) • to open or transfer a child trust fund (<i>CTF</i>) • to open or transfer an <i>ISA</i> or <i>PEP</i> • for an <i>Enterprise Investment Scheme</i> 	14 calendar days	<p>These rights arise only following a <i>personal recommendation</i> of the contract (by the <i>firm</i> or any other <i>person</i>)</p> <p>For a <i>unit</i> bought when opening or transferring a <i>wrapper</i> or <i>pension wrapper</i>, the 14 calendar day right to cancel applies to the entire arrangement</p> <p>Exemptions may apply (see COBS 15 Annex 1)</p>
Non-life/pensions (at a distance): a <i>distance contract</i> , relating to ...		
<ul style="list-style-type: none"> • <i>accepting deposits</i> • <i>designated investment business</i> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

[**Note:** article 35 of the *Consolidated Life Directive*, article 6(1) of the *Distance Marketing Directive*]

- 15.2.2 G (1) If the same transaction attracts more than one right to cancel, the *firm* should apply the longest cancellation period applicable.
- (2) A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.
- (3) If the right to cancel applies to a *wrapper* or *pension wrapper* and underlying investments, the *firm* may give the *consumer* the option of cancelling individual components separately if it wishes.

Start of cancellation period

- 15.2.3 R The cancellation period begins:
- (1) either from the day of the conclusion of the contract, except in respect of contracts relating to *life policies* where the time limit will begin from the

time when the *consumer* is informed that the contract has been concluded;
or

- (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[**Note:** article 35 of the *Consolidated Life Directive*, article 6(1) of the *Distance Marketing Directive*]

- 15.2.4 G If a *firm* does not give a *consumer* the required information about the right to cancel and other matters, the contract remains cancellable and the *consumer* will not be liable for any *shortfall*.

Disclosing a right to cancel or withdraw

- 15.2.5 R (1) The *firm* must disclose to the *consumer*:
- (a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and
- (b) in a *durable medium*;
- the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.
- (2) This *rule* applies only where a *consumer* would not otherwise receive similar information under a *rule* in this sourcebook from the *firm* or another *authorised person* (such as under the *distance marketing disclosure rules* or the ‘Providing product information’ chapter).

15.3 Exercising a right to cancel

Notice of exercise

- 15.3.1 R If a *consumer* exercises his right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if in a durable medium available and accessible to the recipient, is dispatched before the deadline expires.

[**Note:** article 6 (6) of the *Distance Marketing Directive*]

- 15.3.2 R A *consumer* need not give any reason for exercising his right to cancel.

[**Note:** article 6(1) of the *Distance Marketing Directive*]

- 15.3.3 G The *firm* should accept any indication that the *consumer* wishes to cancel as long as it satisfies the conditions for notification. In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as the date when the notification was dispatched.

Record keeping

- 15.3.4 R The *firm* must make adequate records concerning the exercise of a right to cancel or withdraw and retain them:
- (1) indefinitely in relation to a *pension transfer, pension opt-out* or *FSAVC*;
 - (2) for at least five years in relation to a *life policy, pension contract, personal pension scheme* or *stakeholder pension scheme*; and
 - (3) for at least three years in any other case.

15.4 Effects of cancellation

Termination of contract

- 15.4.1 R By exercising a right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 15.4.2 R
- (1) This *rule* applies in relation to a *distance contract* that is not a *life policy, personal pension scheme, cash deposit ISA* or *CTF*.
 - (2) When the *consumer* exercises his right to cancel he may be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract. The performance of the contract may only begin after the *consumer* has given his approval. The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;
 - (b) in any case be such that it could be construed as a penalty.
 - (3) The *firm* may not require the *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable, in conformity with the *distance marketing disclosure rules*. However, in no case may the *firm* require such payment if it has commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive*]

Shortfall

- 15.4.3 R (1) The *firm* may require the *consumer* to pay for any loss under a contract caused by market movements that the *firm* would reasonably incur in cancelling it. The period for calculating the loss shall end on the day on which the *firm* receives the notification of cancellation.
- (2) This *rule*:
- (a) does not apply for a *distance contract* or for a contract established on a regular or recurring premium or payment basis; and
- (b) only applies if the *firm* has complied with its obligations to disclose information concerning the right to cancel.

Obligations on cancellation

- 15.4.4 R The *firm* must, without any undue delay and no later than within 30 calendar days, return to the *consumer* any sums it has received from him in accordance with the *distance contract*, except for any amount that the *consumer* may be required to pay under this section. This period shall begin from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(4) of the *Distance Marketing Directive*]

- 15.4.5 R The *firm* is entitled to receive from the *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive*]

- 15.4.6 R Any sums payable under this section on cancellation of a contract are owed as simple contract debts and may be set off against each other.

15.5 Special situations

Contracts with trustees and operators of pension schemes

- 15.5.1 R In this chapter:
- (1) references to a *consumer* include the trustees of an *occupational pension scheme* and the trustees or *operator* of a *personal pension scheme* or *stakeholder pension scheme*; and
- (2) any contract with such *persons* is to be treated as a *non-distance contract*.

Other legislation including for child trust funds

- 15.5.2 R This chapter applies as modified to the extent necessary for it to be compatible

with any enactment.

15.5.3 G For example:

- (1) the *Child Trust Fund Regulations* contain provisions relevant to cancellation rights; in particular they provide that any uninvested sums held in connection with a *CTF* should be held in a designated bank account; and the effect of conditions 4(a) and (b) in regulation 5 of the *Child Trust Fund Regulations* (applicable to non-*HMRC-allocated CTFs*) is that a *CTF* opened by way of *distance contract* has a cancellable management agreement in all cases and the *CTF* cannot be opened until the cancellation period has expired, therefore the price fluctuation exemption is not engaged;
- (2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*; the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention.

Automatic cancellation of an attached distance contract

15.5.4 G When a *consumer* cancels a *distance contract* under this chapter, his notice may also operate to cancel any attached contract which is also a distance financial services contract unless the *consumer* gives notice that cancellation of the main contract is not to operate to cancel the attached contract (see regulation 12 of the *Distance Marketing Regulations*). Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

Appointed representatives

15.5.5 G This chapter does not act to cancel *distance contracts* entered into by an *appointed representative* as principal such as a *distance contract* to provide advisory services, but the *Distance Marketing Regulations* (regulations 9 to 13, see regulation 4(3)) may have this effect.

Maxi-ISAs

15.5.6 G Where a *life policy* or *unit* bought on opening or transferring an *ISA* is cancellable, the right to cancel, or substitute right to withdraw, applies to the entire arrangement. For example, a maxi-ISA comprising a *life policy* in the stocks and shares component and a *cash component* would be cancellable as a whole with a cancellation period of 30 calendar days. However, a *firm* is free to give the *consumer* the option of cancelling individual components separately with the same cancellation period if it wishes.

15 Annex 1 Exemptions from the right to cancel

Exemptions for life policies and pension contracts (non-distance)

- 1.1 R There is no right to cancel a non-*distance contract* that is a *life policy* or a *pension contract*:
- (1) that is a *pension fund management* policy; or
 - (2) that relates to or is associated with securing benefits under a *defined benefits pension scheme*; or
 - (3) for a term of six months or less, unless it is a single *premium* contract where the designated retirement date is within six months of the date of the policy; or
 - (4) that is effected by the trustees of an *occupational pension scheme* or the employer, trustees or *operator* of a *stakeholder pension scheme* and that represents a:
 - (a) *pension buy-out contract*; or
 - (b) purchase of a without-profits deferred *pension annuity*; or
 - (c) *defined benefits pension scheme* or a single *premium* payment to any *occupational pension scheme* with a pooled fund (that is, underlying investments are not earmarked for individual scheme members); or
 - (d) purchase made to insure and secure members' pension benefits under a *money-purchase occupational scheme* or *stakeholder pension scheme* (unless it is the master, first or only policy); or
 - (5) if the *consumer*, at the time he signs the application, is *habitually resident*:
 - (a) in an *EEA State* other than the *UK* (but that state's rules may apply); or
 - (b) outside the *EEA* and is not present in the *UK*.
- 1.2 G There is no right to cancel a non-*distance contract* for a *traded life policy*. This is because the 30-day right to cancel a *life policy* (in *COBS 15.2.1R*) applies at the point of conclusion of the *life policy* not on its assignment. However, there may be a 14-day right to cancel a *distance contract* for a *traded life policy* unless an exemption applies, since that *distance contract* relates to *designated investment business*.

Exemption for SIPPs

- 1.3 R There is no right to cancel a contract to join a *SIPP* whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel.
- 1.4 G If a *consumer* requests that a *firm* complete a transaction to join a *SIPP* before the expiry of the cancellation period, the *firm* should, in having regard to the information needs of the *consumer*, make him aware that he will lose his right to cancel and satisfy itself on reasonable grounds that the customer understands the cost and other implications.

Exemptions for certain pension arrangements (the 'cancellation substitute')

- 1.5 R There is no right to cancel:
- (1) a contract for or funded (wholly or in part) from a *pension transfer*; or
 - (2) a *pension annuity* due to commence within a year and a day of the contract or a variation of one with similar commencement; or
 - (3) the exercise of an option to make *income withdrawals*;
- to the extent that the right to cancel is replaced with a pre-contract right to withdraw the *consumer's* offer of at least 14 calendar days. The combined period of the right to withdraw and any residual right to cancel must be at least 30 calendar days.

Exemption for pension compensation

- 1.6 R There is no right to cancel a *pension annuity*, a *pension policy*, a *pension contract*, or a contract to join a *personal pension scheme* or *stakeholder pension scheme*, which in each case is funded (wholly or in part) from payments derived from compensation or redress following a review undertaken in relation to a complaint.

Exemption for annuities after death of the life assured

- 1.7 R A *firm* need not accept notification of cancellation of a *pension annuity* contract if the life (or any of the lives) assured under it has died before notice is given.

Exemptions for units (non-distance)

- 1.8 R There is no right to cancel a non-*distance contract* to buy a *unit* in a *regulated collective investment scheme*:
- (1) if the *unit* is not purchased from the scheme's *operator*, from the *operator's associate* acting as provider of a *wrapper*; or
 - (2) if the *consumer* is not a *retail client*; or

- (3) if the contract represents an exchange of *units* between *sub-funds* of the same *umbrella*; or
- (4) if the contract relates to a change between *units* of one class and *units* of another class in the same *scheme*; or
- (5) if the contract relates to a *recognised scheme* and is with an *operator* who is not an *authorised person* or carrying on business in the *UK*; or
- (6) if the *consumer* is not *habitually resident* in the *UK* at the date of the offer of the contract; or
- (7) if the *firm* has reasonable grounds for assuming that no *personal recommendation* of the contract was provided by anyone carrying on *designated investment business* in the *UK*; or
- (8) for the second and subsequent purchases of *units* under recurring single payment *unit* savings plans, provided that:
 - (a) the intention or option to make a series of single payments is disclosed at the outset (for example in pre-contract disclosure documents); or
 - (b) the intention is evidenced (for example, by the establishment of a direct debit mandate).

Exemptions for ISAs, PEPs, CTFs and EISs (non-distance)

1.9 R There is no right to cancel a non-*distance contract*:

- (1) to open or transfer an *ISA* (mini or maxi and including all components whatever the underlying investment, but not a *cash deposit ISA* or an *ISA* containing a *life policy*); or
- (2) to open or transfer a *CTF*; or
- (3) to transfer a *PEP*; or
- (4) for an *EIS*;

provided that:

- (5) (for an *EIS*, *ISA* or *PEP*) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer's* offer; or
- (6) the contract relates to an *EIS* or a non-*packaged product ISA*, *PEP* or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or
- (7) (for an *ISA* or *EIS*) the contract entered into is a second or subsequent *ISA* or *EIS* on substantially the same terms (such as mini-to-mini *ISA* or

maxi-to-maxi *ISA*) as an *ISA* or *EIS* purchased from the same *ISA manager* or *EIS manager* in the previous tax year.

Exemptions for distance contracts (all products and services)

- 1.10 R There is no right to cancel a *distance contract*:
- (1) whose price depends on fluctuations in the financial market outside the *firm's* control, which may occur during the cancellation period, such as:
 - (a) foreign exchange; or
 - (b) money market instruments; or
 - (c) transferable securities; or
 - (d) units in collective investment undertakings; or
 - (e) financial-futures contracts, including equivalent cash-settled instruments; or
 - (f) forward interest-rate agreements; or
 - (g) interest-rate, currency and equity swaps; or
 - (h) options to acquire or dispose of any instruments referred to above including cash-settled instruments and options on currency and on interest rates; or
 - (2) whose performance has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel; or
 - (3) to *deal as agent, advise* or *arrange* if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[**Note:** article 6(2) and recital 19 of the *Distance Marketing Directive*]

- 1.11 R In the case of *distance contracts* for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the right to cancel shall apply only to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

16 Reporting information to clients

16.1 General client reporting requirement

- 16.1.1 R A *firm* must ensure in relation to *MiFID* or *equivalent third country business* that a *client* receives adequate reports on the services provided to it by the *firm*. The reports must include, where applicable, the costs associated with the transactions and services undertaken by the *firm* on behalf of the *client*.

[Note: article 19(8) of *MiFID*]

16.2 Occasional reporting

Execution of orders other than when managing investments

- 16.2.1 R (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
- (a) promptly provide the *client*, in a *durable medium*, with the essential information concerning the execution of the order;
 - (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* as is applicable:
 - (i) as soon as possible and no later than the first *business day* following that execution; or
 - (ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
 - (c) supply a *client*, on request, with information about the status of his order.
- (2) Paragraph (1) does not apply to a *firm managing investments*.
- (3) Paragraph (1)(b) does not apply if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *client* by another *person*.
- (4) Paragraphs (1)(a) and (b) do not apply to an order executed on behalf of a *client* that relates to a bond funding a mortgage loan agreement with the *client*. The report on the transaction must be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.
- (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares*

in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:

- (a) comply with paragraph (1)(b) in relation to that order; or
- (b) provide the *client* at least once every six months with such of the *trade confirmation information* as is applicable in relation to each transaction in that series carried out in the relevant reporting period.

[**Note:** article 40 paragraphs (1) to (4) of the *MiFID implementing Directive*]

16.2.2 G The requirement concerning orders relating to bonds funding a mortgage loan agreement is unlikely to be relevant to products in the *United Kingdom* market.

16.2.3 R For the purposes of calculating the unit price in the *trade confirmation information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[**Note:** article 40(4) of the *MiFID implementing Directive*]

Guidance on the requirements

16.2.4 G Where a *firm* executes an order in tranches, the *firm* may, where appropriate, indicate the trading time and the execution venue in a way that is consistent with this, such as, "multiple". In accordance with the *client's best interests rule*, a *firm* should provide additional information at the *client's* request.

16.2.5 G In accordance with *COBS 2.4.9R*, a *firm* may dispatch a confirmation to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

Special cases

16.2.6 R In relation to business that is not *MiFID* or *equivalent third country business*, a *firm* need not despatch a confirmation if:

- (1) the *firm* has agreed with the *client* (in the case of a *retail client*, in writing and with the *client's* informed consent) that confirmations need not be supplied, either generally or in specified circumstances; or
- (2) the *designated investment* is a *life policy* or a *personal pension scheme* (other than a *SIPP*); or
- (3) the *designated investment* is held within a *CTF* and the annual statement provided under the *CTF Regulations* includes the information that would have been contained in a confirmation under this section (other than information that has since become irrelevant).

Record keeping: occasional reporting

- 16.2.7 R A *firm* must retain a copy of any confirmation despatched to a *client* under this section:
- (1) for *MiFID* or *equivalent third country business*, for a period of at least five years; or
 - (2) for business that is not *MiFID* or *equivalent third country business*, for a period of at least three years;

from the date of despatch.

[**Note:** see article 51(3) of the *MiFID implementing Directive*]

16.3 Periodic reporting

Provision by the firm and contents

- 16.3.1 R (1) If a *firm* is *managing investments* on behalf of a *client*, it must provide the *client* with a *periodic statement* in a *durable medium* unless such a statement is provided by another *person*.
- (2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* as is applicable.

[**Note:** article 41(1) and (2) of the *MiFID implementing Directive*]

- 16.3.2 R (1) In the case of a *retail client*, the *periodic statement* must be provided once every six *months*, except in the following cases:
- (a) if the *retail client* so requests, the *periodic statement* must be provided every three *months*;
 - (b) if the *retail client* elects to receive information about executed transactions on a transaction-by-transaction basis (*COBS* 16.3.3R) and there are no transactions in *derivatives* or other securities giving the right to acquire or sell a *transferable security* or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures, the *periodic statement* must be provided at least once every twelve *months*;
 - (c) if the agreement between a *firm* and a *retail client* for the *managing of investments* authorises a leveraged portfolio, the *periodic statement* must be provided at least once a *month*.
- (2) A *firm* must inform a *retail client* that he has the right to request the provision of a *periodic statement* every three *months*.

[**Note:** article 41(3) of the *MiFID implementing Directive*]

- 16.3.3 R (1) If the *client* elects to receive information about executed transactions on a transaction-by-transaction basis, a *firm managing investments* must provide promptly to the *client*, on the execution of a transaction, the essential information concerning that transaction in a *durable medium*.
- (2) If the *client* is a *retail client*, the *firm* must send him a notice confirming the transaction and containing such of the information identified in column (1) of the table in *COBS 16 Annex 1R* as is applicable:
- (a) no later than the first *business day* following that execution; or
 - (b) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party;

unless the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the *retail client* by another *person*.

[**Note:** article 41(4) of the *MiFID implementing Directive*]

- 16.3.4 G In accordance with *COBS 2.4.9R*, a *firm* may dispatch a periodic statement to an agent, other than the *firm* or an *associate* of the *firm*, nominated by the *client* in writing.

- 16.3.5 R For the purposes of calculating the unit price in the *trade confirmation information* or *periodic information*, where the order is executed in tranches, the *firm* may supply the *client* with information about the price of each tranche or the average price. If the average price is provided, the *firm* must supply the *retail client* with information about the price of each tranche upon request.

[**Note:** article 40(4) of the *MiFID implementing Directive*]

- 16.3.6 R (1) If a *firm*:
- (a) *manages investments* for a *retail client*; or
 - (b) operates a *retail client* account that includes an uncovered open position in a contingent liability transaction,
- it must report to the *retail client* any losses exceeding any predetermined threshold, agreed between it and the *retail client*.
- (2) The *firm* must report:
- (a) no later than the end of the *business day* in which the threshold is exceeded; or

- (b) if the threshold is exceeded on a non-*business day*, the close of the next *business day*.

[**Note:** article 42 of the *MiFID implementing Directive*]

- 16.3.7 R For the purposes of this section, a contingent liability transaction is one that involves any actual or potential liability for the *client* that exceeds the cost of acquiring the instrument.

[**Note:** recital 63 of the *MiFID implementing Directive*]

- 16.3.8 R [intentionally blank]

Guidance on contingent liability transaction

- 16.3.9 G When providing a *periodic statement* to a *retail client*, a *firm* should consider whether to include:
- (1) the *collateral* value in respect of any contingent liability transaction in the *client's* portfolio during the relevant period; and
 - (2) *option* account valuations in respect of each open *option* written by the *client* in the *client's* portfolio at the end of the relevant period; stating:
 - (a) the *share, future, index* or other *investment* involved;
 - (b) the trade price and date for the opening transaction, unless the valuation statement follows the statement for the period in which the option was opened;
 - (c) the market price of the contract; and
 - (d) the exercise price of the contract.
 - (3) Option account valuations may show an average trade price and market price in respect of an *option* series if the *retail client* buys a number of contracts within the same series.

Periodic reporting: special situations

- 16.3.10 R In relation to business that is not *MiFID* or *equivalent third country business*, a *firm* need not provide a *periodic statement*:
- (1) to a *client* habitually resident outside the *United Kingdom* if the *client* concerned has so requested or the *firm* has taken reasonable steps to establish that he does not wish to receive it;
 - (2) in respect of a *CTF*, if the annual statement provided under the *CTF Regulations* contains the *periodic information*.

Record keeping: periodic reporting

- 16.3.11 R A *firm* must make, and retain, a copy of any *periodic statement*:
- (1) for *MiFID* or *equivalent third country business*, for a period of at least five years; or
 - (2) for business that is not *MiFID* or *equivalent third country business*, for a period of at least three years;
- from the date of despatch.

[**Note:** see article 51(3) of the *MiFID implementing Directive*]

16.4 Statements of client designated investments or client money

- 16.4.1 R (1) A *firm* that holds *client designated investments* or *client money* for a *client* must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless such a statement has been provided in a *periodic statement*.
- (2) A *credit institution* need not send a statement in respect of *deposits* held by it.
- (3) This *rule* does not apply in relation to a *firm* holding *client designated investments* or *client money* under a *personal pension scheme* or a *stakeholder pension scheme* where doing so is not *MiFID* or *equivalent third country business*.

[**Note:** article 43(1) of the *MiFID implementing Directive*]

- 16.4.2 R A *firm* must include in a statement of *client* assets referred to under this section the following information:
- (1) details of all the *designated investments* or *client money* held by the *firm* for the *client* at the end of the period covered by the statement;
 - (2) the extent to which any *client designated investments* or *client money* have been the subject of *securities financing transactions*; and
 - (3) the extent of any benefit that has accrued to the *client* by virtue of participation in any *securities financing transactions*, and the basis on which that benefit has accrued.

[**Note:** article 43(2) of the *MiFID implementing Directive*]

- 16.4.3 R In cases where the portfolio of a *client* includes the proceeds of one or more unsettled transactions, the information in a statement provided under this section may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

[**Note:** article 43(2) of the *MiFID implementing Directive*]

- 16.4.4 R A *firm* which holds *designated investments* or *client money* and is *managing investments* for a *client* may include the statement under this section in the *periodic statement* it provides to that *client*.

[**Note:** article 43(3) of the *MiFID implementing Directive*]

16.5 Quotations for surrender values

- 16.5.1 R When a *long-term insurer* receives any indication that a *retail client* wishes to surrender a *life policy* which is of the type that may be traded on an existing secondary market for *life policies*, it must, before accepting a surrender, make the *policyholder* aware that he may be able to sell his *policy* instead, how he may do so and that there may be financial benefits in doing so.

16.6 Life insurance contracts – communications to clients

Disclosure for life insurance contracts: information to be provided during the term of the contract

- 16.6.1 R This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident*:

- (1) in an *EEA State* other than the *United Kingdom*; or
- (2) outside the *EEA* and he was not present in the *United Kingdom*.

- 16.6.2 R If during the term of a *life policy* entered into on or after 1 July 1994 there is any proposed change in the information referred to in paragraphs (1) to (12) of the Consolidated Life Directive information (*COBS 13 Annex 1R*) the *long-term insurer* must inform the *policyholder* of the effect of the change before the change is made.

[**Note:** article 36(2) of the *Consolidated Life Directive*]

- 16.6.3 R If a *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:

- (1) notify the *policyholder* in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this *rule*; or
- (2) give the *policyholder* in writing sufficient information to enable him to determine the amount of any such bonus.

- 16.6.4 R (1) When a *firm* provides information in accordance with this section, it must provide the information in a *durable medium*, unless (2) applies.
- (2) If the contract is being made by telephone, the *firm* may give the information orally to the *customer*. If the *customer* enters into the contract, a written version of the required information must be sent to the *customer* within five *business days* of the contract being entered into.
- 16.6.5 R Where a *life policy* is effected jointly, the information required by this section may be sent to the first named *client*.
- 16.6.6 R A *firm* must make an adequate record of information provided to a *customer* under this section and retain that record for a minimum period after the information is provided of five years.

COBS 16 Annex 1 R

This annex forms part of *COBS 16.2.1R*

COBS 16 Annex 1 R			
	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with <i>SUP 17 Annex 1R</i>	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
	General		
1.	the reporting <i>firm</i> identification;	Y	
2.	the name or other designation of the <i>client</i> ;	Y	
3.	the trading day;	Y	Y
4.	the trading time;	Y	Y
5.	the type of the order (for example, a limit order or a	Y	Y

	market order);		
6.	the venue identification;	Y	Y
7.	the instrument identification;	Y	Y
8.	the buy/sell indicator;	Y	Y
9.	the nature of the order if other than buy/sell;	Y	Y
10.	the quantity;	Y	Y
11.	the unit price;	Y	Y
12.	the total consideration;	Y	Y
13.	a total sum of the commissions and expenses charged and, where the <i>retail client</i> so requests, an itemised breakdown;	Y	Y
14.	[intentionally blank]		
15.	[intentionally blank]		
16.	[intentionally blank]		
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the <i>client</i> ; and	Y	
18.	if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's group</i> or another <i>client</i> of the <i>firm</i> , the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates anonymous trading.	Y	
19.	[intentionally blank]		
[Note: article 40(4) and recital 64 to the <i>MiFID implementing Directive</i>]			
A <i>firm</i> may provide the <i>client</i> with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.			
[Note: article 40(5) of the <i>MiFID implementing Directive</i>]			

COBS 16 Annex 2 R - Information to be included in a Periodic report

This annex forms part of *COBS* 16.3.1R.

	Periodic information (all cases)	
1.	the name of the <i>firm</i> ;	
2.	the name or other designation of the <i>retail client's</i> account;	
3.	a statement of the contents and the valuation of the portfolio, including details of:	
	(a)	each <i>designated investment</i> held, its market value or fair value if market value is unavailable;
	(b)	the cash balance at the beginning and at the end of the reporting period; and
	(c)	the performance of the portfolio during the reporting period;
4.	the total amount of <i>fees</i> and charges incurred during the reporting period, itemising at least total management <i>fees</i> and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;	
5.	a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the <i>firm</i> and the <i>client</i> ;	
6.	the total amount of dividends, interest and other payments received during the reporting period in relation to the <i>client's</i> portfolio; and	
7.	information about other corporate actions giving rights in relation to <i>designated investments</i> held in the portfolio.	
[Note: article 41(2) of <i>MiFID implementing Directive</i>]		

17 Claims handling for long-term care insurance

17.1 Providing information to claimants and dealing with claims

17.1.1 R When an *insurer* or *managing agent* receives a claim under a *long-term care insurance contract*, it must respond promptly by providing the *policyholder*, or the *person* acting on the *policyholder's* behalf, with:

- (1) a claim form (if it requires one to be completed);
- (2) a summary of its claims handling procedure; and
- (3) appropriate information about the medical criteria that must be met, and any waiting periods that apply, under the terms of the *policy*.

Responding to a claim

17.1.2 R As soon as reasonably practicable after receipt of a claim, the *insurer* or *managing agent* must tell the *policyholder*, or the *person* acting on the *policyholder's* behalf:

- (1) (for each part of the claim it accepts), whether the claim will be settled by paying the *policyholder*, providing goods or services to the *policyholder* or paying another *person* to provide those goods or services; and
- (2) (for each part of the claim it rejects), why the claim has been rejected and whether any future rights to claim exist.

Rejecting a claim

17.1.3 R An *insurer* and a *managing agent* must not:

- (1) unreasonably reject a claim; or
- (2) except where there is evidence of fraud, reject a claim for:
 - (a) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably have been expected to disclose; or
 - (b) misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or
 - (c) breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.

18 [Intentionally blank]

19 Pensions – supplementary provisions

19.1 Pension transfers and opt-outs

Preparing and providing a transfer analysis

- 19.1.1 R If an individual who is not a *pension transfer specialist* gives a *personal recommendation* about a *pension transfer* or *pension opt-out* on a *firm's* behalf, the *firm* must ensure that the recommendation is checked by a *pension transfer specialist*.
- 19.1.2 R A *firm* must:
- (1) compare the benefits likely (on reasonable assumptions) to be paid under a *defined benefits pension scheme* with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme*, before it advises a *retail client* to transfer out of a *defined benefits pension scheme*;
 - (2) ensure that that comparison includes enough information for the *client* to be able to make an informed decision;
 - (3) give the *client* a copy of the comparison, drawing the *client's* attention to the factors that do and do not support the *firm's* advice, no later than when the *key features document* is provided; and
 - (4) take reasonable steps to ensure that the *client* understands the *firm's* comparison and its advice.
- 19.1.3 G In particular, the comparison should:
- (1) take into account all of the *retail client's* relevant circumstances;
 - (2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme; and
 - (3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up.
- 19.1.4 R When a *firm* compares the benefits likely to be paid under a *defined benefits pension scheme* with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme* (COBS 19.1.2R(1)), it must:
- (1) assume that:

- (a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity ([cross-reference to follow later]) or the rate for annuities in payment (if less)
- (b) the retail prices index is 2.5%
- (c) the average earnings index and the rate for section 21 orders is 4.0%
- (d) the pre-retirement limited price indexation revaluation is 2.5%
- (e) the post-retirement limited price increases at 2.5%
- (f) the index linked pensions rate is the intermediate rate of return in [cross-reference to follow later] for annuities linked to the retail prices index;

or use more cautious assumptions;

- (2) calculate the interest rate in deferment; and
- (3) have regard to benefits which commence at different times.

19.1.5 R If a *firm* arranges a *pension transfer* or *pension opt-out* for a *retail client* as an *execution-only transaction*, the *firm* must make, and retain indefinitely, a clear record of the fact that no *personal recommendation* was given to that *client*.

Suitability

19.1.6 G When advising a *retail client* who is, or is eligible to be, a member of a *defined benefits occupational pension scheme* whether to transfer or opt-out, a *firm* should start by assuming that a transfer or opt-out will not be suitable. A *firm* should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the *client's* best interests.

19.1.7 G When a *firm* advises a *retail client* on a *pension transfer* or *pension opt-out*, it should consider the *client's* attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

19.1.8 G When a *firm* prepares a *suitability report* it should include:

- (1) a summary of the advantages and disadvantages of its *personal recommendation*;
- (2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information.

19.1.9 G If a *firm* proposes to advise a *retail client* not to proceed with a *pension transfer* or *pension opt-out*, it should give that advice in writing.

19.2 Personal pensions, FSAVCs and AVCs

Financial promotions

19.2.1 G A *financial promotion* for an *AVC* or *FSAVC* should contain a prominent warning that, as an alternative:

- (1) (for *AVC* promotions) *FSAVCs* are available;
- (2) (for *FSAVC* promotions) an *AVC* exists, and that details can be obtained from the scheme administrator (if that is the case).

Suitability

19.2.2 R When a *firm* prepares a *suitability report* it must:

- (1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*; and
- (2) (in the case of an *FSAVC*), explain why it considers the *FSAVC* to be at least as suitable as any *stakeholder pension scheme*, *AVC* or facility to make additional contributions to an *occupational pension scheme* which is available to the *retail client*.

19.2.3 R When a *firm* promotes a *personal pension scheme*, including a *group personal pension scheme*, to a group of *employees* it must:

- (1) be satisfied on reasonable grounds that the scheme is likely to be at least as suitable for the majority of the *employees* as a *stakeholder pension scheme*; and
- (2) record why it thinks the promotion is justified.

19.3 Product disclosure to members of occupational pension schemes

19.3.1 R (1) When a *firm* sells, *personally recommends* or arranges the sale of a new group or master *life policy*, the first in a series of individual *life policies* or the first *units* in a particular *key features scheme* or *simplified prospectus scheme* to or for the trustees of an *occupational pension scheme* for an *AVC*, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the *AVC* and any alternative

personal pension schemes and stakeholder pension schemes available.

- (2) This *rule* applies to an *AVC* where members' benefits are linked to the earmarked segments of a *life policy* or *scheme*, but it does not apply to an *AVC* where the trustees make pooled investments and have their own arrangements for allocating investment returns to determine members' *AVC* benefits.

19.4 Open market options

19.4.1 R In this section:

- (1) 'intended retirement date' means:
 - (a) the date (according to the most recent recorded information available to the provider) when the scheme member intends to retire, or to bring the benefits in the scheme into payment, whichever is the earlier; or
 - (b) if there is no such date, the scheme member's state pension age;
- (2) 'open market option' means the option to use the proceeds of a *personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity contract* or *pension buy-out contract* to purchase an annuity on the open market; and
- (3) 'open market option statement' means:
 - (a) the *FSA*'s "Your pension: it's time to choose" fact sheet, together with a written summary of the *retail client's* open market option, which is sufficient for the *client* to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or
 - (b) a written statement that gives materially the same information.

19.4.2 R (1) If a *retail client* asks a *firm* for a retirement quotation more than four *months* before the *client's* intended retirement date, the *firm* must give the *client* an open market option statement with or as part of its reply, unless the *firm* has given the *client* such a statement in the last 12 *months*.

- (2) If a *firm* does not receive such a request, it must provide a *retail client* with an open market option statement between four and six *months* before the *client's* intended retirement date.

19.4.3 R The *firm* must:

- (1) remind the *retail client* about the open market option statement; and

- (2) tell the *client* what sum of money will be available to purchase an annuity on the open market;

at least six weeks before the *client's* intended retirement date.

19.4.4 R If a *retail client* with an open market option tells a *firm* that he is considering, or has decided:

- (1) to discontinue an *income withdrawal* arrangement; or
- (2) to take a further sum of money from his pension to buy an *annuity* as part of a phased retirement,

the *firm* must give the *client* an open market option statement, unless the *firm* has given the *client* such a statement in the last 12 *months*.

20 With-profits

20.1 Application

- 20.1.1 R This chapter applies to a *firm* carrying on *with-profits business*, except to the extent modified in the following *rules*.
- 20.1.2 R (1) The section on the process for *retribution* (*COBS* 20.2.42R to *COBS* 20.2.52G):
- (a) applies to a *firm* that is proposing to make a *retribution* of its *inherited estate*;
 - (b) but not if, and to the extent that, it would require the *firm* to breach, or would prevent the *firm* from complying with, an order made by a court of competent jurisdiction.
- (2) If a *firm* proposes to seek an order from a court of competent jurisdiction that would allow or require it to act in a way that is contrary to the *rules* on *retribution* (*COBS* 20.2.42R to *COBS* 20.2.52G) (through, or because of, the exception in (1)(b)), the *firm* must:
- (a) tell the *FSA* that that is what it proposes to do;
 - (b) seek the order at the earliest opportunity; and
 - (c) if it wishes to take a step that would be contrary to those *rules* in anticipation of such an order, secure a *waiver* before it does so.
- 20.1.3 R For an *EEA insurer*:
- (1) the *rules* and *guidance* on treating *with-profits policyholders* fairly (*COBS* 20.2.1G to *COBS* 20.2.41G and *COBS* 20.2.53R to *COBS* 20.2.60G) apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by a European Community instrument;
 - (2) *COBS* 20.3 (Principles and Practices of Financial Management) does not apply;
 - (3) the *rule* on providing information to *with-profits policyholders* who are *habitually resident* in the *United Kingdom* (*COBS* 20.4.4R) and the *rule* on production and provision of a *CFPPFM* (*COBS* 20.4.5R) apply, but the rest of *COBS* 20.4 (Communications with *with-profits policyholders*) does not; and
 - (4) the *rule* on production and provision of a *CFPPFM* (*COBS* 20.4.5R) applies as if a reference to a *firm* was a reference to an *EEA insurer* in

relation to any of its *with-profits policyholders* who are *habitually resident* in the *United Kingdom*.

- 20.1.4 R The following do not apply to a *non-directive friendly society*:
- (1) *COBS* 20.3 (Principles and Practices of Financial Management); and
 - (2) *COBS* 20.4 (Communications with with-profits policyholders).
- 20.1.5 R This chapter does not apply to *with-profits business* that consists of effecting or carrying out *Holloway sickness policies*.

20.2 Treating with-profits policyholders fairly

Introduction

- 20.2.1 G *With-profits business*, by virtue of its nature and the extent of discretion applied by *firms* in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of *policyholders*. The *rules* in this section address specific situations where the risk may be particularly acute. However, a *firm* should give careful consideration to any aspect of its operating practice that has a bearing on the interests of its *with-profits policyholders* to ensure that it does not lead to an undisclosed, or unfair, benefit to *shareholders*.
- 20.2.2 R Neither *Principle 6* (Customers' interests) nor the *rules* on treating *with-profits policyholders* fairly (*COBS* 20.2) relieve a *firm* of its obligation to deliver each *policyholder's* contractual entitlement.

Amounts payable under with-profits policies

- 20.2.3 R A *firm* must have good reason to believe that its pay-outs on individual *with-profits policies* are fair.

Amounts payable under with-profits policies: Maturity payments

- 20.2.4 G In this section, maturity payments include payments made when a *with-profits policy* provides for a minimum guaranteed amount to be paid.
- 20.2.5 R (1) Unless a *firm* cannot reasonably compare a maturity payment with a calculated asset share, it must:
- (a) set a target range for the maturity payments that it will make on:
 - (i) all of its *with-profits policies*; or
 - (ii) each group of its *with-profits policies*;

- (b) ensure that each target range:
 - (i) is expressed as a percentage of unsmoothed asset share; and
 - (ii) includes 100% of unsmoothed asset share; and
 - (c) manage its *with-profits business*, and the business of each *with-profit fund*, with the aim of making on each *with-profit policy* a maturity payment that falls within the relevant target range.
- (2) Unsmoothed asset share means:
- (a) the unsmoothed asset share of the relevant *with-profits policy*; or
 - (b) an estimate of the unsmoothed asset share of the relevant *with-profits policy* derived from the unsmoothed asset share of one or more specimen *with-profits policies*, which a *firm* has selected to represent a group, or all, of the *with-profits policies* effected in the same *with-profits fund*.
- (3) A *firm* must calculate unsmoothed asset share by:
- (a) applying the methods in *INSPRU* 1.3.119R to *INSPRU* 1.3.123R;
 - (b) including any amounts that have been added to the *policy* as the result of a distribution from an *inherited estate*; and
 - (c) subject to (d), and where the terms of the *policy* so provide, adding or subtracting an amount that reflects the experience of the *insurance business* in the relevant *with-profits fund*; but
 - (d) if a *with-profits fund* has suffered adverse experience, which results from a *firm's* failure to comply with the *rules* and *guidance* on treating *with-profits policyholders* fairly (*COBS* 20.2.1G to *COBS* 20.2.41G and *COBS* 20.2.53R to *COBS* 20.2.60G), that adverse experience may only be taken into account if, and to the extent that, in the reasonable opinion of the *firm's governing body*, the amount referred to in (c) cannot be met from:
 - (i) the *firm's inherited estate* (if any); or
 - (ii) any assets attributable to shareholders, whether or not they are held in the relevant *with-profits fund*.

20.2.6 R Notwithstanding that a *firm* must aim to make maturity payments that fall

within the relevant target range, a *firm* may make a maturity payment that falls outside the target range if it has a good reason to believe that at least 90% of maturity payments on *with-profits policies* in that group have fallen, or will fall, within the relevant target range.

- 20.2.7 G If it is not fair or reasonable to calculate or assess a maturity payment using the *prescribed asset share methodology*, a *firm* may use another methodology to set bonus rates, if that methodology properly reflects its representations to *with-profits policyholders* and it applies that methodology consistently.
- 20.2.8 R A *firm* may make deductions from asset share to meet the cost of guarantees, or the cost of capital, only under a plan approved by its *governing body* and described in its *PPFM*. A *firm* must ensure that any deductions are proportionate to the costs they are intended to offset.
- 20.2.9 R If a *firm* has approved a plan to make deductions from asset share, it must ensure that its planned deductions do not change unless justified by changes in the business or economic environment, or changes in the nature of the *firm's* liabilities as a result of *policyholders* exercising options in their *policies*.
- 20.2.10 R If a *firm* calculates maturity payments using the *prescribed asset share methodology*, it must manage its *with-profits business*, and each *with-profits fund*, with the longer term aim that it will make aggregate maturity payments of 100% of unsmoothed asset share.

Amounts payable under with-profits policies: Surrender payments

- 20.2.11 G A *firm* may use its own methodology to calculate surrender payments, but it should have good reason to believe that its methodology produces a result which, in aggregate across all similar policies, is not less than the result of the *prescribed asset share methodology*. A *firm* might, for example, test the surrender payments on a suitable range of specimen *with-profits policies*.
- 20.2.12 R If a *firm* calculates surrender payments using the *prescribed asset share methodology*, it must first calculate what the surrender payment would be if it was a maturity payment calculated by that methodology.
- 20.2.13 R A *firm* may then make a deduction from unsmoothed asset share if necessary, in the reasonable opinion of the *firm's governing body*, to protect the interests of the *firm's* remaining *with-profits policyholders*.
- 20.2.14 G Amounts that might be deducted include:
- (1) the *firm's* unrecovered costs, including any financing costs incurred in effecting or carrying out the surrendered *with-profits policy* to the date of surrender, including the costs that might have been recovered if the *policy* had remained in force;
 - (2) costs that would fall on the *with-profits fund*, if the surrender value is

calculated by reference to an assumed *market value* of assets which exceeds the true *market value* of those assets;

- (3) the *firm's* costs incurred in administering the surrender; and
- (4) a fair contribution towards the cost of any contractual benefits due on the whole, or an appropriate part, of the continuing policies in the *with-profits fund* which would otherwise result in higher costs falling on the continuing *with-profits policies*.

20.2.15 G The provisions dealing with the calculation of surrender payments (*COBS* 20.2.11G to *COBS* 20.2.12R) do not prevent a *firm* from setting a target range for surrender payments where the top-end of the range is lower than the top-end of the relevant range for maturity payments.

20.2.16 R A *firm* must not make a market value reduction to the face value of the units of an accumulating *with-profits policy* unless:

- (1) the *market value* of the *with-profits assets* in the relevant *with-profits fund* is, or is expected to be, significantly less than the assumed value of the assets on which the face value of the units of the *policy* has been based; or
- (2) there has been, or there is expected to be, a high volume of surrenders, relative to the liquidity of the relevant *with-profits fund*; and

the market value reduction is no greater than is necessary to reflect the impact of (1) or (2) on the relevant surrender payment.

Conditions relevant to distributions

20.2.17 R A *firm* must:

- (1) not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*;
- (2) ensure that the amount distributed to *policyholders* from a *with-profits fund* is not less than the *required percentage* of the total amount distributed; and
- (3) if it adjusts the amounts distributed to *policyholders*, apply a proportionate adjustment to amounts distributed to shareholders, so that the distribution to *policyholders* will not be less than the *required percentage*.

20.2.18 R A *realistic basis life firm* must not make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a distribution) can be met from the excess of the *realistic value of assets* over the *realistic value of liabilities*

in that *with-profits fund*.

- 20.2.19 R A distribution to a *person* who is not a *with-profits policyholder* includes a transfer of assets out of a *with-profits fund* that is not made to satisfy a liability of that fund.
- 20.2.20 R If, on a distribution, a *firm* incurs a tax liability on a transfer to shareholders, it must not attribute that tax liability to a *with-profits fund*, unless:
- (1) the *firm* can show that attributing the tax liability to that *with-profits fund* is consistent with its established practice;
 - (2) that established practice is explained in the *firm's PPFM*; and
 - (3) that liability is not charged to asset shares.

Requirement relating to distribution of an excess surplus

- 20.2.21 R At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years), a *firm's governing body* must determine whether the *firm's with-profits fund*, or any of the *firm's with-profits funds*, has an *excess surplus*.
- 20.2.22 E
- (1) If a *with-profits fund* has an *excess surplus*, and to retain that surplus would be a breach of *Principle 6* (Customers' interests), the *firm* should:
 - (a) make a distribution from that *with-profits fund*; or
 - (b) carry out a *retribution*.
 - (2) Compliance with (1) may be relied on as tending to establish compliance with *Principle 6* (Customers' interests).
 - (3) Contravention of (1) may be relied on as tending to establish a contravention of *Principle 6* (Customers' interests).

Charges to a with-profits fund

- 20.2.23 R A *firm* must only charge costs to a with-profits fund which have been, or will be, incurred in operating the *with-profits fund*. This may include a fair proportion of overheads.
- 20.2.24 R A *firm* must not pay compensation or redress from a *with-profits fund*, unless the payment is made to a *policyholder*, or former *policyholder*, of that *with-profits fund*.
- 20.2.25 R A *firm* may pay compensation or redress due to a *policyholder*, or former *policyholder*:
- (1) from assets attributable to shareholders, whether or not they are held

within a *long-term insurance fund*; or

- (2) from its *inherited estate* (if any); or
- (3) from assets that would otherwise be attributable to asset shares, if, in the reasonable opinion of the *firm's governing body*, that compensation or redress cannot be paid from the assets in (1) or (2), or from any other source.

- 20.2.26 R A proprietary *firm* must not charge to a *with-profits fund* any amounts paid or payable to a skilled person in connection with a report under section 166 of the *Act* (Reports by skilled persons) if the report indicates that the *firm* has, or may have, materially failed to satisfy its obligations under the regulatory system.

Tax charge to a with-profits fund

- 20.2.27 R A *firm* must not charge a contribution to corporation tax to a *with-profits fund*, if that contribution exceeds the notional corporation tax liability that would be charged to that *with-profits fund* if it were assessed to tax as a separate *body corporate*.

New business

- 20.2.28 R If a *firm* proposes to effect new *contracts of insurance* in an existing *with-profits fund*, it must only do so on terms that are, in the reasonable opinion of the *firm's governing body*, unlikely to have a material adverse effect on the interests of its existing *with-profits policyholders*.
- 20.2.29 G In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of a material adverse effect on its existing, or new, *with-profits policyholders*, unless it establishes a new bonus series or *with-profits fund*. Circumstances that might cause a *firm* to establish a new bonus series or *with-profits fund* include:
- (1) where the *firm* has a high level of guarantees or options in its existing *with-profits policies*, which might place an excessive burden on new *with-profits policies*, or vice versa; and
 - (2) where the potential risks are likely to be so great that a single *with-profits fund* cannot provide adequately for the interests of new and existing *policyholders*, even after allowing for any beneficial effects of diversification. Such potential risks are likely to arise from significant differences in the terms and conditions of the new and existing *with-profits policies*, including the basis on which charges are levied and reviewed.
- 20.2.30 G When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund*, it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits*

fund.

- 20.2.31 G When a *firm* sets a target volume for new *insurance business* in an existing *with-profits fund*, it should pay particular attention to the risk of disadvantage to existing *with-profits policyholders*. Those *policyholders* might be disadvantaged, for example, by the need to retain additional capital to support a rapid growth in new business, when that capital might have been distributed in the ordinary course of the *firm's* existing business.

Relationship of a with-profits fund with the firm and any connected persons

- 20.2.32 R A *firm* carrying on *with-profits business* must not:
- (1) make a loan to a *connected person* using assets in a *with-profits fund*; or
 - (2) give a guarantee to, or for the benefit of, a *connected person*, where the guarantee will be backed using assets in a *with-profits fund*;
- unless that loan or guarantee:
- (3) will be on commercial terms;
 - (4) will, in the reasonable opinion of the *firm's* senior management, be beneficial to the *with-profits policyholders* in the relevant *with-profits fund*; and
 - (5) will not, in the reasonable opinion of the *firm's* senior management, expose those *policyholders* to undue *credit* or *group* risk.

Contingent loans and other forms of support for the with-profits fund

- 20.2.33 G (1) If a *firm*, or a *connected person*, provides support to a *with-profits fund* (for example, by a contingent loan), no reliance should be placed on that support when the *firm* assesses the *with-profits fund's* financial position unless there are clear and unambiguous criteria governing any repayment obligations to the support provider.
- (2) The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of *with-profits policyholders* and clarification of what fair treatment means in various circumstances. For a *realistic basis life firm* this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the *future policy-related liabilities*.
- 20.2.34 G Where assets from outside a *with-profits fund* are made available to support that fund (and there is no ambiguity in the criteria governing any repayment obligations to the support provider), a *firm* should manage the fund disregarding the liability to repay those assets, at least in so far as that is necessary for its *policyholders* to be treated fairly.

Other guidance on the conduct of with-profit business

- 20.2.35 G When a *firm* determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:
- (1) the extent of the guarantee in its *with-profits policies*;
 - (2) any representation that it has made to its *with-profits policyholders*;
 - (3) its established practice; and
 - (4) the amount of capital support available.
- 20.2.36 G If a proprietary *firm* is considering using *with-profits assets* to finance the purchase of another business, directly or by or through a *connected person*, or if a *firm* is considering whether it should retain such an investment, it should consider whether the purchase or retention would be, or will remain, fair to its *with-profits policyholders*. When a *firm* makes that assessment it should consider whether it would be more appropriate for the investment to be made using assets other than those in a *with-profits fund*.
- 20.2.37 G If a *firm* carries out *non-profit insurance business* in a *with-profits fund*, it should review the profitability of the *non-profit insurance business* regularly.
- 20.2.38 G If a *firm* has reinsured its *with-profits insurance business* into another *insurance undertaking*, it should take reasonable steps to discharge its responsibilities to its *with-profits policyholders*, in respect of the reinsured business. Those steps should include maintaining adequate controls.

Major changes in with-profits funds

- 20.2.39 R A *firm* must not enter into a material transaction relating to a *with-profits fund* unless, in the reasonable opinion of the *firm's governing body*, the transaction is unlikely to have a material adverse effect on the interests of that fund's existing *with-profits policyholders*.
- 20.2.40 R A material transaction includes a series of related non-material transactions which, if taken together, are material.
- 20.2.41 G Examples of material transactions include:
- (1) a significant bulk outwards *reinsurance* contract;
 - (2) inwards *reinsurance* of *with-profits business* from another *insurance undertaking*;
 - (3) a financial engineering transaction that would materially change the profile of any surplus expected to emerge on the *with-profits fund's* existing *insurance business*; and

- (4) a significant restructuring of the *with-profits fund*, especially if it involves the creation of new *sub-funds*.

Process for reattribution of inherited estates: Policyholder advocate: appointment and role

- 20.2.42 R A *firm* that is seeking to make a *reattribution* of its *inherited estate* must:
- (1) identify at the earliest appropriate point a policyholder advocate, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the *firm* on behalf of relevant *with-profits policyholders*;
 - (2) seek the approval of the *FSA* for the appointment of the *policyholder advocate* as soon as he is identified, or appoint a *policyholder advocate* nominated by the *FSA* if its approval is not granted; and
 - (3) involve the policyholder advocate designate at the earliest possible opportunity to enable him to participate effectively in the negotiations about the proposals for the *reattribution*.
- 20.2.43 G The *firm* should include an independent element in the *policyholder advocate* selection process, which may include consulting representative groups of *policyholders* or using the services of a recruitment consultant. When considering an application for approval of a nominee to perform the *policyholder advocate* role, the *FSA* will have regard to the extent to which the *firm* has involved others in the selection process.
- 20.2.44 G The precise role of the *policyholder advocate* in any particular case will depend on the nature of the *firm* and the *reattribution* proposed. A *firm* will need to discuss with the *FSA* the precise role of the *policyholder advocate* in a particular case (*COBS 20.2.45R*). However, the role of the *policyholder advocate* should include:
- (1) negotiating with the *firm*, on behalf of the relevant *with-profits policyholders*, the benefits to be offered to them in exchange for the rights or interests they will be asked to give up;
 - (2) commenting to *with-profits policyholders*, on:
 - (a) the methodology used for the allocation of benefits amongst the relevant (or groups of) *with-profits policyholders* and the form of those benefits;
 - (b) the criteria used for determining the eligibility of the various *with-profits policyholders*;
 - (c) the terms and conditions of the proposals (to the extent that they materially affect the benefits to be offered, or the bonuses that may be added to *with-profits policies*); and

- (d) the views expressed by the *independent expert* or the *retribution expert* (as the case may be), and the *firm's with-profits actuary* on the allocation of any benefits amongst the relevant *with-profits policyholders*; and
- (3) telling *with-profits policyholders*, or each group of *with-profits policyholders*, with reasons, whether the *firm's* proposals are in their interests.

Process for reattribution of inherited estates: Policyholder advocate: terms of appointment

- 20.2.45 R A *firm* must:
- (1) notify the *FSA* of the terms on which it proposes to appoint a *policyholder advocate* (whether or not the candidate was nominated by the *FSA*); and
 - (2) ensure that the terms of appointment for the *policyholder advocate*:
 - (a) stress the independent nature of the *policyholder advocate's* appointment and function, and are consistent with it;
 - (b) define the relationship of the *policyholder advocate* to the *firm* and its *policyholders*;
 - (c) set out arrangements for communications between the *policyholder advocate* and *policyholders*;
 - (d) make provision for the resolution of any disputes between the *firm* and the *policyholder advocate*;
 - (e) specify when and how the *policyholder advocate's* appointment may be terminated; and
 - (f) allow the *policyholder advocate* to communicate freely and in confidence with the *FSA*.
- 20.2.46 G A *firm* may include, within the *policyholder advocate's* terms of appointment, arrangements for the *policyholder advocate* to be indemnified in respect of certain claims that may be made against him in connection with the performance of his functions. If such indemnity is included, it should not include protection against any liability arising from acts of bad faith.

Process for reattribution of inherited estates: Reattribution expert

- 20.2.47 R Where a *firm* is not otherwise required to appoint an *independent expert*, it must:
- (1) appoint a reattribution expert to undertake an objective assessment of its *reattribution* proposals, who must be:

- (a) nominated or approved by the *FSA* before he is appointed; and
 - (b) free from any conflicts of interest that may, or may appear to, undermine his independence or the quality of his report;
- (2) ensure that the *retribution expert's* terms of appointment allow him to communicate freely and in confidence with the *FSA*; and
 - (3) require the *retribution expert* to prepare a report which must be available to the *FSA*, the *policyholder advocate* and the court (if it is relevant to any court proceedings).

20.2.48 G A *retribution expert's* report should comply with the applicable rules on expert evidence. The scope and content of the report should be substantially similar to that of the report required of an *independent expert* under *SUP* 18.2 (Insurance business transfers), as if (where appropriate) a reference to:

- (1) the '*scheme report*' was a reference to the '*retribution expert's* report';
- (2) the '*independent expert*' was a reference to the '*retribution expert*'; and
- (3) the '*scheme*' was a reference to the proposal for a '*retribution*'.

Process for retribution of inherited estates: Information to policyholders

20.2.49 R A *firm* must ensure that every *policyholder* that may be affected by the proposed *retribution* is sent appropriate and timely information about:

- (1) the *retribution* process, including the role of the *policyholder advocate*, the *independent expert* or *retribution expert*, as the case may be, and other individuals appointed to perform particular functions;
- (2) the *retribution* proposals and how they affect the relevant *policyholders*, including an explanation of any benefits they are likely to receive and the rights and interests that they are likely to be asked to give up;
- (3) the *policyholder advocate's* views on the *retribution* proposals and any benefits the relevant *policyholders* are likely to receive and the rights and interests that they are likely to be asked to give up; and
- (4) the outcome of the negotiations between the *firm* and the *policyholder advocate* about the benefits that will be offered to relevant *with-profits policyholders*, in exchange for the rights and interests that they will be asked to give up.

20.2.50 R An adequate summary of the report by the *retribution expert* must be

made available to every *policyholder* that may be affected by the proposed *retribution*.

Process for retribution of inherited estates: Consent of policyholders

- 20.2.51 R A *firm* must give relevant *with-profits policyholders* the option to:
- (1) individually accept or reject the final proposals for the *retribution*; or
 - (2) (if the legal process to be followed allows the majority of *policyholders* to bind the minority) vote on whether the *firm* should go ahead with those proposals.

Process for retribution of inherited estates: Costs

- 20.2.52 G
- (1) *Retribution* and *insurance business transfer* costs (excluding *policyholder advocate* costs) should be met from shareholder funds. A *firm* may present alternative arrangements if it can show good reasons for doing so.
 - (2) Shareholders should pay a reasonable proportion of the *policyholder advocate's* costs.
 - (3) If a *retribution* proposal is not successful, the *FSA* would expect the costs of the *policyholder advocate* to be met by the *person* initiating the proposal. That will usually be the shareholders of the *firm*.

Ceasing to effect new contracts of insurance in a with-profits fund

- 20.2.53 R A *firm* must:
- (1) inform the *FSA* and its *with-profits policyholders* within 28 days; and
 - (2) submit a run-off plan to the *FSA* as soon as reasonably practicable and, in any event, within three months;

of first ceasing to effect new *contracts of insurance* in a *with-profits fund*.

- 20.2.54 R A *firm* will be taken to have ceased to effect new *contracts of insurance* in a *with-profits fund*:
- (1) when any decision by the *governing body* to cease to effect new *contracts of insurance* takes effect; or
 - (2) where no such decision is made, when the *firm* is no longer:
 - (a) actively seeking to effect new *contracts of insurance* in that fund; or
 - (b) effecting new *contracts of insurance* in that fund, except by

increment.

- 20.2.55 R A *firm* must contact the *FSA* to discuss whether it has, or should be taken to have, ceased to effect new *contracts of insurance* if:
- (1) it is no longer effecting a material volume of new *with-profits policies* in a particular *with-profits fund*, other than by *reinsurance*; or
 - (2) it cedes by way of *reinsurance* most of the new *with-profits policies* which it continues to effect.
- 20.2.56 R The run-off plan required by this section must:
- (1) demonstrate how the *firm* will ensure a fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and
 - (2) be approved by the *firm's governing body*.
- 20.2.57 G A *firm* should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.
- 20.2.58 G When a *firm* tells its *with-profits policyholders* that it has ceased to effect new *contracts of insurance* in a *with-profits fund*, it should also explain:
- (1) why it has done so;
 - (2) what changes it has made, or proposes to make, to the fund's investment strategy (if any);
 - (3) how closure may affect *with-profits policyholders* (including any reasonably foreseeable effect on future bonus prospects);
 - (4) the options available to *with-profits policyholders* and an indication of the potential costs associated with the exercise of each of those options; and
 - (5) any other material factors that a *policyholder* may reasonably need to be aware of before deciding how to respond to this information.
- 20.2.59 G A *firm* may not be able to provide its *with-profits policyholders* with all of the information described above until it has prepared the run-off plan. In those circumstances, the *firm* should:
- (1) tell its *with-profits policyholders* that that is the case;
 - (2) explain what is missing and give a time estimate for its supply; and
 - (3) provide the missing information as soon as possible, and within the time estimate given.

- 20.2.60 G (1) If *non-profit insurance business* is written in a *with-profits fund*, a *firm* should take reasonable steps to ensure that the economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.
- (2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (COBS 20.2.28R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business.

20.3 Principles and Practices of Financial Management

Production of PPFM

- 20.3.1 R (1) A *firm* must:
- (a) establish and maintain the *PPFM* according to which its *with-profits business* is conducted (or, if appropriate, separate *PPFM* for each *with-profits fund*); and
 - (b) retain a record of each version of its *PPFM* for five years.
- (2) A *firm's with-profits principles* must:
- (a) be enduring statements of the standards it adopts in managing *with-profits funds*; and
 - (b) describe the business model it uses to meet its duties to *with-profits policyholders* and to respond to longer-term changes in the business and economic environment.
- (3) A *firm's with-profits practices* must:
- (a) describe how a *firm* manages its *with-profits funds* and how it responds to shorter-term changes in the business and economic environment; and
 - (b) be sufficiently detailed for a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a *with-profits policy* with it.
- (4) A *firm* must not change its *PPFM* unless, in the reasonable opinion of its *governing body*, that change is justified to:
- (a) respond to changes in the business or economic environment;

or

- (b) protect the interests of *policyholders*; or
 - (c) change the *firm's with-profits practices* better to achieve its *with-profits principles*.
- (5) A *firm* may change its *PPFM* if that change:
- (a) is necessary to correct an error or omission; or
 - (b) would improve clarity or presentation without materially affecting the *PPFM's* substance; or
 - (c) is immaterial.

Governance arrangements for with-profits business

- 20.3.2 G In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (*SYSC 3.2.6R*), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable *PPFM*. These arrangements should:
- (1) be appropriate to the scale and complexity of the *firm's with-profits business*;
 - (2) include the approval of the *firm's PPFM* by its *governing body*; and
 - (3) involve some independent judgment in assessing compliance with its *PPFM* and addressing conflicting rights and interests of *policyholders* and, if applicable, shareholders, which may include but is not confined to:
 - (a) establishing a *with-profits committee*;
 - (b) asking an independent person with appropriate skills and experience to report on these matters to the *governing body* or to any *with-profits committee*; or
 - (c) for small *firms*, asking one or more non-executive members of the *governing body* to report to the *governing body* on these matters.
- 20.3.3 G If a *person* or committee who provides the independent judgement wishes to make a statement or report to *with-profits policyholders*, in addition to any annual report made by a *firm* to those *policyholders*, a *firm* should facilitate this.

Scope and content of PPFM

- 20.3.4 R A *firm's PPFM* must cover the issues set out in the table in *COBS 20.3.6R*.

- 20.3.5 R *A firm's PPFM* must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the *firm's* management of *with-profits funds*, including but not limited to:
- (1) any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes; and
 - (2) the nature and extent of any shareholder commitment to support the *with-profits fund*.

20.3.6 R Table: Issues to be covered in PPFM

	Subject	Issues
(1)	Amount payable under a with-profits policy	<p>(a) Methods used to guide determination of the amount that is appropriate to pay individual <i>with-profits policyholders</i>, including:</p> <ol style="list-style-type: none"> (i) the aims of the methods and approximations used; (ii) how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and (iii) the procedures for changing the current method or any assumptions or parameters relevant to a particular method. <p>(b) Approach to setting bonus rates.</p> <p>(c) Approach to smoothing maturity payments and surrender payments, including:</p> <ol style="list-style-type: none"> (i) the smoothing policy applied to each type of <i>with-profits policy</i>; (ii) the limits (if any) applied to the total cost of, or excess from, smoothing; and (iii) any limits applied to any changes in the level of maturity payments between one period to another.
(2)	Investment strategy	Significant aspects of the <i>firm's</i> investment strategy for its <i>with-profits business</i> or, if different, any <i>with-</i>

	Subject	Issues
		<p><i>profits fund</i>, including:</p> <ul style="list-style-type: none"> (a) the degree of matching to be maintained between assets relevant to <i>with-profits business</i> and liabilities to <i>with-profits policyholders</i> and other creditors; (b) the <i>firm's</i> approach to assets of different credit or liquidity quality and different volatility of market values; (c) the presence among the assets relevant to <i>with-profits business</i> of any assets that would not normally be traded because of their importance to the <i>firm</i>, and the justification for holding such assets; and (d) the <i>firm's</i> controls on using new asset or liability instruments and the nature of any approval required before new instruments are used.
(3)	Business risk	<p>The exposure of the <i>with-profits business</i> to business risks (new and existing), including the <i>firm's</i>:</p> <ul style="list-style-type: none"> (a) procedures for deciding if the <i>with-profits business</i> may undertake a particular business risk; (b) arrangements for reviewing and setting a limit on the scale of such risks; and (c) procedures for reflecting the profits or losses of such business risks in the amounts payable under <i>with-profits policies</i>.
(4)	Charges and expenses	<ul style="list-style-type: none"> (a) The way in which the <i>firm</i> applies charges and apportionments expenses to its <i>with-profits business</i>, including, if material, any interaction with connected firms. (b) The cost apportionment principles that will determine which costs are, or may be, charged to a <i>with-profits fund</i> and which costs are, or may be, charged to the other parts of its business of its shareholders.
(5)	Management of inherited	Management of any <i>inherited estate</i> and the uses to which the <i>firm</i> may put that <i>inherited estate</i> .

	Subject	Issues
	estate	
(6)	Volumes of new business and arrangements on stopping taking new business	If a <i>firm's with-profits fund</i> is accepting new <i>with-profits</i> business, its practice for review of the limits on the quantity and type of new business and the actions that the <i>firm</i> would take if it ceased to take on new business of any significant amount.
(7)	Equity between the with-profits fund and any shareholders	The way in which the interests of <i>with-profits policyholders</i> are, or may be, affected by the interests of any shareholders of the <i>firm</i> .

20.3.7 G The table in *COBS* 20.3.8R sets out *guidance* on how various information relevant to some of the issues covered in a *firm's PPFM* (*COBS* 20.3.6R) might be split between *with-profits principles* and *with-profits practices*. This is an example of the matters a *firm* should address in its *with-profits principles* and *with-profits practices* and is not exhaustive. A *firm* should consider carefully the scope and content of its *PPFM* as appropriate.

20.3.8 G Table: Guidance on with-profits principles and practices

Reference to PPFM issues (<i>COBS</i> 20.3.6R)	With-profits principles	With-profits practices
(1) Amount payable under a with-profits policy	<p>General</p> <p>(a) Circumstances under which any historical assumptions or parameters, relevant to methods used to determine the amount payable, may be changed;</p>	<p>General</p> <p>(e) For each major class of <i>with-profits policy</i>, methods establishing the main assumptions or parameters that decide the output of methods that determine the amount payable;</p> <p>(f) Degree of approximation allowed when assumptions or parameters are applied</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>across generations of <i>with-profits policyholders</i> or across different types or classes of <i>with-profits policies</i>;</p> <p>(g) Formality with which the methods, parameters or assumptions used are documented;</p> <p>(h) Target range, or target ranges, that have been set for maturity payments;</p> <p>(i) Factors likely to be regarded as relevant to address <i>policyholders'</i> interests or security when determining <i>excess surplus</i>; and</p> <p>Investment return, expenses or charges and tax</p> <p>(j) How investment return, expenses or charges and tax are brought into account and how the impact of those items is determined on the amount payable. In particular:</p> <p>(i) any distinctions made in recognising the investment return from a subset of the total assets of a <i>with-profits fund</i>;</p> <p>(ii) whether expenses are apportioned between all the policies in a <i>with-profits fund</i> or apportioned in some</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>other way;</p> <p>(iii) the relationship between the liability to tax attributed to a <i>with-profits fund</i> and the tax that the <i>firm</i> imputes to determine the amount payable;</p> <p>(iv) impact on the amount payable of any attributed liability to tax of a <i>with-profits fund</i> as a result of the <i>firm</i> making a transfer to shareholders; and</p> <p>(v) how any other items are brought into account.</p>
	<p>Bonus rates</p> <p>(b) General aims in setting bonus rates and the constraints to which the <i>firm</i> may be subject in changing economic circumstances;</p> <p>(c) How the range of <i>with-profits policies</i> or generations of <i>with-profits policies</i> over which the <i>firm</i> believes a single bonus rate would be appropriate is determined and the circumstances under which it believes a new bonus series would be necessary;</p>	<p>Bonus rates</p> <p>(k) Current approach to setting bonus rates, including the weight given to recent economic experience. For final bonus rates, the description should include any distinctions made between <i>with-profits policies</i> that remain in force until contractual dates, or dates on which no market value reduction applies (for example, maturity or retirement dates) and policies that are surrendered or transferred at other dates;</p> <p>(l) Frequency at which</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	and	<p>bonus rates are re-set or expected to be re-set and the circumstances under which changes in the economic environment would cause the time between re-setting to change;</p> <p>(m) Maximum amount by which annual bonuses would alter if annual bonus rates were reset;</p> <p>(n) Approach to setting any interim bonus rates before the next declaration of annual bonus rates;</p> <p>(o) Relationship or interaction between final bonus rates and any market value reductions, if both can apply at the same time;</p> <p>(p) How final bonus rates influence the value of <i>with-profits policies</i> that have formulaic surrender or transfer bases (for example, older conventional policies rather than unitised policies); and</p>
	<p>Smoothing</p> <p>(d) Statement as to whether smoothing is intended to be neutral over time.</p>	<p>Smoothing</p> <p>(q) Any differences in approach for:</p> <p>(i) the various types of <i>with-profits policy</i>;</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		<p>(ii) different categories of payout, such as between surrendered policies and maturing policies; and</p> <p>(iii) different generations of <i>with-profits policyholders</i>.</p>
(2) Investment strategy	<p>(a) How the types, classes or mix of assets are determined; and</p> <p>(b) Strategy in respect of derivatives and other instruments.</p>	<p>(c) Whether and to what extent there is hypothecation of assets;</p> <p>(d) Period between formal reviews of investment strategy;</p> <p>(e) Approach to investment in different asset classes, and assets of different credit or liquidity quality, including assets not normally traded; and</p> <p>(f) Details of any external support available to the <i>with-profits fund</i> and how this affects the investment strategy.</p>
(3) Business risk	<p>(a) Where a <i>firm</i> explicitly excludes business risk from a class of <i>with-profits policies</i> but there are residual risks, clarification where these risks such as guarantee and smoothing costs are</p>	<p>(c) Current limits which apply to the taking on of business risk; and</p> <p>(d) Whether and to what extent particular generations of <i>with-profits policyholders</i> or classes of <i>with-profits policies</i> bear or might</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
	<p>borne; and</p> <p>(b) Define where compensation costs from a business risk would be borne.</p>	<p>bear particular business risks, including for example, crystallised or contingent guarantees to other classes of <i>policyholders</i> or whether the out-turn from all business risk is pooled across all <i>with-profits policies</i>.</p>
(4) Charges and expenses	<p>(a) Factors that would drive any change to the basis on which the <i>firm</i> applies charges to or apportions its actual expenses amongst <i>with-profits policies</i>, or exercises any discretion to apply charges to particular <i>with-profits policies</i>.</p>	<p>(b) Charges currently applied and the expenses currently apportioned to major classes of <i>with-profits policies</i>;</p> <p>(c) Relationship between the <i>firm's</i> actual charges and expenses, as applied to determine the amounts payable under <i>with-profits policies</i>, and the charges and expenses borne by the <i>with-profits fund</i>;</p> <p>(d) Circumstances under which expenses will be charged to the <i>with-profits fund</i> at an amount other than cost, and the reasons why; and</p> <p>(e) Interval for reviewing any arrangements for out-sourced services, including those provided by connected parties, giving a broad indication of the terms</p>

Reference to PPFM issues (COBS 20.3.6R)	With-profits principles	With-profits practices
		for termination.
(5) Management of inherited estate	<p>(a) Preferred size or scale of <i>inherited estate</i> and implications for the values of the <i>with profits policies</i>; and</p> <p>(b) Any existing division of the <i>inherited estate</i> between <i>with-profits funds</i>; and</p> <p>(c) Any constraints on the freedom to deal with the <i>inherited estate</i> as a result of previous dealings.</p>	<p>(d) How the <i>inherited estate</i> is used, for example, in meeting costs;</p> <p>(e) Whether the investment strategy for the <i>inherited estate</i> differs from the rest of the <i>with-profits fund</i>; and</p> <p>(f) Any current guidelines in place as to the size or scale of the <i>inherited estate</i> or as to how and over what time period the <i>inherited estate</i> would be managed, if it becomes too large or too small.</p>
(7) Equity between the with-profits fund and any shareholders	(a) Arrangements for, and any changes to, profit sharing between shareholders and <i>with-profits policyholders</i> .	<p>(b) Current basis on which profit between <i>with-profits policyholders</i> and shareholders is divided; and</p> <p>(c) Whether the pricing of any policies being written, and particular policies open to new business, appear to be significantly and systematically reducing the <i>inherited estate</i> if the shareholder transfer is taken into account.</p>

20.4 Communications with with-profits policyholders

Provision and publication of PPFM

- 20.4.1 R A *firm* must:
- (1) on request, provide its *PPFM*, or the *PPFM* applicable to specified *with-profits funds*:
 - (a) free of charge to its *with-profits policyholders*; or
 - (b) for a reasonable charge to any person who is not its *with-profits policyholder*; and
 - (2) if the *firm* publishes its *PPFM* on its website, prominently signpost its location there.

Notification of changes

- 20.4.2 R A *firm* must send its *with-profits policyholders* who are affected by any change in its *PPFM*, written notice, setting out any:
- (1) proposed changes to the *with-profits principles*, three *months* in advance of the effective date; and
 - (2) changes to the *with-profits practices*, within a reasonable time.

- 20.4.3 R A *firm* need not give the notice required if the change to its *PPFM*:
- (1) is necessary to correct an error or omission; or
 - (2) would improve clarity or presentation without materially affecting the *PPFM's* substance; or
 - (3) is immaterial.

Requirements on EEA insurers

- 20.4.4 R In relation to any *with-profits policyholder* who is *habitually resident* in the *United Kingdom*, an *EEA insurer* must:
- (1) on request, provide the information necessary to enable that *policyholder* properly to understand the *insurer's* commitment under the *policy*;
 - (2) ensure that the information provided is not narrower in scope or less detailed in content than the equivalent *PPFM*; and
 - (3) send the *policyholder* who is affected by any information being

changed written notice, setting out:

- (a) any proposed changes to information that is equivalent to the *with-profits principles*, three *months* in advance of the effective date; and
- (b) any changes to information that is equivalent to the *with-profits practices*, within a reasonable time.

Consumer-friendly PPFM

20.4.5 R A *firm* must:

- (1) produce a *CFPPFM* describing the most important information set out under each of the headings in its *PPFM* and keep it up to date as the *PPFM* changes over time;
- (2) express its *CFPPFM* in clear and plain language that can be easily understood by a *with-profits policyholder*, or potential *with-profits policyholder* who does not possess any specialist or technical knowledge;
- (3) provide its *CFPPFM* free of charge with any:
 - (a) written notice sent to *with-profits policyholders* on proposed changes to its *with-profits principles* (where the *firm* must provide the version of the *CFPPFM* in use before the changes if this has not already been provided);
 - (b) annual statements sent to its *with-profits policyholders* (unless there has been no material change in the *CFPPFM* since it was last supplied); and
 - (c) *key facts disclosure document for a with-profits policy*; and
- (4) make its *CFPPFM* publicly available and prominently signpost the availability on its website.

20.4.6 G A *firm* may include the information set out in its *CFPPFM* in any other document it produces.

Annual report to with-profits policyholders

20.4.7 R A *firm* must produce an annual report to its *with-profits policyholders*, which must:

- (1) state whether, throughout the *financial year* to which the report relates, the *firm* believes it has complied with its obligations relating to its *PPFM* and setting out its reasons for that belief;
- (2) address all significant relevant issues, including the way in which the *firm* has:

- (a) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and
 - (b) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*), including the competing interests of different classes and generations.
- 20.4.8 G The following documents should be annexed to the annual report in this section:
 - (1) the report to *with-profits policyholders* made by a *with-profits actuary* in respect of each financial year (see *SUP 4.3.16AR(4)*); and
 - (2) any statement or report provided by the *person* or committee who provides the independent judgement under the *firm's* governance arrangements for its *with-profits business*.
- 20.4.9 G In preparing the annual report to *with-profits policyholders*, a *firm* should take advice from a *with-profits actuary*.
- 20.4.10 G A *firm* should make the annual report available to *with-profits policyholders* within six *months* of the end of the *financial year* to which it relates. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.

Transitional Provisions

COBS TP 1: Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
			Overview of transitional provisions for client categorisation		
1.1	<i>COBS 3</i>	G	<p>(1) <i>COBS</i> TP 1.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under <i>COBS 3</i> to their previous categorisation.</p> <p>(2) <i>COBS</i> TP 1.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p> <p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with <i>COBS 3</i>. <i>COBS</i> TP 1.4 provides guidance on how some of the procedural requirements in <i>COBS 3</i> apply in some such cases.</p> <p>(4) <i>COBS</i> TP 1.5 contains transitional notification obligations, which apply if the default provisions do not allow that <i>client</i> to be provided with the nearest equivalent categorisation</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) <i>COBS</i> TP 1.6 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID</i> or <i>equivalent third country business</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se professional client</i>.</p>		
			Categorisation of existing clients		
1.2	<i>COBS</i> 3	R	<p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS</i> 3.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS</i> 3.</p> <p>(3) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p>	From 1 November 2007 indefinitely	1 November 2007

			<p>(a) for <i>eligible counterparty business</i> that is not <i>MiFID</i> or <i>equivalent third country business</i>, an <i>eligible counterparty</i>; and</p> <p>(b) otherwise, a <i>per se professional client</i>;</p> <p>unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS 3</i>.</p> <p>[Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to, <i>MiFID</i>]</p>		
1.3	<i>COBS 3</i>	G	<p>Under <i>COBS 3.5.9R</i>, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i>, the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under <i>COBS TP 1.2R(2)(a)</i>, the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate customer</i>.</p>	From 1 November 2007 indefinitely	1 November 2007
			Former inter-professional business		
1.4	<i>COBS 3</i>	G	<p>The requirement to provide notices under <i>COBS 3.3.1R</i> only applies in relation to new <i>clients</i>. The requirement to obtain confirmation under <i>COBS 3.6.3R(2)</i> only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under <i>COBS 3</i> in relation to <i>eligible counterparty business</i>.</p>	From 1 November 2007 indefinitely	1 November 2007

			Transitional notification obligations		
1.5	COBS 3	R	<p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>(3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i>.</p> <p>[Note: article 28(1) of the <i>MiFID implementing Directive</i>]</p>	From 1 November 2007 indefinitely	1 November 2007
1.6	COBS 3	R	If a <i>firm</i> , in relation to <i>MiFID</i> or <i>equivalent third country business</i> , categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS</i> TP 1.2(2)(b) or (3)(b), it must	From 1 November 2007 indefinitely	1 November 2007

			inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i> . This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i> . [Note: article 71(6) of <i>MiFID</i>]		
1.7		G	A notice to a <i>professional client</i> under COBS TP 1.6 should inform that <i>client</i> : (a) that they have been categorised as a <i>professional client</i> ; and (b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i> .	From 1 November 2007 indefinitely	1 November 2007
1.8		R	The record-keeping requirements under <i>COBS</i> 3.8.2R apply in relation to any <i>client</i> categorisations or re-categorisations made under the transitional provisions for <i>COBS</i> 3.	From 1 November 2007 indefinitely	1 November 2007

COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
2.1	<i>COBS</i> 6.1	G	(1) If a <i>firm</i> provides services of an ongoing nature to an existing <i>client</i> it need not provide information to that <i>client</i> that it would be required to provide under <i>COBS</i> to a new <i>client</i> but which it was not required to	From 1 November 2007 indefinitely	1 November 2007

			<p>provide under <i>COB</i>.</p> <p>(2) Services of an ongoing nature include <i>safekeeping and administration</i> and <i>managing investments</i>,</p>		
2.2	<i>COBS</i> 6.1	G	<p>(1) If a <i>firm</i> provides a service for an existing <i>client</i> that is not of an ongoing nature and which relates to the same particular type of <i>designated investment</i> as a previous service, the <i>firm</i> need not provide information to that <i>client</i> that it would be required to provide under <i>COBS</i> 6.1 to a new <i>client</i> but which it was not required to provide under <i>COB</i>.</p> <p>(2) But a <i>firm</i> should ensure that the <i>client</i> has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those described in respect of a previous transaction.</p>	From 1 November 2007 indefinitely	1 November 2007
2.3	<i>COBS</i> 10.1.2R	R	For business which is not <i>MiFID</i> or <i>equivalent third country business</i> , compliance with <i>COB</i> 3.9.5R(2) (Prohibited types of direct offer financial promotion) as it was in force on 31 October 2007 is treated as compliance with <i>COBS</i> 10.1.2R (<i>arranging</i> or <i>dealing</i> in certain <i>derivatives</i> and <i>warrants</i> for <i>retail clients</i>).	From 1 November 2007 to 31 May 2008	1 November 2007
2.4	<i>COBS</i> 10.1.2R	G	This transitional (TP 2.3R) relates to non- <i>MiFID</i> or <i>equivalent third country business</i> arising out of a <i>direct offer financial promotion</i> of a <i>derivative</i> or <i>warrant</i> (or both) for a <i>retail client</i> . This would include, for example, sports or political spread betting. For such business, a <i>firm</i> may begin to comply with the new <i>appropriateness rules</i> at any time within six <i>months</i> of 1 November	From 1 November 2007 to 31 May 2008	1 November 2007

			so long as, in the meantime, it complies with <i>COB</i> 3.9.5R(2).		
2.5	<i>COBS</i> 13	R	<p>A <i>firm</i> is not required to prepare a <i>key features document</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(1) the rules would have required the <i>firm</i> to prepare <i>key features</i> for the product if they were still in force; and</p> <p>(2) the <i>firm</i> prepares <i>key features</i> in accordance with the rules as if they were still in force.</p> <p>For these purposes, ‘the rules’ are the <i>rules</i> on product disclosure and the customer’s right to cancel or withdraw (<i>COB</i> 6) that were in force on 31 October 2007.</p>	From 1 November 2007 until 31 October 2008	1 November 2007
2.6	<i>COBS</i> 14.1 and <i>COB</i> 14.2	R	<p>A <i>firm</i> is not required to provide a <i>key features document</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(1) the rules would have required the <i>firm</i> to provide <i>key features</i> for that product if they were still in force;</p> <p>(2) the <i>firm</i> is satisfied, on reasonable grounds, that providing <i>key features</i> in accordance with the rules, as if they were still in force, will not cause:</p> <p style="padding-left: 40px;">(a) a <i>client</i> to suffer any prejudice; or</p> <p style="padding-left: 40px;">(b) the <i>firm</i> to breach its obligations under one or more of the <i>Principles</i>; and</p> <p>(3) the <i>firm</i> provides <i>key features</i> for the product in accordance with the rules as if they were still in force.</p>	From 1 November 2007 until 31 October 2008	1 November 2007

			For these purposes, ‘the rules’ means the <i>rules</i> on product disclosure and the customer’s right to cancel or withdraw (<i>COB 6</i>) that were in force on 31 October 2007.		
2.7	<i>COBS 15</i>	R	<p>Cancellation</p> <p>(1) In relation to a contract concluded before 1 November 2007 the previous cancellation rules (<i>COB 6.7</i>) continue to apply.</p> <p>(2) In relation to a contract concluded on or after 1 November 2007 any pre-contract disclosure made before that date that complies with the requirements of this sourcebook is to be treated for the purposes of <i>COBS 15</i> as if made under this sourcebook.</p>	1 November 2007 for 6 months	From 1 November 2007
2.8	<i>COBS 16.3</i> (Periodic statements)	G	<p>This transitional <i>rule</i> applies in relation to a periodic reporting period for a <i>periodic statement</i> that includes 1 November 2007.</p> <p>A <i>firm</i> may choose to comply with either <i>COBS 16.3</i> or <i>COB 8.2</i> in providing any <i>periodic report</i> in relation to which this <i>rule</i> applies.</p>	From 1 November 2007 indefinitely	1 November 2007
2.9	<i>COBS 20.2.1G</i> – <i>20.2.41G</i> ; <i>COBS 20.2.53R</i> – <i>20.2.60G</i> (Treating with-profits policyholders fairly)	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.	From 1 November 2007 indefinitely	1 November 2007
2.10	<i>COBS 20.2.42R</i> (3) (Policyholder advocate: appointment and role)	R	The provision listed in column (2) does not apply to a <i>firm</i> if it is already carrying out a <i>retribution</i> and the process is substantially underway to the extent that it has on or before 31 October 2007 appointed a <i>policyholder advocate</i> .	From 1 November 2007 – until completion of the <i>firm's retribution</i>	1 November 2007

2.11	COBS TP 2.9	G	<p>The <i>rules and guidance</i> on treating with-profits policyholders fairly (<i>COBS 20.2.1G – 20.2.41G; COBS 20.2.53R – 20.2.60G</i>) may be contrary to, or inconsistent with, some arrangements that were formally approved by the <i>FSA</i>, a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005. The effect of TP 2.9 is that these <i>rules</i> do not apply to such arrangements if, and to the extent that, it is inconsistent with them.</p> <p>A <i>firm</i> should be mindful, however, that, even if some or all of these <i>rules</i> are disapplied, the <i>firm</i> is still subject to the <i>rules</i> in the rest of the <i>Handbook</i>, including <i>Principle 6</i>.</p>	From 1 November 2007 indefinitely	1 November 2007
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COBS Schedules

Schedule 1:	Record keeping requirements	[to follow]
Schedule 2:	Notification requirements	[to follow]
Schedule 3:	Fees and other required payments	[to follow]
Schedule 4:	Powers exercised	[to follow]
Schedule 5:	Rights of action for damages	[to follow]
Schedule 6:	Rules that can be waived	[to follow]

**RECORD KEEPING, INTERPROFESSIONAL BUSINESS AND SIMPLIFIED
PROSPECTUSES INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1)
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 158A (Guidance on outsourcing by investment firms);
 - (e) section 210(3) (Statements of policy);
 - (f) section 247 (Trust scheme rules);
 - (g) section 248 (Scheme particulars rules);
 - (h) section 278 (Rules as to scheme particulars); and
 - (i) section 395(5) (The Authority's procedures);
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulation 2001 (SI 2001/1228); and
 - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FSA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act;

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA'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)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex B
Market Conduct sourcebook (MAR)	Annex C
New Collective Investment Schemes sourcebook (COLL)	Annex D

Citation

- E. This instrument may be cited as the Record Keeping, Interprofessional Business and Simplified Prospectuses Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

9. Record-keeping
- 9.1 General rules on record-keeping
- 9.1.-1 R ~~This chapter applies to the *MiFID business* of a *firm*. [deleted]~~
- 9.1.-2 R ~~This chapter applies only to the extent necessary to implement *MiFID* and the *MiFID implementing directive*. [deleted]~~
- 9.1.1 R ...
- 9.1.2 R ...
- 9.1.3 R ...
- Guidance on record-keeping
- 9.1.4 G ~~[intentionally blank]~~ Subject to any other record-keeping rule in the Handbook, the records required under the Handbook should be capable of being reproduced in the English language on paper. Where a firm is required to retain a record of a communication that was not made in the English language, it may retain it in that language. However, it should be able to provide a translation on request. If a firm's records relate to business carried on from an establishment in a country or territory outside the United Kingdom, an official language of that country or territory may be used instead of the English language.
- 9.1.5 G ~~[intentionally blank]~~ In relation to the retention of records for non-*MiFID business*, a firm should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the firm may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.
- 9.1.6 G ~~[intentionally blank]~~ Schedule 1 to each module of the Handbook sets out a list summarising the record-keeping requirements of that module.
- [Note: article 51(3) of *MiFID implementing Directive*]
- 9.1.7 G The Committee of European Securities Regulators (CESR) has issued recommendations on the list of minimum records under Article 51(3) of the

MiFID implementing Directive. This can be found at:
http://www.fsa.gov.uk/pubs/other/CESR_Minimum_List_Recommendations.pdf .

Annex B

Amendments to the Interim Prudential sourcebook for Investment Business (IPRU(INV))

In this Annex, underlining indicates new text.

....

1.2.3A R The record-keeping requirements listed in the table at IPRU (INV) 1.2.3B R do not apply to *common platform firms*.

1.2.3B R Table: List of IPRU (INV) record-keeping requirements that do not apply to *common platform firms*.

<u>IPRU (INV)</u>	<u>Provision</u>
<u>Chapter 3</u>	<u>3-10(1)R to 3-10(3)R</u> <u>3-12(1)R to 3-12(2)R</u> <u>3-13(1)R to 3-13(5)R</u>
<u>Chapter 5</u>	<u>5.3.1(1)R to 5.3.1(6)R</u>
<u>Chapter 13</u>	<u>13.1.10R to 13.1.17R</u>

...

Annex C

Amendments to the Market Conduct sourcebook (MAR)

MAR 3 is deleted in its entirety. The deleted text is not shown struck through.

MAR 3 [deleted]

Annex D

Amendments to the New Collective Investment Schemes sourcebook (COLL)

After *COLL* 4.5 insert the following new provisions. All text is new and is not underlined.

4.6 Simplified Prospectus provisions

Application

- 4.6.1 R This section applies to an *ICVC*, an authorised *fund manager* of an *AUT* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT* or *ICVC* is a *simplified prospectus scheme*.

Production and publication of simplified prospectus

- 4.6.2 R (1) An *operator* of a *simplified prospectus scheme* must, for each *simplified prospectus scheme* in respect of which it is the *operator*, produce and publish a *simplified prospectus* in accordance with the *rules* in this section and ensure that it contains in summary form each of the matters referred to in the table below that relates to this rule.
- (2) A *simplified prospectus* must be incorporated in a written document or in any *durable medium*.
- (3) An *operator* of a *simplified prospectus scheme* must be satisfied on reasonable grounds that each *simplified prospectus* which it produces:
- (a) includes all such information as is necessary to enable an investor to make an informed decision about whether to acquire *units* in the *scheme*;
 - (b) does not omit any key item of information;
 - (c) wherever possible is written in plain language which avoids technical language and jargon; and
 - (d) adopts a format and style of presentation which is clear and attractive to the average reader, so that it can be easily understood by him.
- (4) The *simplified prospectus* may be attached to the full *prospectus* as a removable part of it.

4.6.3 R Revision of simplified prospectus

An operator of a simplified prospectus scheme must, for each simplified prospectus scheme of which it is the operator, keep its simplified prospectus up-to-date and must revise it immediately on the occurrence of any material change.

- 4.6.4 G It is the *FSA's* view that any change to a *simplified prospectus scheme* that would be likely to influence the average investor in deciding whether to invest in the *scheme* or realise his investment in it should be regarded as a material change for the purposes of revision of a *simplified prospectus*. Examples would be changes to the *scheme's* objectives or investment policy. The *FSA* would expect a *simplified prospectus* to be updated at least annually.

Filing requirements

- 4.6.5 R A *UCITS management company* must for each *UCITS scheme* it manages file the *scheme's* initial *simplified prospectus*, together with each revision to it, with:

- (1) the *FSA*; and
- (2) the *competent authority* of each *EEA state* in which its *units* are to be marketed in the exercise of an *EEA right*.

UK firms exercising passporting rights in respect of UCITS scheme

- 4.6.6 R
- (1) A *UCITS management company* must for each *UCITS scheme* it manages and in respect of which it is marketing *units* in another *EEA State* in the exercise of an *EEA right*, produce a *simplified prospectus* for the *scheme* drawn up in accordance with the requirements contained in this section.
 - (2) The *simplified prospectus* must be drawn up in the, or one of the, official languages of the *EEA State* for which it was prepared or in a language approved by the *competent authority* of that *State*.
 - (3) The *simplified prospectus* may, without alteration, be used for marketing purposes in the *EEA State* for which it was prepared and in which the *units* of the *simplified prospectus scheme* are to be sold.
- 4.6.7 G
- (1) In translating the *simplified prospectus* from English into the or one or more of the official languages of the *EEA State* in which the

simplified prospectus scheme is to be marketed, or into a language approved by the *competent authority* of that *State*, it is permissible under article 28.3 of the *UCITS Directive*, in the *FSA's* view, for figures expressed in pounds sterling to be converted into the appropriate local currency such as euros. It is not necessary, for example, for the *simplified prospectus* of a *scheme* that is to be marketed across the *EEA* in the exercise of an *EEA right*, to refer to each amount in pounds sterling, in euros and additionally in every other local currency of an *EEA State* in which *units* of the *scheme* are to be marketed that has not adopted the euro as its currency.

- (2) *Operators* considering marketing the *units* of their *simplified prospectus schemes* in another *EEA State* in the exercise of an *EEA right* should have regard to the local marketing legislation of such country.

Contents of the simplified prospectus

- 4.6.8 R This table belongs to the rule on production and publication of a simplified prospectus (*COLL 4.6.2R* and *COLL 4.6.6R*)

Contents of simplified prospectus

Note:	By reproducing schedule C (Contents of the simplified prospectus) to the <i>UCITS Directive</i> (as amplified by Commission Recommendation (2004/384/EC)) and cross-referring to other relevant material, this annex details the facts or matters that must included in a <i>simplified prospectus</i> .
Brief presentation of the <i>simplified prospectus scheme</i> (in this Table referred to as "the <i>scheme</i> ").	
(1)	when the <i>scheme</i> was created and an indication of the <i>EEA State</i> where the <i>scheme</i> has been registered or incorporated;
(2)	in the case of a <i>scheme</i> having different investment compartments (<i>sub-funds</i>), the indication of this circumstance;
(3)	the name and contact details of the <i>operator</i> (when applicable);
(4)	the expected period of existence of the <i>scheme</i> (when applicable);
(5)	the name and contact details of the <i>depository</i> ;
(6)	the name and contact details of the auditors;
(7)	the name and brief details of the financial group (e.g. a bank) promoting the <i>scheme</i> ;

Investment information		
(8)	a short description of the <i>scheme's</i> objectives including:	
	(a)	a concise and appropriate description of the outcomes sought for any investment in the <i>scheme</i> ;
	(b)	a clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees; and
	(c)	a statement, where relevant, that the <i>scheme</i> is intended to track an index or indices, and sufficient information to enable investors both to identify the relevant index or indices and to understand the extent or degree of tracking pursued;
Notes:	1.	Information on (8)(a) should include a statement as to whether there is any arrangement intended to result in a particular capital or income return from the <i>units</i> or any investment objective of giving protection to their capital value or income return and, if so, details of that arrangement or protection.
	2.	The information disclosed under (8)(b) should include an explanation of what is to happen when an <i>investment</i> is encashed before the expiry of any related guarantee or protection.
(9)	the <i>scheme's</i> investment policy, including:	
	(a)	the main categories of eligible financial instruments which are the object of investment;
	(b)	whether the <i>scheme</i> has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets, e.g. investments in emerging countries' financial instruments;
	(c)	where relevant, a warning that, whilst the actual portfolio composition is required to comply with the broad legal and statutory rules and limits, risk-concentration may occur in regard of certain tighter asset classes, economic and geographic sectors;
	(d)	if the <i>scheme</i> invests in bonds, an indication of whether they are corporate or government, their duration and the ratings requirements;
	(e)	if the <i>scheme</i> uses financial derivative instruments, an indication of whether this is done in pursuit of the <i>scheme's</i> objectives, or for hedging purposes only;
	(f)	whether the <i>scheme's</i> management style makes some reference to a benchmark; and in particular whether the <i>scheme</i> has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this; and

	(g)	whether the <i>scheme's</i> management style is based on a tactical asset allocation with high frequency portfolio adjustments;	
	provided the information is material and relevant;		
Note:	The information referred to in paragraphs (8) and (9) may be set out as a single item in the <i>simplified prospectus</i> (e.g. for the information on index tracking), provided that the information so combined does not lead to confusion of the objectives and policies of the <i>scheme</i> . The order of the information items may be adapted to reflect the <i>scheme's</i> specific investment objectives and policy.		
(10)	a brief assessment of the <i>scheme's</i> risk profile by investment compartment or sub-fund, including:		
	(a)	overall structure of the information provided:	
		(i)	a statement to the effect that the value of investments may fall as well as rise and that investors may get back less than they put in;
		(ii)	a statement that details of all the risks actually mentioned in the <i>simplified prospectus</i> may be found in the full <i>prospectus</i> ;
		(iii)	a description in words of any risk investors have to face in relation to their investment, but only where such risk is relevant and material, based on risk impact and probability; and
	(b)	details regarding the description (in words) of the following risks:	
		(i)	specific risks:
			The description referred to in paragraph (10)(a)(iii) should include a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the <i>scheme</i> such as:
		A	the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);
		B	the risk that an issuer or a counterparty will default (credit risk);
		C	only where strictly relevant, the risk that a settlement in a transfer system does not take place as expected because a counterparty does not pay or deliver on time or as expected (settlement risk);
		D	the risk that a position cannot be liquidated in a timely manner at a reasonable price (liquidity risk);
		E	the risk that the investment's value will be affected by

				changes in exchange rates (exchange or currency risk);
			F	only where strictly relevant, the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the custodian or of a subcustodian (custody risk); and
			G	risks related to a concentration of assets or markets; and
		(ii)	horizontal risk factors:	
			The description referred to in paragraph (10)(a)(iii) should also mention, where relevant and material, the following factors that may affect the product:	
			A	performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;
			B	risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;
			C	exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider;
			D	inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;
			E	inflation risk; and
			F	lack of certainty that environmental factors, such as a tax regime, will persist;
		(iii)	possible prioritisation of information disclosure:	
			In order to avoid conveying a misleading image of the relevant risks, the information items should be presented so as to prioritise, based on scale and materiality, the risks so as to better highlight the individual risk profile of the <i>scheme</i> ;	
(11)	the historical performance of the <i>scheme</i> (where applicable) and a warning that this is not an indicator of future performance (which may be either included in or attached to the <i>simplified prospectus</i>), including:			
	(a)	disclosure of past performance:		
		(i)	the <i>scheme's</i> past performance, as presented using a bar chart showing annual returns for the last ten full consecutive years. If	

			the <i>scheme</i> has been in existence for fewer than ten years but at least for a period of one year, it is recommended that the annual returns, calculated net of tax and charges, be given for as many years as are available; and
		(ii)	if a <i>scheme</i> is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the <i>scheme</i> should include a comparison with the past performance of the benchmark according to which the <i>scheme</i> is managed or the performance fee is calculated;
Note:	Comparison should be achieved by representing the past performance of the benchmark and that of the <i>scheme</i> through the use of appropriate graphs to assist the reader to make the comparison.		
	(b)	disclosure of cumulative performance:	
		Disclosure should be made of the cumulative performance of the <i>scheme</i> over the ten year period referred to in paragraph (11)(a)(i). A comparison should also be made with the cumulative performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with paragraph (11)(a)(ii);	
Note:	Where the <i>scheme</i> has been in existence for fewer than ten years but at least for a period of one year, disclosure of the past cumulative performance should be made for as many years as are available.		
	(c)	exclusion of subscription and redemption fees, subject to appropriate disclosure:	
		A statement should be made that past performance of the <i>scheme</i> does not include the effect of subscription and redemption fees.	
Notes:	1.	Where a comparison is being made with the cumulative performance of a benchmark as required by paragraph (11)(b), the comparison should be achieved by representing the past performance of the benchmark and that of the <i>scheme</i> through the use of appropriate graphs to assist the reader to make the comparison.	
	2.	The <i>scheme's</i> historical performance may be produced as a separate attachment to the <i>simplified prospectus</i> .	
(12)	a profile of the typical investor the <i>scheme</i> is designed for;		
Economic information			
(13)	the <i>scheme's</i> applicable tax regime, including:		
	(a)	the tax regime applicable to the <i>scheme</i> in the <i>UK</i> ; and	
	(b)	a statement which explains that the regime of taxation of the income or capital gains received by individual investors depends on the tax law	

		applicable to the personal situation of each individual investor and/or to the place where the capital is invested and that if investors are unclear as to their fiscal position, they should seek professional advice or information from local organisations, where available;
Note:		This information should include a statement in relation to <i>SDRT provision</i> , explaining how the <i>scheme</i> may suffer stamp duty reserve tax as a result of transactions in <i>units</i> and whether the <i>operator's</i> policy is such that an <i>SDRT provision</i> may be imposed.
(14)		details of any entry and exit commissions relating to the <i>scheme</i> and details of the <i>scheme's</i> other possible expenses or fees, distinguishing between those to be paid by the <i>unitholder</i> and those to be paid from the <i>scheme's</i> or the <i>sub-fund's</i> assets, including:
	(a)	overall contents of the information provided:
	(i)	disclosure of a total expense ratio (TER), calculated as indicated in Annex 1 to this chapter, except for a newly created fund where a TER cannot yet be calculated;
	(ii)	on an ex ante basis, disclosure of the expected cost structure, that is an indication of all costs available according to the list set forth in Annex 1 to this chapter so as to provide investors, in so far as possible, with a reasonable estimate of expected costs;
	(iii)	all entry and exit commissions and other expenses directly paid by the investor;
	(iv)	an indication of all the other costs not included in the TER, including disclosure of transaction costs;
	(v)	as an additional indicator of the importance of transaction costs, the portfolio turnover rate, calculated as shown in Annex 2 to this chapter; and
	(vi)	an indication of the existence of fee-sharing agreements and soft commissions;
Notes:	1.	In explaining the function of the TER to the reader, appropriate wording should be used in the <i>simplified prospectus</i> . For example, TER might be explained in the following terms: "The TER shows the annual operating expenses of the <i>scheme</i> - it does not include transaction expenses. All European funds highlight the TER to help you compare the annual operating expenses of different <i>schemes</i> ."
	2.	It is the FSA's understanding that the disclosure of a reasonable estimate of expected costs on an ex ante basis, as required by paragraph (14)(a)(ii), only applies to new <i>schemes</i> where a TER cannot yet be calculated. Where a TER can be calculated for a <i>simplified prospectus scheme</i> , there is no need to have to

			disclose a reasonable estimate of expected costs on an ex ante basis in accordance with paragraph (14)(a)(ii), in addition to the TER.
		3.	Paragraph (14)(a)(vi)) should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the <i>Handbook</i> . Taking into account current market practice, consideration should be given as to how far the <i>scheme's</i> existing fee-sharing agreements and comparable fee arrangements are for the exclusive benefit of the <i>scheme</i> .
		4.	The <i>simplified prospectus</i> should make a reference to the full <i>prospectus</i> for detailed information on these kinds of arrangements, which should allow any investor to understand to whom expenses are to be paid and how possible conflicts of interest will be resolved in his/her best interest. The information provided in the <i>simplified prospectus</i> should remain concise in this respect.
		5.	[intentionally blank]
	(b)		information about 'fee sharing agreements' and 'soft commissions':
		(i)	identification of 'fee-sharing agreements';
Note:			For the purposes of paragraph (14)(b)(i), fee-sharing agreements should be taken as those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a <i>scheme</i> agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the <i>scheme</i> .
		(ii)	identification of soft commissions;
Note:			For the purposes of paragraph (14) (b) (ii), soft commissions should be regarded as any economic benefit, other than clearing and execution services, that an asset manager receives in connection with the scheme's payment of commissions on transactions that involve the scheme's portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.
	(c)		presentation of TER and portfolio turnover rate;
Note:			Both the TER and the portfolio turnover rate may be either included in or attached to the <i>simplified prospectus</i> in the same paper as information on past performance.
Commercial information			
(15)			how to buy the <i>units</i> ;
Note:			This should include an explanation of any relevant right to cancel or withdraw

	from the purchase, or, where it is the case, that such rights do not apply.
(16)	how to sell the <i>units</i> ;
(17)	in the case of a <i>scheme</i> having different investment compartments (<i>sub-funds</i>), an explanation of how to switch from one investment compartment into another and any charges applicable in such cases;
(18)	when and how dividends on <i>units</i> or <i>shares</i> of the <i>scheme</i> (if applicable) are distributed;
(19)	when and where prices of <i>units</i> are published or made available;
Additional information	
(20)	A statement that, on request, the full <i>prospectus</i> and the annual and half-yearly reports of the <i>scheme</i> may be obtained free of charge before the conclusion of the contract and afterwards, together with details of how they may be obtained or how a <i>person</i> may gain access to them;
(21)	the name and contact details of the <i>FSA</i> as being the <i>competent authority</i> which has authorised or registered the <i>scheme</i> ;
(22)	details of a contact point (<i>person</i> or department, and, if appropriate the times of day etc.) where additional information may be obtained if needed;
(23)	the date of publication of the <i>simplified prospectus</i> .
General Note:	
	In making the disclosures required by paragraphs (8) to (19) of this Table, the information must be presented in the form of questions and answers. This format is designed to assist the comprehension of the reader. This requirement will not apply in relation to a <i>simplified prospectus</i> that is to be used to market the <i>units</i> of the <i>scheme</i> in another <i>EEA state</i> or in relation to a <i>simplified prospectus</i> that is to be used to market the <i>units</i> of the <i>scheme</i> exclusively to <i>persons</i> who are not <i>private customers</i> .

[intentionally blank]

4.6.9 R (1) [intentionally blank]

(2) [intentionally blank]

Composite documents for several schemes, sub-funds and classes

4.6.10 G [intentionally blank]

Multiclass schemes: use of representative class

4.6.11 G In the *FSA's* view, where a *simplified prospectus scheme* has more than one *class of unit*, the *simplified prospectus* may be prepared on a representative *class* basis, provided this is made clear and there is no material difference in the *classes* concerned. The same applies for an *umbrella*, as regards any *sub-fund* with more than one *class of units*.

Total expense ratio calculation

4 Annex R This Annex belongs to the rule on the contents of the simplified prospectus
1 1 in this chapter.

Total expense ratio (TER)		
1.	Definition of the TER	
	The total expense ratio (TER) of a <i>simplified prospectus scheme</i> is the ratio of the <i>scheme's</i> total operating costs to its average net assets calculated according to paragraph 3.	
2.	Included/excluded costs	
	(a)	The total operating costs are all the expenses which come in deduction of a <i>simplified prospectus scheme's</i> assets. These costs are usually shown in a <i>scheme's</i> statement of operation for the relevant fiscal period. They are assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.
	(b)	Total operating costs include any legitimate expenses of the <i>simplified prospectus scheme</i> , whatever their basis of calculation (e.g. flat-fee, asset-based, transaction-based - see note 2 above), such as:
		- management costs including performance fees;
		- administration costs;
		- fees linked to <i>depository</i> duties;
		- audit fees;
		- payments to shareholder services providers including payments to the <i>simplified prospectus scheme's</i> transfer agent and payments to broker-dealers that are record owners of the <i>scheme's</i> shares and that provide sub-accounting services for the beneficial owners of the <i>scheme's</i> shares;
		- payments to lawyers;
		- any distribution or unit cancellation costs charged to the <i>scheme</i> ;
		- registration fees, regulatory fees and similar charges;
		- any additional remuneration of the management company (or any other party) corresponding to certain fee-sharing agreements in accordance with paragraph 4 below.

	(c)	The total operating costs do not include:
	-	transaction costs which are costs incurred by a <i>simplified prospectus scheme</i> in connection with transactions on its portfolio. They include brokerage fees, taxes and linked charges and the market impact of the transaction taking into account the remuneration of the broker and the liquidity of the concerned assets;
	-	interest on borrowing;
	-	payments incurred because of financial derivative instruments;
	-	entry/exit commissions or any other fees paid directly by the investor;
	-	soft commissions in accordance with paragraph 4.
3.		Calculation method and disclosure
	(a)	The TER is calculated at least once a year on an ex post basis, generally with reference to the fiscal year of the <i>simplified prospectus scheme</i> . For specific purposes it may also be calculated for other time periods. The <i>simplified prospectus</i> should in any case include a clear reference to an information source (e.g. the <i>scheme's</i> website) where the investor may obtain previous years'/periods' TER figures.
	(b)	The average net assets must be calculated using figures that are based on the <i>scheme's</i> net assets at each calculation of the net asset value (NAV), e.g. daily NAVs where this is the normal frequency of NAV calculation as approved by the <i>simplified prospectus scheme's competent authorities</i> . Further circumstances or events which could lead to misleading figures have equally to be taken into consideration.
		Tax relief should not be taken into account.
		The calculation method of the TER must be validated by the <i>simplified prospectus scheme's</i> auditors and/or <i>competent authorities</i> .
4.		Fee-sharing agreements and soft commissions
		It regularly results from fee-sharing agreements on expenses that are generally not included in the TER, that the management company or another party is actually meeting, in all or in part, operating costs that should normally be included in the TER. They should therefore be taken into account when calculating the TER, by adding to the total operating costs any remuneration of the management company (or another party) that derives from such fee-sharing agreements.
		There is no need to take into account fee-sharing arrangements on expenses that are already in the scope of the TER. Soft commissions should also be

	left outside the scope of the TER.
	Thus:
-	the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs and with other fund management companies in the case of funds of funds (if this remuneration has not already been taken into account in the synthetic TER (see paragraph 6 below) or through other costs already charged to the fund and therefore directly included into the TER) should anyway be taken into account in the TER,
-	conversely, the remuneration of a management company through a fee-sharing agreement with a <i>scheme</i> (except when this remuneration falls under the scope of the specific fund-of-fund case covered in the previous indent) should not be taken into account.
5.	Performance fees:
	Performance fees should be included in the TER and should also be disclosed separately as a percentage of the average net asset value.
6.	Simplified prospectus scheme investing in UCITS scheme or in non-UCITS scheme:
	When a <i>simplified prospectus scheme</i> invests at least 10% of its net asset value in <i>UCITS schemes</i> or in <i>schemes</i> that are not <i>UCITS schemes</i> which publish a TER in accordance with this Annex, a synthetic TER corresponding to that investment should be disclosed.
	The synthetic TER is equal to the ratio of:
-	the <i>simplified prospectus scheme's</i> total operating costs expressed by its TER and all the costs borne by the <i>scheme</i> through holdings in underlying funds (i.e. those expressed by the TER of the underlying funds weighted on the basis of the <i>simplified prospectus scheme's</i> investment proportion), plus the subscription and redemption fees of these underlying funds, divided by
-	the average net assets of the <i>scheme</i> .
	As mentioned in the previous subparagraph, subscription fees and redemption fees of the underlying funds should be included in the TER. Subscription and redemption fees may not be charged when the underlying funds belong to the same group in accordance with Article 24 (3) of the <i>UCITS Directive</i> .
	When any of the underlying <i>schemes</i> that are not <i>UCITS schemes</i> does not publish a TER in accordance with this Annex, disclosure of costs should be adapted in the following way:
-	the impossibility of calculating the synthetic TER for that fraction of

		the investment must be disclosed,
	-	the maximum proportion of management fees charged to the underlying fund(s) must be disclosed in the <i>simplified prospectus</i> ,
	-	a synthetic figure of total expected costs must be disclosed, by calculating:
	-	a truncated synthetic TER incorporating the TER of each of those underlying funds for which the TER is calculated according to this Annex, weighted on the basis of the <i>simplified prospectus scheme's</i> investment proportion, and
	-	by adding, for each of the other underlying funds, the subscription and redemption fees plus the best available maximum estimate of TER-eligible costs. This should include the maximum management fee and the last available performance fee for that fund, weighted on the basis of the <i>simplified prospectus scheme's</i> investment proportion.
7.	Umbrella funds/multiclass funds:	
	In the case of umbrella funds, the TER should be calculated for each <i>sub-fund</i> . If, in the case of multiclass funds, the TER differs between different share classes, a separate TER should be calculated and disclosed for each share class. Furthermore, in keeping with the principle of equality among investors, where there are differences in fees and expenses across classes, these different fees/expenses should be disclosed separately in the <i>simplified prospectus</i> . An additional statement should indicate that the objective criteria (e.g. the amount of subscription), on which these differences are based, are available in the full <i>prospectus</i> .	

Notes:	
1.	This Annex sets out the requirements in relation to the TER. It reproduces, and adapts where appropriate for the purposes of the Simplified Prospectus provisions, Annex 1 to Commission Recommendation (2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC).
2.	The non-exhaustive typology of calculation bases referred to in paragraph 2(b) below reflects the diversity of recent commercial practice across Member States (at the end of 2003) and should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the <i>Handbook</i> .

Portfolio turnover calculation

4 Annex R
2

This Annex belongs to the rule on the contents of the simplified prospectus in this chapter.	
Note:	This Annex sets out the requirements in relation to the portfolio turnover rate. It reproduces Annex II to Commission Recommendation (2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC). This table also includes other material which the FSA considers should be included.
Portfolio turnover rate	
A <i>simplified prospectus scheme's</i> or, where relevant, a compartment's (<i>sub-fund's</i>) portfolio turnover rate must be calculated in the following way:	
Purchases of securities = X	
Sales of securities = Y	
Total 1 = total of transactions in securities = X + Y	
Issues/Subscriptions of units of the scheme = S	
Cancellations/Redemptions of units of the scheme = T	
Total 2 = Total transactions in units of the scheme = S + T	
Reference average of total net assets = M	
Turnover = [(Total 1 - Total 2)/M]*100	
The reference average of total net assets corresponds to the average of net asset values calculated with the same frequency as under Annex 1 to this chapter. The portfolio turnover rate disclosed should correspond to the period(s) for which a TER is disclosed. The <i>simplified prospectus</i> should in any case include a clear reference to an information source (e.g. the <i>scheme's</i> website) where the investor may obtain previous periods' performance.	
Note	
Firms should note that inclusion of the portfolio turnover rate in the <i>simplified prospectus</i> is mandatory. The rate must be calculated according to the formula which is prescribed above. However, because the rate includes both purchases and sales of <i>securities</i> , readers may find it difficult to understand. Consequently <i>firms</i> should consider including an explanation of the formula, such as:	

(Purchase of *securities* + Sales of *securities*) – (Subscription of
units + Redemptions of units)

(Average Fund Value over 12 months) x 100

HANDBOOK ADMINISTRATION (NO 6) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force as follows:
- (1) Annex D comes into force on 29 June 2007;
 - (2) Annex C, Part 1 of Annex E and Annex G come into force on 6 July 2007;
 - (3) Part 1 of Annex A and Annex B come into force on 6 August 2007;
 - (4) Part 2 of Annex A comes into force on 1 October 2007; and
 - (5) the rest of this instrument comes into force on 1 November 2007.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex E
New Conduct of Business sourcebook (COBS)	Annex F
Supervision manual (SUP)	Annex G

Notes

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

Citation

- F. This instrument may be cited as the Handbook Administration (No 6) Instrument 2007.

By order of the Board
28 June 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. In Part 1, where a new definition is being inserted, the text is not underlined.

Part 1 (in force 6 August 2007)

RPPD the Regulatory Guide which contains a statement of the responsibilities of providers and distributors for the fair treatment of *customers*.

Part 2 (in force 1 October 2007)

multilateral development bank ~~(1)~~(a) any of the following:

- (i) African Development Bank;
- (ii) Asian Development Bank;
- (iii) Caribbean Development Bank;
- (iv) Council of Europe Development Bank;
- (v) European Bank for Reconstruction & Development;
- (vi) European Investment Bank;
- (vii) European Investment Fund;
- (viii) Inter-American Development Bank;
- (ix) International Bank for Reconstruction & and Development;
- (x) International ~~Financial~~ Finance Corporation;
- (xa) International Finance Facility for Immunisation;
- (xb) Islamic Development Bank;
- (xi) Multilateral Investment Guarantee Agency; and
- (xii) Nordic Investment Bank;

~~(2)~~(b) ...

Part 3 (in force 1 November 2007)

The changes made to the definition of “*controlled activity*” by the *Glossary (MiFID) Instrument 2007* (FSA 2007/1) and the *Glossary (Conduct of Business and Other Sourcebooks) Instrument 2007* (FSA 2007/32) are revoked. This definition is amended as follows:

controlled activity (in accordance with section 21(9) of the *Act* (The classes of activity and investment) any of the following activities specified in Part 1 of Schedule 1 to the Financial Promotions Order (Controlled Activities):

...

(fa) operating a multilateral trading facility (paragraph 4A);

...

(u) agreeing to carry on specified kinds of activity (paragraph 11) which are specified in paragraphs 3 to 10H (other than paragraph 4A) of Part 1 of Schedule 1 to the *Financial Promotion Order*.

Amend the following definitions as shown:

excess surplus a *firm* will have an excess surplus in a *with-profits fund* if, and to the extent that:

(a) the *regulatory surplus* (or, in the case of a *realistic basis life firm*, the excess of *realistic value of assets* over *realistic value of liabilities*) in that *with-profits fund*; and

(b) ...

...

regulatory system the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance* and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the *MiFID implementing Directive* and the *MiFID implementing Regulation*.

Annex B

Amendments to the Principles for Businesses (PRIN)

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

Responsibilities of product providers and distributors under the Principles

- 1.1.10 G *RPPD* contains *guidance* on the responsibilities of providers and distributors for the fair treatment of *customers* under the *Principles*.

Annex C

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

3.4 Risk weights under the standardised approach to credit risk

...

Exposures secured by mortgages on residential property

...

3.4.64 R The requirements about legal certainty referred to in *BIPRU* 3.4.60R(4)(a) are as follows:

- (1) the mortgage or ~~charge~~ charge must be enforceable in all relevant jurisdictions which are relevant at the time of conclusion of the credit agreement, and the mortgage or ~~charge~~ charge must be properly filed on a timely basis;

...

3.4.84 R For the purposes of *BIPRU* 3.4.56R or *BIPRU* 3.4.58R, a *firm* may only treat an *exposure* as fully and completely secured by residential property situated in the territory of a *third-country competent authority* that is listed as equivalent for credit risk in *BIPRU* 8 Annex ~~36R~~ if it would be treated as fully and completely secured under the applicable requirements of that *third-country competent authority* (including any applicable loan-to-value ceiling).

4.3 The IRB approach: Provisions common to different exposure classes

...

4.3.33 R A *firm* must regularly compare realised *default* rates with estimated *PDs* for each grade and where realised *default* rates are outside the expected range for that grade a *firm* must specifically analyse the reasons for the deviation. A ~~firm~~ firm using its own estimates of *LGDs* and/or *conversion factors* must also perform analogous analysis for own estimates of *LGDs* and *conversion factors*. Such comparisons must make use of historical data that cover as long a period as possible. A *firm* must document the methods and data used in such comparisons. This analysis and documentation must be updated at least annually.

[**Note:** *BCD* Annex VII Part 4 point 111]

Annex D

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

In this Annex, where a new version of a form or instructions to a form is substituted for the current version, the new text is not underlined.

...

Appendix 9.11 Reporting Forms

...

Replace Form 60 with the following:

Lloyd's Return

Long term insurance capital requirement

Form 60

The Society of Lloyd's
Financial year ended
Units

				L60	Global	Financial year ended	Units
				Net reserves / capital at risk	Reinsurance factor	31/12/xx	£000
				3	4	LTICR Financial year	LTICR Previous year
				1	2	5	6
Insurance death risk capital component							
Life protection reinsurance	11	0.0%					
Classes I (other), II and IX	12	0.1%					
Classes I (other), II and IX	13	0.15%					
Classes I (other), II and IX	14	0.3%					
Classes III, VII and VIII	15	0.3%					
Total	16						
Insurance health risk and life protection reinsurance capital component							
Class IV, supplementary classes 1 and 2 and life protection reinsurance	21						
Insurance expense risk capital component							
Life protection and permanent health reinsurance	31	0%					
Classes I (other), II and IX	32	1%					
Classes III, VII and VIII (investment risk)	33	1%					
Classes III, VII and VIII (expenses fixed 5 yrs +)	34	1%					
Classes III, VII and VIII (other)	35	25%					
Class IV (other)	36	1%					
Class V	37	1%					
Class VI	38	1%					
Total	39						
Insurance market risk capital component							
Life protection and permanent health reinsurance	41	0%					
Classes I (other), II and IX	42	3%					
Classes III, VII and VIII (investment risk)	43	3%					
Classes III, VII and VIII (expenses fixed 5 yrs +)	44	0%					
Classes III, VII and VIII (other)	45	0%					
Class IV (other)	46	3%					
Class V	47	0%					
Class VI	48	3%					
Total	49						
Long term insurance capital requirement	51						

Replace the instructions to Form 60 as follows:

Instructions for completion of Form 60

1. The *insurance death risk capital component* in lines 11-15 column 5 is based on capital at risk for those contracts where it is not negative. Capital at risk is the benefit payable as a result of death less the *mathematical reserves* after distribution of surplus. *Life protection reinsurance business* written by a *pure reinsurer* or a *mixed insurer* is reported in line 11. Other business in classes I, II and IX must be split between lines 12, 13 and 14 in accordance with *INSPRU* 1.1.82R. Line 12 is for temporary insurance on death where the original term of the contract is 3 years or less. Line 13 is for temporary insurance where the original term is 5 years or less but more than 3 years. Line 14 is for other *class I, II* or *IX* business. For a *pure reinsurer* the factor of 0.3% in column 1 of line 15 must be replaced by 0.1%.
2. In lines 11-15 columns 2 and 3 are the gross and net capital at risk in accordance with *INSPRU* 1.1.83R. For lines 12-14 the reinsurance factor is calculated in aggregate, so column 4 is the sum of lines 12-14 column 3 divided by the sum of lines 12-14 column 2, subject to a minimum of 0.5 in accordance with *INSPRU* 1.1.81R. For line 15 column 4 is column 3 divided by column 2, subject to a minimum of 0.5 in accordance with *INSPRU* 1.1.81R. Column 5 is column 1 x column 2 x column 4.
3. The *insurance health risk and life protection reinsurance capital component* in line 21 column 5 must be equal to the entry at line 43 in Form 12 for *long-term insurance business*, unless an estimate has been made in accordance with instruction 2 to Forms 11 and 12. In this case a supplementary note (code 6001) is required as described in that instruction.
4. For the purpose of calculating the *insurance expense risk capital component* and the *insurance market risk capital component* linked contracts must be allocated to:
 - lines 33 and 43 where the *firm* bears an investment risk,
 - lines 34 and 44 where the *firm* does not bear an investment risk but where the allocation to cover *management expenses* is fixed for a period exceeding 5 years from the commencement of the contract, and
 - lines 35 and 45, otherwise.*Life protection reinsurance business* and *permanent health reinsurance business* written by a *pure reinsurer* or a *mixed insurer* must be allocated to lines 31 and 41.
5. The *insurance expense risk capital component* for linked contracts where the *firm* bears no investment risk and the allocation to cover *management expenses* does not have a fixed upper limit for a period exceeding 5 years from the commencement of the contract in line 35 is 25% of net *administrative expenses* in accordance with *INSPRU* 1.1.88R(1).
6. The *insurance expense risk capital component* for *class V* in line 37 column 5 is 1% of the assets of the tontine in accordance with *INSPRU* 1.1.88R(2).
7. The *insurance expense risk capital component* for other business in lines 32, 33, 34, 36 and 38 column 5 is 1% of adjusted *mathematical reserves* after distribution of surplus in accordance with *INSPRU* 1.1.88R(3). Column 4 is column 3 divided by column 2, subject to a minimum of 85% (50% for a pure reinsurer) in accordance with *INSPRU* 1.1.90R. Column 5 is column 1 x column 2 x column 4.
8. The *insurance market risk capital component* in lines 44 and 45 column 5 for class III, VII and VIII contracts where the *firm* does not bear any investment risk and in line 46 for class V contracts is nil in accordance with *INSPRU* 1.1.89R.
9. The *insurance market risk capital component* in line 42, 43, 46 and 48 column 5 is 3% of adjusted *mathematical reserves* after distribution of surplus in accordance with *INSPRU* 1.1.89R. Column 4 is column 3 divided by column 2 subject to a minimum of 85% (50% for a pure reinsurer) in accordance with *INSPRU* 1.1.90R. Column 5 is column 1 x column 2 x column 4. The amount in line 49 column 3 must equal the amount in Form 14 line 11.
10. The *long term insurance capital requirement* in line 51 column 5 is the sum of column 5 in lines 16, 21, 39 and 49.

11. The ratios in column 4 must be shown to 2 decimal places, but the unrounded ratios must be used for the purposes of calculating column 5.
12. Where the previous financial year ends before 31 December 2006, column 6 must be completed using the corresponding figures from the previous return, e.g. line 12 column 6 contains the amount previously shown in line 11 column 5.

Annex E

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

Part 1 (in force 6 July 2007)

Annex A: LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS' CAPITAL

...

Specific conditions for eligibility

2.2 R The specific conditions are that:

(1) ...

(2) the members' capital account is an account:

(a) ...

(b) from which under the terms of the *limited liability partnership* agreement an amount representing capital may be withdrawn by a member only if:

(i) he ceases to be a member and an equal amount is transferred to another such account by his former fellow members or any person replacing him as a member; or

(ii) the *limited liability partnership* is wound up or otherwise dissolved; or ~~wound up and either the *firm* has ceased to be *authorised* or no longer has a *Part IV permission*.~~

(iii) the *firm* has ceased to be *authorised* or no longer has a *Part IV permission*.

Part 2 (in force 1 November 2007)

...

APPENDIX 13(1): Defined terms for Chapter 13

Delete the following definition from Appendix 13(1); the text is not shown struck through:

Category A firm

Annex D [Required Forms]

...

9.8 Guidance Notes on Completion of Agreements

...

15 Repayment clauses have given rise to confusion in the past. The wording of such clauses will differ depending on ~~whether an ISD long term, an ISD short term or a non-ISD~~ which form is being used. Sample wordings for each of these forms of agreement are set out below.

Annex F

Amendments to the new Conduct of Business sourcebook (COBS)

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

These amendments are to the text of COBS as published in the *Conduct of Business Sourcebook Instrument 2007* (FSA 2007/33).

1 Ann 1 ...

Part 1: What?

...

1	Eligible counterparty business	
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> that is <i>MiFID</i> or <i>equivalent third country business</i> .
		COBS provision
		Description
		...
		<i>COBS</i> 4 (other than <i>COBS</i> 4.2.5R <u>4.4.1R</u> and <i>COBS</i> 4.2.6G <u>4.4.2G</u>)
		Communicating with clients including financial promotions
		...
...		
5.2	G	... The exclusion also does not apply in relation to the sale of a <i>financial instrument</i> for the purpose of enabling a <i>client</i> to invest money to repay his obligations under a loan, mortgage <u>mortgage</u> or home reversion <u>home reversion</u> .
...		

...

Part 3: Guidance

...		
5.1	G	... The rules in this sourcebook within the Directive's scope are the cancellation rules <u>cancellation rules (COBS 15)</u> and those rules requiring the provision of pre-contract information ...

...		
6.1	G	... The <i>rules</i> in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information, the <i>cancellation rules</i> <u>cancellation rules (COBS 15)</u> and the other ...
...		
6.5	G	In the <i>FSA's</i> view:
		...
		(2) ...; in other words, the <i>rules</i> requiring pre-contract information and <i>cancellation rules</i> <u>cancellation rules (COBS 15)</u> derived from the <i>Consolidated Life Directive</i> ...
		(3) ... (The basis for this is that the <i>IMD Insurance Mediation Directive</i> was adopted after the <i>DMD Distance Marketing Directive</i> and is not expressed to be subject to it.)
...		

2.4.3 R ...

(2) Paragraph (1) does not apply if:

...

(b) C1 is neither a *firm* nor an *overseas financial services institution* and the main purpose of the arrangements between the parties is the avoidance of duties that F would otherwise owe to C2.

...

3.1.2 G ... For example, a separate approach to *client* categorisation is set out in the definition of a *retail client* for a *firm* that ~~is providing basic advice on a stakeholder product~~ gives basic advice.

4.11.1 R ...

(3) A *firm* must retain the record in relation to a *financial promotion* relating to:

...

(b) a *life policy*, ~~*OPS occupational pension scheme*~~, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*, for six years;

- ...
- ...
- 6.1.11 R ...
- (2) A *firm* may instead provide that information immediately after starting to provide *designated investment business* or *ancillary services* if:
- (a) the *firm* was unable to comply with (1) because, at the request of the *client*, the agreement was concluded using a ~~*means of distance communication*~~ means of distance communication which prevented the *firm* from doing so; and
- (b) in any case where the ~~*rule on voice telephony communications*~~ rule on voice telephony communications (COBS 5.1.12R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.
- ...
- 9.5.2 R The A *firm* must retain its records relating to suitability for a minimum ...
- 11.7.2A G The requirements of this section are without prejudice
- 14.3.11 R If a *firm* provides ...
- ...
- (2) costs and associated charges (~~COBS 2.2.2R(1)(d)~~ 2.2.1R(1)(d) and ~~COBS 7.1.8R~~ 6.1.9R);
- ...
- 15.2.5 R ...
- (2) This *rule* applies only where a *consumer* would not otherwise receive similar information under a *rule* in this sourcebook from the *firm* or another *authorised person* (such as under the ~~*distance marketing disclosure rules*~~ distance marketing disclosure rules (COBS 5.1.1R to 5.1.4R) or the COBS 14 ('Providing product information' ~~chapter~~)).
- 15.4.2 R ...
- (3) The *firm* may not require the *consumer* to pay any amount on the basis of this *rule* unless it can prove that the *consumer* was duly informed about the amount payable, in conformity with the ~~*distance marketing disclosure rules*~~ distance marketing disclosure rules.

However, ...

...

16 Annex 1R Trade confirmation and periodic information

This annex forms part of *COBS* 16.2.1R

...

20.4.5 R A *firm* must:

...

(3) provide its *CFPPFM* free of charge with any:

...

(c) ~~key facts disclosure~~ features document ~~for~~ for a with-profits policy; and

...

...

TP 1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Pprovision	Transitional provision: dates in force	Handbook Pprovisions: coming into force
...					
1.4	<i>COBS</i> 3	G	... The requirement to obtain confirmation under <i>COBS</i> 3.6.3R(2) <u>3.6.4R(2)</u> only applies in relation to prospective counterparties. ...	...	...
...					

TP 2

(1)	(2)	(3)	(4)	(5)	(6)
-----	-----	-----	-----	-----	-----

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provisions: coming into force
...					
2.6	COBS 14.1 and COBS 14.2	R	<p>A <i>firm</i> is not required to provide a <i>key features document</i> ... if:</p> <p>(1) the rules would have required the <i>firm</i> to provide a <i>key features document</i> for that product if they were still in force;</p> <p>(2) the <i>firm</i> is satisfied, on reasonable grounds, that providing a <i>key features document</i> in accordance with the rules, as if they were still in force, will not cause:</p> <ul style="list-style-type: none"> (a) a <i>client</i> to suffer any prejudice; or (b) the <i>firm</i> to breach its obligations under one or more of the <i>Principles</i>; and <p>(3) the <i>firm</i> provides a <i>key features document</i> for the product in accordance with the rules as if they were still in force.</p> <p>...</p>	...	...
...					
2.8	COBS 16.3 (Periodic statements)	G	<p>...</p> <p>A <i>firm</i> may choose to comply with either COBS 16.3 or COB 8.2 in providing any <i>periodic report statement</i> in</p>	...	...

			relation to which this <i>rule</i> applies.		
--	--	--	---	--	--

Annex G

Amendments to the Supervision manual (SUP)

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

SUP 16 Annex 9R Annual Questionnaire for Authorised Professional Firms

...

2.02 Income from mainstream regulated activities

a ...

b During the period, please indicate the proportion of this income generated from: i) ...

(An estimate to the nearest 10% is sufficient)

...

iv) *Mortgage
Home Finance
mediation activities*

...

c Did the *firm* during the period:

...

(i) Handle *client money*?
(i.e. money held in the course of *designated investment business, ~~mortgage~~ home finance mediation activity* or *insurance mediation activity*)

...

...

...

[The following list was inserted into Section E of the Retail Mediation Activities Return (RMAR), in SUP 16 Annex 18AR, by the *Supervision Manual (Retail Mediation Activities Return) Instrument 2006* (FSA 2006/14). Although the list was set out in full in the instrument, it does not of itself need to form part of the return. Rather, it was intended to act as a convenience to firms filling in this return. Whilst the list will remain as a drop-down menu within the RMAR, future amendments to it will no longer be made by instrument.]

SUP 16 Annex 18AR

Delete the following from the face of the form:

~~Drop down list~~

~~[Please Select]~~

- ~~1 Abacus Syndicate (Lloyds Syndicate)~~
- ~~2 Aee~~
- ~~3 ALEA London Ltd~~
- ~~4 American International Group~~
- ~~5 American Insurance Company~~
- ~~6 Amlin Insurance Services~~
- ~~7 Aon Professional Risks~~
- ~~8 Beazley (Lloyds Syndicate or Limited Company)~~
- ~~9 Brit (Lloyds Syndicate or Limited Company)~~
- ~~10 Canopus Managing Agents (previously Trenwick)~~
- ~~11 Catlin Insurance Company Ltd~~
- ~~12 CBC UK Ltd~~
- ~~13 Chaucer Syndicates Ltd (Lloyds Syndicate)~~
- ~~14 China~~
- ~~15 Chubb Insurance Company of Europe SA~~
- ~~16 CNA Insurance~~
- ~~17 Collegiate~~
- ~~18 D A Constable (Lloyds Syndicate)~~
- ~~19 Griffen~~
- ~~20 HCC (Lloyds syndicate)~~
- ~~21 Hiscox (Lloyds Syndicate or Limited Company)~~
- ~~22 Interpolis (SimplyBiz)~~
- ~~23 Magian Underwriting~~
- ~~24 Markel (Lloyds Syndicate)~~
- ~~25 Mitsui Sumitomo (Lloyds Syndicate)~~
- ~~26 Newline Underwriting (Lloyds Syndicate)~~
- ~~27 PI Direct~~
- ~~28 QBE International Insurance Limited~~
- ~~29 Royal & Sun Alliance~~
- ~~30 St Paul International Insurance Co Ltd~~
- ~~31 SVB (Lloyds Syndicate)~~
- ~~32 Towergate Lifestyle Underwriting~~
- ~~33 Trilley~~
- ~~34 W R Berkley~~
- ~~35 Other (please state)~~
- ~~36 Multiple (please state all the insurance undertakings)~~

**CAPITAL REQUIREMENTS DIRECTIVE (MISCELLANEOUS AMENDMENTS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 June 2007.

Amendments to the Handbook

- D. The General Prudential sourcebook (GENPRU) is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Capital Requirements Directive (Miscellaneous Amendments) Instrument 2007.

By order of the Board
28 June 2007

Annex A

Amendments to the General Prudential sourcebook (GENPRU)

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

2 Capital

...

2.2 Capital resources

...

Core tier one capital: profit and loss account and other reserves: Dividends

2.2.87 R Dividends must be deducted from reserves as soon as they are ~~declared~~ foreseeable.

2.2.87A G Each firm must assess for itself when, in its particular circumstances, dividends are foreseeable. A dividend is foreseeable at the latest:

(1) in the case of an interim dividend, when it is declared by the directors; or

(2) in the case of a final dividend, when the directors approve the dividend to be proposed at the annual general meeting.

...

Core tier one capital: externally verified interim net profits

2.2.102 R Externally verified interim net profits are interim profits which have been verified by a *firm's* external auditors after deduction of tax, ~~declared~~ foreseeable dividends and other appropriations.

...

2.2.216A G (1) This paragraph gives guidance as to the amount to be deducted at Part 2 of stage M (Deductions from the totals of tier one and two) of GENPRU 2 Annex 2R (Capital resources table for a bank) and Annex 3R (Capital resources table for a building society) in respect of investments in subsidiary undertakings and participations (excluding any amount which is already deducted as material holdings or qualifying holdings).

(2) The effect of those rules is to achieve the deduction of all

investments in subsidiary undertakings and participations for banks and building societies by ensuring that amounts not already deducted under other rules are accounted for at this stage of the calculation of capital resources.

- (3) The following investments in subsidiary undertakings and participations should be deducted at this stage:
- (a) those not deducted in Part 1 of stage M because of the operation of the thresholds in GENPRU 2.2.205R (on qualifying holdings) and GENPRU 2.2.209R (on material holding); and
 - (b) those which do not meet the definition of qualifying holding or material holding.
- (4) For example, an investment in an undertaking which is not a qualifying holding under GENPRU 2.2.204R(2) (on the definition of a non-financial undertaking), that is whose exclusive or main activities are a direct extension of banking or concern services ancillary to banking, such as leasing, factoring, the management of unit trusts, the management of data processing services or any other similar activity, should be deducted at this stage.

...

GENPRU 2 Annex 2R

Capital resources table for a bank

The capital resources calculation for a bank			
Type of capital		Related text	Stage
...			
Deductions from the totals of tier one and two			(M)
...			
	Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding any amount which is already deducted as <i>material holdings</i> or <i>qualifying holdings</i>	None <u>GENPRU 2.2.216AG</u>	(Part 2 of stage M)
...			

GENPRU 2 Annex 3R

Capital resources table for a building society

The capital resources calculation for a building society			
Type of capital		Related text	Stage
...			
Deductions from the totals of tier one and two			(M)
...			
	Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding any amount which is already deducted as <i>material holdings</i> or <i>qualifying holdings</i>	None <u>GENPRU 2.2.216AG</u>	
...			

...

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

- 1 Application
- ...
- 1.2 Definition of the trading book
- ...
- Definition of the trading book: Repos
- 1.2.6 R ...
- 1.2.6A G Capital requirements for term trading-related repo-style transactions are the same whether the risks arise in the *trading book* as counterparty credit risk or in the *non-trading book* as credit risk.
- ...
- 10.8 UK integrated groups
- ...
- 10.8.5 G ~~Firms are referred to the guidance in *BIPRU 3.2.30G* and *BIPRU 3.2.31G* (*guidance* relating to 0% risk weights for intra-group exposures under the standardised approach) as follows: on the prompt transfer of capital resources and repayment of liabilities.~~
- (1) *BIPRU 3.2.28G* in respect of *BIPRU 10.8.4R(3)* on same risk evaluation, measurement and control procedures; and
- (2) *BIPRU 3.2.30G* and *BIPRU 3.2.31G* in respect of *BIPRU 10.8.4R(5)* on prompt transfer of *capital resources* and repayment of liabilities.
- 10.8.5A G The FSA may discuss with a firm that makes the notification required in *BIPRU 10.8.1R(2)* the reasons why the firm believes it meets the conditions in *BIPRU 10.8.4R* (Definition of UK integrated group).
- ...
- 13 The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions

...

13.6 CCR internal model method

...

13.6.30 R ~~Where appropriate, volatilities and correlations of *market risk* factors used in the joint simulation of *market risk* and credit risk must be conditioned on the credit risk factor to reflect potential increases in volatility or correlation in an economic downturn.~~

~~[Note: BCD Annex III Part 6 point 14] [deleted]~~

...

Alpha

...

13.6.35A R Where appropriate, volatilities and correlations of *market risk* factors used in the joint simulation of *market risk* and credit risk must be conditioned on the credit risk factor to reflect potential increases in volatility or correlation in an economic downturn.

[Note: BCD Annex III Part 6 point 14]

...

**INTEGRATED REGULATORY REPORTING IMPLEMENTATION
(AMENDMENT) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Annex A, Parts 2 and 11 of Annex C and Annex D come into force immediately;
 - (2) Annex B, and Parts 1 and 3 of Annex C come into force on 1 July 2007;
 - (3) Parts 4 to 7 of Annex C come into force on 1 November 2007;
 - (4) Parts 8 and 9 of Annex C come into force on 1 January 2008;
 - (5) Part 12 of Annex C comes into force on 1 February 2008; and
 - (6) Part 10 of Annex C comes into force on 1 May 2008.

Revocation

- D. Annex F to the Integrated Regulatory Reporting (Credit Institutions and Investment Firms) (No 2) Instrument 2006 (FSA 2006/67) is revoked.

Amendments to instruments

- E. The Integrated Regulatory Reporting (Credit Institutions and Investment Firms) (No 2) Instrument 2006 (FSA 2006/67) is amended as follows:
- (1) replace the text of paragraph C(3) of this instrument with the following:
“the amendments in Annex E come into force on 1 April 2009;”;
 - (2) in paragraph C(4) of this instrument, substitute “31 August 2008” for “1 January 2009.”.
- F. Paragraph C(6) of the Integrated Regulatory Reporting Instrument 2007 (FSA 2007/10) is amended by substituting “1 April 2009” for “1 July 2009”.

Amendments to the Handbook

- G. The modules of the FSA'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
Interim Prudential sourcebook for Banks (IPRU(BANK))	Annex B
Supervision manual (SUP)	Annex C
Electronic Money sourcebook (ELM)	Annex D

Citation

- H. This instrument may be cited as the Integrated Regulatory Reporting Implementation (Amendment) Instrument 2007.

By order of the Board
28 June 2007

Annex A

Amendments to the Glossary of definitions

The amendments to the Glossary of definitions included in Annex E of the *Integrated Regulatory Reporting (Credit Institutions and Investment Firms) (No 2) Instrument 2006* (FSA 2006/67) which were to come into force on 30 September 2008 will now come into force on 1 April 2009.

Annex B

Amendments to the Interim Prudential sourcebook for Banks (IPRU(BANK))

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

LM: Section 1

MISMATCH LIQUIDITY INTRODUCTION

1

...

1.2 Application

4

...

1. (a) For UK-incorporated banks, the reporting form LR (or data item FSA010 on and after 1 January 30 June 2008) is completed on a solo basis. ...
 2. (i) ...
 3. (b) ... The FSA monitors the liquidity of such branches by requiring them to submit Form LR, or FSA012 (which consists of a simplified cash flow maturity ladder) on and after 1 January 30 June 2008. ...
- ...

LM: Section 3

3 MAIN FEATURES OF THE LIQUIDITY POLICY

...

3.2 A bank's reporting obligations

- ... 5 A bank that has a deposit-taking permission in the UK must report its liquidity position quarterly on the Form LR (FSA010 on and after 1 January 30 June 2008) or more frequently as required by the FSA.
- ... 6 An EEA bank with a branch in the UK that does not have a UK deposit-taking permission must report its liquidity position quarterly on the Form LR (or six-monthly on FSA012 on and after 1 January 30 June 2008), or more frequently as required by the FSA.

LM: Section 5

5 INCLUDING ASSETS AND LIABILITIES IN THE TIME BANDS

...

5.1 Components of the cashflow and maturity analysis ladder

5.1.1 General

1 In the period up to ~~31 December 2007~~29 June 2008, the timebands in the maturity ladder are divided into two sections. ... ~~From~~On and after 1 January 30 June 2008, only the cashflow basis will be used on FSA010.

...

LM: Section 6

6 STOCK OF MARKETABLE ASSETS

...

6.3 Inclusion of marketable assets in the maturity ladder

...

6.3.3 Procedures for discounting assets

10 In deciding whether a bank should enter assets on Part 1 of the Form LR (or FSA010 on and after 1 January 30 June 2008) the FSA takes account of the following factors;

...

LM: Section 9

9 MONITORING LIQUIDITY

...

9.2 Monitoring performance against guidelines

...

4 A bank is required to report its cashflow and asset and liability maturity profile on a quarterly basis using the LR return (or FSA010 on and after 1 January 30 June 2008).

...

9.3 Breaches of guidelines

6 ... A bank should also report any breaches of its guidelines on the Form LR (or FSA010 on and after 1 January 30 June 2008) retrospectively at the end of the quarter.

...

LS: Section 3

3 MAIN FEATURES OF THE POLICY

...

3.2 Reporting by a sterling stock liquidity bank

7 A sterling stock liquidity bank should report its sterling stock liquidity position to the FSA monthly up to end ~~December 2007~~May 2008, and quarterly on and after 1 January 30 June 2008.

- (a) Its liquidity position should be reported on the Sterling Liquidity Return ('form SLR1') up to ~~31 December 2007~~29 June 2008, and on data item FSA013 on and after 1 January 30 June 2008. ...

...

5 **MONITORING LIQUIDITY**

...

5.2 **Monitoring and reporting performance of sterling stock liquidity**

- 2 A sterling stock liquidity bank should monitor its liquidity position on an inter-day basis. Any breaches of the wholesale sterling net outflow limit, the sterling stock 'floor' or the sterling stock liquidity ratio should be reported immediately to the FSA and a completed, contemporaneous form SLR1 (or a paper version of FSA013 on and after 1 January 30 June 2008) sent to the firm's usual supervisory contact at the FSA detailing the liquidity breach. ...

...

- 3 A sterling stock liquidity bank should report its liquidity position to the FSA monthly on the form SLR1 up to end ~~December 2007~~May 2008 and, on and after 1 January 30 June 2008, quarterly on FSA013. Unless otherwise agreed in writing with the FSA, the form SLR1 (FSA013 on and after 1 January 30 June 2008) should be completed on a consolidated basis.

...

- 4 The FSA monitors a sterling stock liquidity bank's liquidity profile up to end ~~December 2007~~May 2008 on a monthly basis in line with the submission of the form SLR1: on and after 1 January 30 June 2008, it will monitor the liquidity profile quarterly in line with the submission of FSA013. ...

...

Annex C

Amendments to the Supervision manual (SUP)

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

Part 1

SUP16 Ann 18BG

Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Section D3: *ISD Personal investment firms*

This section will no longer be applicable for reporting dates after ~~31 December 2007~~29 June 2008. ...

...

Section D4: **CAD 13 quarterly financial resources** (*ISD personal investment firms*)

This section will no longer be applicable after ~~31 December 2007~~29 June 2008. ...

...

Section D5: reportable *Large Exposures* (*ISD personal investment firms*)

This section will no longer be applicable after ~~31 December 2007~~29 June 2008. ...

...

Part 2

The amendments to the Supervision manual (*SUP*) included in Annex F of the *Integrated Regulatory Reporting (Credit Institutions and Investment Firms) (No 2) Instrument 2006* (FSA 2006/67) which were to come into force on 30 September 2008 are revoked.

Part 3

Amendments to Transitional provisions

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
12M	...					
12 N	(1)	SUP 16.7.36R	R	<p>(1) Subject to (2), <i>SUP</i> 16.7.36R does not apply from 6 April 2007 to 31 January<u>30 August</u> 2008 to an <i>investment management firm</i> which:</p> <p>(a) was not a <i>firm</i> before 6 April 2007; and</p> <p>(b) carries on only the activity of <i>establishing, operating or winding up a personal pension scheme</i>.</p> <p>(2) Notwithstanding (1), a <i>firm</i> described in (1) with an <i>accounting reference date</i> of between 6 April 2007 and 31 January<u>30 August</u> 2008 (inclusive) must submit a copy of its annual accounts to the <i>FSA</i> in accordance with <i>SUP</i> 16.7.36R, unless (3) applies. The annual accounts must give a true and fair view of the state of affairs of the <i>firm</i> and of the <i>firm's</i> profit or loss.</p>	6 April 2007 to 31 January <u>30 August</u> 2008	6 April 2007
...						

...

Part 4

SUP 3.1 Application

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
(7)	<i>Investment management firm (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or an exempt CAD firm), or securities and futures firm (other than an exempt CAD firm) which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act. (Note 3 and 3A)</i>	<i>SUP 3.1 – SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8 – SUP 3.10</i>
...			

...

Part 5

Amendments to SUP 16.7

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

16.7.26 R A *securities and futures firm* which is a category C or D firm or an arranger or venture capital firm or an exempt CAD firm must submit reports to the FSA in accordance with SUP 16.7.27R. ~~A securities and futures firm that is:~~

- (1) ~~an exempt CAD firm; or;~~
- (2) ~~an exempt BIPRU commodity firm subject to the requirements of Chapter 3 of IPRU(INV);~~

~~must also submit reports to the FSA in accordance with SUP 16.7.27BR. and, in the case of a securities and futures firm which is an ISD investment firm, SUP 16.7.27AR.~~

...

16.7.27B R ~~Table financial reports from a securities and futures firm that is:~~

- (1) ~~an exempt CAD firm; or;~~
- (2) ~~an exempt BIPRU commodity firm subject to the requirements of Chapter 3 of IPRU(INV). [deleted]~~

Content of report	Form	Frequency	Due date
Key data	FSA043 (note 1)	In line with Quarterly reporting statement applicable to the firm in SUP 16.7.27R.	As for Quarterly reporting statement applicable to the firm in SUP 16.7.27R.
Note 1	Reports beginning FSA*** are contained within SUP 16 Annex 24.		

...

Part 6

Amendments to Transitional provisions

TP1.2

...

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
120	(1)	SUP 16.7.27B ; SUP 16.7.36B ; SUP 16.7.68B ; SUP 16.7.77B	R	The submission of FSA043 for reporting dates between 1 November 2007 and 31 December 2007 should not be made to the timescales set out in the underlying rules but instead be submitted between 1 January 2008 and 15 February 2008. [deleted]	1 November 2007 to 15 February 2008	1 November 2007
	...					
	(5)	SUP 16.12.11 <u>R</u> , SUP 16.12.12 <u>R</u>	R	An <i>exempt BIPRU commodity firm</i> that does not meet the conditions in <i>BIPRU TP16</i> is not required to submit FSA008 for reporting dates prior to 1 February <u>30 June</u> 2008.	1 January 2008 to 31 <u>29</u> January <u>2008</u>	1 January 2008

Part 7

Amendments to SUP 16

SUP 16 Annex 24R

In this Annex, the entire data item FSA043 is deleted, and replaced by '[deleted]'.

SUP 16 Annex 25G

In this Annex, the guidance notes and validations relating to FSA043 are deleted and replaced, in each case, by '[deleted]'.

Part 8

SUP 16.12

16.12 Integrated Regulatory Reporting

...

16.12.1 G ...

(1) ...

(2) ...

(3) an authorised professional firm (other than one that must comply with IPRU(INV) 3, 5, 10 or 13 in accordance with IPRU(INV) 2.1.4R, where SUP 16.12.4R will apply in respect of the business the firm undertakes), which must comply with SUP 16.12.30R and SUP 16.12.31R; and

(4) ...

...

...

Regulated Activity Group 1

Applicable data items

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to firm type in the table below:

Description of data item	Prudential category of firm and applicable data items (Note 1)						
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</i>	<i>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</i>	Electronic money institutions	<i>Credit union</i>
...							
Non-EEA sub-group	FSA028 (note 8)					FSA028 (note 8)	

...	
Note 3	... A <i>UK bank</i> which monitors its liquidity according to the sterling stock liquidity approach as set out in <i>IPRU(BANK)</i> LS must submit FSA013. <u>FSA013 will generally be provided on a consolidated basis and members of the consolidated group will not be required to report individually.</u>
...	
Note 6	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach, or Advanced Modelling Approaches under <i>BIPRU 76</i> .
...	
Note 8	This will be applicable to <i>firms</i> that report ‘yes’ in data element 4A in FSA001 <u>are members of a UK consolidation group on a half-yearly reporting date.</u> <i>Firms’</i> attention is drawn to <i>SUP</i> 16.3.25G regarding a single submission for all <i>firms</i> in the <i>group</i> .
...	.

16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in *SUP* 16.12.5R are set out in the table below according to firm type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

	Unconsolidated <i>UK banks and building societies</i>	Solo consolidated <i>UK banks and building societies</i>	Report on a <i>UK consolidation group</i> basis by <i>UK banks and building societies</i>	Other members of RAG 1
...				
FSA007	Annually (note 3)			
...				
FSA013	Quarterly		Quarterly (note 4)	
...				
Note 3	<u>The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i>.</u>			
Note 4	<u>The <i>firms</i> covered by the consolidation for FSA013 may differ from those companies in the <i>UK consolidation group</i>.</u>			

...

16.12.7 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.6R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				3 months <u>80 business days</u>

				(note 1) 7 months (note 2)
Annual accounts of the <i>mixed-activity holding company</i>				7 months
...				
FSA017		20 <i>business days</i>	<u>45 <i>business days</i></u>	
...				

Regulated Activity Group 3

16.12.10 R (1) *SUP* 16.12.11R to *SUP* 16.12.13R do not apply to:

- (a) ...
- (b) ...
- (c) a local authority;
- (d) a *service company*.

(2) ...

(3) A *service company* must submit a copy of its annual audited financial statements within 6 months from its *accounting reference date*. However, the *firm* need only submit this if the report was audited as a result of a statutory provision other than the *Act*.

16.12.11 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to *firm* type in the table below:

Description of data item	<i>Firms</i> prudential category and applicable data items (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms</i> other than <i>BIPRU firms</i>				
	730K	125K and <i>UCITS investment firms</i>	50K	<i>IPRU (INV)</i> Chapter 3	<i>IPRU (INV)</i> Chapter 5	<i>IPRU (INV)</i> Chapter 9	<i>IPRU (INV)</i> Chapter 13	<i>UPRU</i>
Annual accounts	No standard format			No standard format (note 19)	No standard format			No standard format (note 21)

...								
Balance sheet	...	...	...	...	...	...	FSA029 (note 16) or <u>Section A RMAR</u> (note 21)	...
Income statement	...	...	...	...	...	...	FSA030 (note 16) or <u>Section B RMAR</u> (note 21)	...
Capital adequacy	...	...	...	...	...	...	FSA032 (note 15) or FSA037 (note 15 and 16) or <u>Sections D1 and D2 RMAR</u> (note 21)	...
...					
<u>Threshold conditions</u>							<u>Section F RMAR</u> (note 21)	
Volumes and type of business	FSA038	FSA038	FSA038	FSA038 (note 18)	FSA038	FSA038	FSA038	FSA038
Client money and client assets	...	...	...	...	...	...	<u>Section C RMAR</u> (note 21) or FSA039	...
...								
Asset managers that use hedge	FSA041	FSA041	FSA041	FSA041 (note 18)	FSA041	FSA041	FSA041	FSA041

fund techniques								
UCITS	FSA042	FSA042	FSA042	FSA042 (note 18)	FSA042	FSA042	FSA042	FSA042
...								
Note 7	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach, or Advanced Modelling Approaches under <i>BIPRU 76</i> .							
...								
Note 21	This is only applicable to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is not an <i>exempt CAD firm</i> .							

16.12.12 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.16 R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	Consolidated <i>BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA038	Half yearly	Half yearly	Half yearly		Half yearly
...					
FSA041	Annually	Annually	Annually		Annually
FSA042	Quarterly	Quarterly	Quarterly		Quarterly
<u>Section A RMAR</u>					Half yearly (note 2) Quarterly (note 3)
<u>Section B RMAR</u>					Half yearly (note 2) Quarterly (note 3)
<u>Section C RMAR</u>					Half yearly (note 2) Quarterly (note 3)
<u>Section D1 and D2 RMAR</u>					Half yearly (note 2) Quarterly (note 3)
<u>Section F RMAR</u>					Half yearly
...					
Note 2	Annual regulated business revenue up to and including £5 million.				

Note 3	Annual regulated business revenue over £5 million.
--------	--

...

16.12.13 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.12R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
FSA038			<i>30 business days</i>	
...				
FSA041				<i>30 business days</i>
FSA042		<i>20 business days</i>		
<u>Section A RMAR</u>		<i>30 business days</i>	<i>30 business days</i>	
<u>Section B RMAR</u>		<i>30 business days</i>	<i>30 business days</i>	
<u>Section C RMAR</u>		<i>30 business days</i>	<i>30 business days</i>	
<u>Section D1 and D2 RMAR</u>		<i>30 business days</i>	<i>30 business days</i>	
<u>Section F RMAR</u>			<i>30 business days</i>	

...

Regulated Activity Group 4

...

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and <i>UCITS investment firms</i>	50K	IPRU INV Chapter 3	IPRU INV Chapter 5	IPRU INV Chapter 9	IPRU INV Chapter 13	UPRU
...								
Note 7	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach, or Advanced Modelling Approaches under <i>BIPRU 76</i> .							
...								

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.4R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Firms' prudential category				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA031					<u>Quarterly</u>
FSA032					<u>Quarterly</u>
...					

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				3 months , or 80 <i>business days</i> (note 1)
...				
Note 1	<i>BIPRU investment firms</i> — 3 months: Non- <i>BIPRU firms</i> — 80 <i>business days</i>			
...				

Regulated Activity Group 5

...

16.12.18 R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a ~~firm's accounting reference date~~*firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of data item	Data item (note 1)	Frequency	Submission deadline
Annual accounts	No standard format	Annually	3 months <u>80 <i>business days</i></u>

...	
-----	--

Regulated Activity Group 6

...

16.12.19 R The applicable *data items* referred to in SUP 16.12.4R are set out according
A to type of *firm* in the table below:

Description of data item	<i>Firm's</i> prudential category and applicable data item (note 1)				
	<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13	<i>UPRU</i>
...					
Volumes and type of business	FSA038	FSA038	FSA038	FSA038	FSA038
...					
Asset managers that use hedge fund techniques	FSA041	FSA041	FSA041	FSA041	FSA041
UCITS	FSA042	FSA042	FSA042	FSA042	FSA042
...					

16.12.20 R The applicable reporting frequencies for submission of *data items* referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

...	
FSA038	Half yearly
...	
FSA041	Annually
FSA042	Quarterly
...	

16.12.21 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.20R.

<i>Data item</i>	Quarterly submission	Half yearly submission	Annual submission
------------------	----------------------	------------------------	-------------------

...			
FSA038		30 business days	
...			
FSA041			30 business days
FSA042	20 business days		

...

Regulated Activity Group 7

16.12.22 R The applicable *data items* referred to in SUP 16.12.4R are set out in the
A table below:

...	
Note 7	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach, or Advanced Modelling Approaches under <i>BIPRU 76</i> .
...	

16.12.24 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.23R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				3 months 80 business days
...				

Regulated Activity Group 8

16.12.25 R The applicable *data items* referred to in SUP 16.12.4R are set out according
A to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
Volumes and type of business	FSA03 8	FSA03 8	FSA03 8	FSA03 8	FSA03 8	FSA03 8	FSA03 8	FSA03 8
...								
Asset	FSA04	FSA04	FSA04	FSA04	FSA04	FSA04	FSA04	FSA04

managers that use hedge fund techniques	±	±	±	±	±	±	±	±
UCITS	FSA04 ±	FSA04 ±	FSA04 ±	FSA04 ±	FSA04 ±	FSA04 ±	FSA04 ±	FSA04 ±
...								
Note 7	This is only applicable to a <i>firm</i> that has adopted, in whole or in part, either the Standardised Approach, Alternative Standardised Approach, or Advanced Modelling Approaches under <i>BIPRU 76</i> .							
...								

16.12.26 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.25R* are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	Consolidated <i>BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA038	Half yearly	Half yearly	Half yearly	Half yearly	Half yearly
...					
FSA041	Annually	Annually	Annually	Annually	Annually
FSA042	Quarterly	Quarterly	Quarterly	Quarterly	Quarterly

16.12.27 R The applicable due dates for submission referred to in *SUP 16.12.4R* are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP 16.12.26R*.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
FSA038			30 <i>business days</i>	
...				
FSA041				30 <i>business days</i>
FSA042		20 <i>business days</i>		

...

Authorised professional firms

16.12.30 R (1) *An authorised professional firm, other than one that must comply with IPRU(INV) 3, 5, 10 or 13 in accordance with IPRU(INV) 2.1.4R, must submit an annual questionnaire, contained in SUP 16*

Ann 9R, unless:

(a) ...

(b) ...

in which case the *authorised professional firm* must complete the appropriate report specified in *SUP 16.12.31R*.

(2) ...

(3) An *authorised professional firm* must also, where applicable, submit the other report to the FSA in accordance with *SUP 16.12.31R* in respect of the other *regulated activities* it undertakes under (1)(a).

16.12.30 R An *authorised professional firm* that must comply with *IPRU(INV) 3, 5, 10* or *13* in accordance with *IPRU(INV) 2.1.4R* must submit the relevant reports in *SUP 16.12.4R* to *SUP 16.12.29R*, according to the *regulated activity groups* that its business falls into.

A

...

Part 9

SUP Transitional provisions TP1

...
SUP TP 1.2

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
12 L	(1)	<p><i>SUP</i> 16.7.7R, <i>SUP</i> 16.7.8R, <u><i>SUP</i></u> <u>16.7.8AR</u>, <i>SUP</i> 16.7.16R, <i>SUP</i> 16.7.17R, <u><i>SUP</i></u> <u>16.7.17AR</u>, <i>SUP</i> 16.7.24R, <i>SUP</i> 16.7.25<u>R</u>, <u><i>SUP</i></u> <u>16.7.25AR</u>, <i>SUP</i> 16.7.26<u>R</u>, <i>SUP</i> 16.7.27<u>R</u>, <u><i>SUP</i></u> <u>16.7.27AR</u>, <i>SUP</i> 16.7.30<u>R</u>, <i>SUP</i> 16.7.35<u>R</u>, <i>SUP</i> 16.7.36<u>R</u>, <u><i>SUP</i></u> <u>16.7.36AR</u>, <i>SUP</i> 16.7.67<u>R</u>, <i>SUP</i> 16.7.68<u>R</u>,</p>	R	<p>Except to the extent required by a transitional provision in TP12M, a <i>BIPRU firm</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007, but will instead report under <i>SUP</i> 16.12.</p>	<p>1 January 2008 to 30 September 2008 <u>1 April 2009</u></p>	<p>1 January 2008</p>

		<u>SUP</u> 16.7.68AR, <u>SUP</u> 16.7.76R, <u>SUP</u> 16.7.77R, <u>SUP</u> 16.7.77AR				
	(2)	<u>SUP</u> 16.7.9R, <u>SUP</u> 16.7.10R	R	Except to the extent required by a transitional provision in TP12M, an <i>EEA Bank</i> , other than one with <i>permission</i> for <i>cross border services</i> only, will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.5R.	1 January 2008 to 30 September 2008 <u>1 April 2009</u>	1 January 2008
	(3)	<u>SUP</u> 16.7.11R, <u>SUP</u> 16.7.12R	R	Except to the extent required by a transitional provision in TP12M, a <i>bank</i> established outside the <i>EEA</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.5R.	1 January 2008 to 30 September 2008 <u>1 April 2009</u>	1 January 2008
	(4)	<u>SUP</u> 16.7.62R, <u>SUP</u> 16.7.63R	R	A <i>credit union</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.5R.	1 January 2008 to 30 September 2008 <u>1 April 2009</u>	1 January 2008
	...					
	(6)	<u>SUP</u> 16.7.82R, <u>SUP</u> 16.7.83R	R	(1) A <i>firm</i> that is a member of a <i>financial conglomerate</i> : (a) that is at the head of an <i>FSA regulated EEA financial conglomerate</i> ; or (b) whose <i>Part IV permission</i> contains a relevant <i>requirement</i> ; will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.32R and <i>SUP</i> 16.12.33R.	1 January 2008 to 30 September 2008 <u>1 April 2009</u>	1 January 2008

				(2) In (1)(b), a relevant <i>requirement</i> is one as set out in <i>SUP</i> 16.7.82R (2).		
	(7)	<u>SUP</u> <u>16.7.65R</u> , <u>SUP</u> <u>16.7.66R</u>	R	<u>An <i>ELMI</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.5R.</u>	<u>1 January 2008 to 1 April 2009</u>	<u>1 January 2008</u>
12 M	(1)	<u>SUP</u> <u>16.12.5R</u>	R	Firms in <i>Regulated Activity Group 1</i> are not required to submit the following data items: <u>(i) for reporting dates falling prior to 30 June 2008:</u> <u>FSA001</u> <u>FSA002</u> <u>FSA008</u> <u>FSA010</u> <u>FSA012</u> <u>FSA013</u> <u>FSA016</u> <u>FSA018</u> <u>and</u> <u>(ii) for reporting dates falling prior to 1 January 2009</u> <u>31 August 2008:</u> <u>FSA005</u> <u>FSA006</u> <u>FSA007</u> <u>FSA014</u> <u>FSA020</u> <u>FSA021</u> <u>FSA022</u> <u>FSA023</u> <u>FSA024</u> <u>FSA025</u> <u>FSA026</u>	<u>1 January 2008 to 31 December</u> <u>30 August 2008</u>	<u>1 January 2008</u>
	...					
	(5)	<u>SUP</u> <u>16.12.11R</u>	R	<u>Firms in <i>Regulated Activity Group 3</i> other than <i>exempt BIPRU commodity firms</i>, are not required to submit the following data items:</u> <u>(i) for reporting dates falling prior to 30 June 2008:</u> <u>FSA001</u> <u>FSA002</u> <u>FSA008</u> <u>FSA016</u>	<u>1 January 2008 to 31 December</u> <u>30 August 2008</u>	<u>1 January 2008</u>

				<u>FSA018</u> <u>FSA019</u> <u>and</u> <u>(ii) for reporting dates falling prior to 1 January 200931 August 2008:</u> <u>FSA005</u> <u>FSA006</u> <u>FSA007</u> <u>FSA039</u> <u>FSA040</u>		
	(6)	<i>SUP</i> <u>16.12.15R</u>	R	<i>Firms in Regulated Activity Group 4</i> are not required to submit the following data items: <u>(i) for reporting dates falling prior to 30 June 2008:</u> <u>FSA001</u> <u>FSA002</u> <u>FSA008</u> <u>FSA016</u> <u>FSA018</u> <u>FSA019</u> <u>and</u> <u>(ii) for reporting dates falling prior to 1 January 200931 August 2008:</u> <u>FSA005</u> <u>FSA006</u> <u>FSA007</u> <u>FSA038</u> <u>FSA039</u> <u>FSA040</u> <u>FSA041</u> <u>FSA042</u>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	(7)	<i>SUP</i> <u>16.12.22R</u>	R	<i>Firms in Regulated Activity Group 7</i> are not required to submit the following data items: <u>(i) for reporting dates falling prior to 30 June 2008:</u> <u>FSA001</u> <u>FSA002</u> <u>FSA008</u> <u>FSA016</u> <u>FSA018</u> <u>FSA019</u> <u>and</u> <u>(ii) for reporting dates falling prior to 1 January 200931 August 2008:</u>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008

				<u>August 2008:</u> FSA005 FSA006 FSA007		
	(8)	<u>SUP</u> <u>16.12.25R</u>	R	<i>Firms in Regulated Activity Group 8</i> are not required to submit the following data items: <u>(i) for reporting dates falling prior to 30 June 2008:</u> <u>FSA001</u> <u>FSA002</u> <u>FSA008</u> <u>FSA016</u> <u>FSA018</u> <u>FSA019</u> <u>and</u> <u>(ii) for reporting dates falling prior to 1 January 2009</u> <u>31 August 2008:</u> FSA005 FSA006 FSA007 <u>FSA039</u> <u>FSA040</u>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	(9)	<u>SUP</u> <u>16.12.11R</u>	R	<i>Exempt BIPRU commodity firms</i> are not required to submit the following data items for reporting dates: <u>(i) falling prior to 30 June 2008:</u> <u>FSA008</u> <u>(ii) falling prior to 1 January 2009</u> <u>31 August 2008:</u> FSA001 FSA002 FSA016 FSA018 FSA028 <u>FSA038</u> <u>FSA039</u> <u>FSA040</u> <u>FSA041</u> <u>FSA042</u>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	...					
	(11)	<u>SUP</u> <u>16.12.5R</u>	R	<u>(1) A UK bank must submit the following reports for reporting dates falling between 1 January 2008 and 29 June 2008 in accordance</u>	<u>1 January 2008 to 29 June 2008</u>	<u>1 January 2008</u>

				<p>with the rules set out in <u>SUP 16.7.8R</u>: <u>BSD3 (unconsolidated, solo consolidated)</u>; <u>BSD3 (consolidated)</u>; <u>LE3 (unconsolidated, solo consolidated)</u>; <u>LE3 (consolidated)</u>; <u>M1 (unconsolidated, solo consolidated)</u>; and <u>M1 (consolidated)</u>. <u>Consolidated reports are only required from UK consolidation groups.</u> <u>(2) In addition, a UK bank subject to IPRU(BANK) Chapter LS must submit the SLR1 for reporting dates between 1 January 2008 and 31 May 2008 in accordance with the rules set out in SUP 16.7.8R.</u> <u>(3) Also, a UK bank subject to IPRU(BANK) Chapter LM must submit the LR for reporting dates between 1 January 2008 and 31 March 2008 in accordance with the rules set out in SUP 16.7.8R.</u></p>		
	(12)	<u>SUP 16.7.9R</u> , <u>SUP 16.7.10R</u>	<u>R</u>	<p><u>An EEA Bank, other than one with permission for cross border services only, must submit the LR for reporting dates between 1 January 2008 and 31 March 2008 in accordance with the rules set out in SUP 16.7.10R.</u></p>	<u>1 January 2008 to 31 March 2008</u>	<u>1 January 2008</u>
	(13)	<u>SUP 16.7.11R</u> , <u>SUP 16.7.12R</u>	<u>R</u>	<p><u>A bank established outside the EEA must submit:</u> <u>(a) the LR for reporting dates between 1 January 2008 and 31 March 2008; and</u> <u>(b) the B7 for reporting dates between 1 January 2008 and 29 June 2008</u> <u>in accordance with the rules set out in SUP 16.7.12R.</u></p>	<u>1 January 2008 to 29 June 2008</u>	<u>1 January 2008</u>
	(14)	<u>SUP 16.7.16R</u> , <u>SUP</u>	<u>R</u>	<p><u>A building society must submit:</u> <u>(a) the QFS1 and AFS1 for</u></p>	<u>1 January 2008 to 30 August</u>	<u>1 January 2008</u>

	<u>16.7.17R</u>		reporting dates between 1 January 2008 and 29 June 2008; and (b) the interest rate gap report for reporting dates between 1 January 2008 and 30 August 2008 in accordance with the rules set out in <u>SUP 16.7.17R</u> .	<u>2008</u>	
(15)	<u>SUP 16.7.24R</u> , <u>SUP 16.7.25R</u>	<u>R</u>	<u>A securities and futures firm which is a category A or B firm or a broad scope firm, and is a BIPRU investment firm, must submit the large exposures quarterly reporting statement (Form LEM 1 or LEM 2) (consolidated and unconsolidated) and monthly reporting statement for reporting dates between 1 January 2008 and 29 June 2008 in accordance with the rules set out in SUP 16.7.25R, except that the monthly reporting statement should be submitted quarterly.</u>	<u>1 January 2008 to 29 June 2008</u>	<u>1 January 2008</u>
(16)	<u>SUP 16.7.26R</u> , <u>SUP 16.7.27R</u>		<u>A securities and futures firm which is a category C or D firm or an arranger or venture capital firm, and is a BIPRU investment firm, must submit the large exposures quarterly reporting statement (Form LEM 1 or LEM 2) (consolidated and unconsolidated) and quarterly reporting statement for reporting dates between 1 January 2008 and 29 June 2008 in accordance with the rules set out in SUP 16.7.27R, except that BIPRU 50K firms should submit the quarterly reporting statement half yearly.</u>	<u>1 January 2008 to 29 June 2008</u>	<u>1 January 2008</u>
(17)	<u>SUP 16.7.35R</u> , <u>SUP 16.7.36R</u>	<u>R</u>	<u>An investment management firm which is a BIPRU investment firm must submit either a quarterly financial</u>	<u>1 January 2008 to 29 June 2008</u>	<u>1 January 2008</u>

				<p><u>return or a monthly financial return (depending on whether the firms is subject to a Liquid Capital Requirement or is an ISD firm subject to the Own Funds Requirement of Euro 730,000) for reporting dates between 1 January 2008 and 29 June 2008 in accordance with the rules set out in SUP 16.7.36R, except that BIPRU 50K firms should submit the quarterly financial return half yearly, and BIPRU 730K firms should submit the monthly financial return on a quarterly basis.</u></p>		
	(18)	<p><u>SUP 16.7.65R, SUP 16.7.66R</u></p>	R	<p><u>An ELMI must submit the ELM CA/LE (unconsolidated and consolidated) for reporting dates between 1 January 2008 and 30 August 2008 in accordance with the rules set out in SUP 16.7.66R.</u></p>	<p><u>1 January 2008 to 30 August 2008</u></p>	<p><u>1 January 2008</u></p>
	(19)	<p><u>SUP 16.7.67R, SUP 16.7.68R</u></p>	R	<p><u>A UCITS firm must submit the Quarterly Financial Return for reporting dates between 1 January 2008 and 29 June 2008 in accordance with the rules set out in SUP 16.7.68R.</u></p>	<p><u>1 January 2008 to 29 June 2008</u></p>	<p><u>1 January 2008</u></p>
	(20)	<p><u>SUP 16.7.76R, SUP 16.7.77R</u></p>	R	<p><u>A firm that was not subject to other reporting requirements in SUP 16.7 (other than in SUP 16.7.76R and SUP 16.7.77R) at 31 December 2007, and is a BIPRU firm, must submit sections A, B, C and E of the RMAR and sections A and B of the MLAR for reporting dates between 1 January 2008 and 29 June 2008 in accordance with the rules set out in SUP 16.7.77R, except that the frequency for these sections of the RMAR and MLAR is amended as follows:</u></p>	<p><u>1 January 2008 to 29 June 2008</u></p>	<p><u>1 January 2008</u></p>

				(a) for <i>BIPRU 730K firms</i> and <i>BIPRU 125K firms</i> , quarterly; and (b) for <i>BIPRU 50K firms</i> , half-yearly.		
...						
12P	(1)	<p><i>SUP</i> 16.7.20<u>R</u>, <i>SUP</i> 16.7.21<u>R</u>, <i>SUP</i> 16.7.21A<u>R</u>, <i>SUP</i> 16.7.21B<u>R</u>, <i>SUP</i> 16.7.26<u>R</u>, <i>SUP</i> 16.7.27<u>R</u>, <i>SUP</i> 16.7.27B, <i>SUP</i> 16.7.28<u>R</u>, <i>SUP</i> 16.7.29<u>R</u>, <i>SUP</i> 16.7.30<u>R</u>, <i>SUP</i> 16.7.35<u>R</u>, <i>SUP</i> 16.7.36<u>R</u>, <i>SUP</i> 16.7.36B, <i>SUP</i> 16.7.54<u>R</u>, <i>SUP</i> 16.7.54A<u>R</u>, <i>SUP</i> 16.7.55<u>R</u>, <i>SUP</i> 16.7.56<u>R</u>, <i>SUP</i> 16.7.57<u>R</u>, <i>SUP</i> 16.7.58<u>R</u>, <i>SUP</i> 16.7.67<u>R</u>, <i>SUP</i> 16.7.68<u>R</u>, <i>SUP</i> 16.7.68B,</p>	R	Except to the extent required by a transitional provision in TP12Q, a <i>firm</i> , other than a <i>BIPRU firm</i> , will not be required to report under these rules in respect of reporting dates after 31 December 2007, but will instead report under <i>SUP</i> 16.12.	1 January 2008 to 31 December 2008 <u>March 2009</u>	1 January 2008

		<i>SUP</i> 16.7.76 <u>R</u> , <i>SUP</i> 16.7.77 <u>R</u>				
...						
12 Q	(1)	<i>SUP</i> 16.12.11 <u>R</u>	R	<p><i>Firms in Regulated Activity Group 3:</i> (1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009<u>31 August 2008</u>:</p> <p>FSA029 FSA030 FSA031 FSA032 FSA033 FSA034 FSA035 FSA036 FSA037 FSA038 FSA039 FSA040 FSA041 FSA042</p> <p>(2) are instead required to report as set out TP12Q (5).</p>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	(2)	<i>SUP</i> 16.12.14 <u>R</u>	R	<p><i>Firms in Regulated Activity Group 4:</i> (1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009<u>31 August 2008</u>:</p> <p>FSA029 FSA030 FSA031 FSA032 FSA033 FSA034 FSA035 FSA036 FSA037 FSA038 FSA039 FSA040 FSA041 FSA042</p> <p>(2) are instead required to</p>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008

				report as set out TP 12N (1), TP12Q (5) or TP12R (1).		
	(3)	<i>SUP</i> 16.12.19 <u>R</u>	R	<p><i>Firms in Regulated Activity Group 6:</i></p> <p>(1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009<u>31 August 2008</u>:</p> <p>FSA029 FSA030 FSA031 FSA032 FSA033 FSA034 FSA035 FSA036 FSA037 FSA038 FSA039 FSA040 FSA041 FSA042</p> <p>(2) are instead required to report as set out TP12Q (5).</p>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	(4)	<i>SUP</i> 16.12.25 <u>R</u>	R	<p><i>Firms in Regulated Activity Group 8:</i></p> <p>(1) are not required to submit the following data items for reporting dates falling prior to 1 January 2009<u>31 August 2008</u>:</p> <p>FSA029 FSA030 FSA031 FSA032 FSA033 FSA034 FSA035 FSA036 FSA037 FSA038 FSA039 FSA040 FSA041 FSA042</p> <p>(2) are instead required to report as set out TP12Q (5).</p>	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	(5)	<i>SUP</i> 16.12.11 <u>R</u> ,	R	(1) <i>A securities and futures firm</i> that is :	1 January 2008 to 31	1 January 2008

		<p><i>SUP</i> 16.12.14R, <i>SUP</i> 16.12.19R, <i>SUP</i> 16.12.25R</p>	<p>(a) not a <i>BIPRU firm</i>, an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodity firm</i> must submit the annual reporting statement, the annual reconciliation and the quarterly reporting statement in the manner and to the timescales set out in <i>SUP</i> 16.7.27R, and <i>SUP</i> 16.7.31R to <i>SUP</i> 16.7.34G;</p> <p>(b) either an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodity firm</i> (to which the requirements of <i>IPRU(INV)</i> Chapter 3 apply) must submit the quarterly reporting statement in the manner and to the timescales set out in <i>SUP</i> 16.7.27R, and <i>SUP</i> 16.7.31R to <i>SUP</i> 16.7.34G and FSA043 in the manner and to the timescale set out in <i>SUP</i> 16.7.27BR;</p> <p>(c) an <u><i>exempt BIPRU commodity firm</i></u> (to which the requirements of <u><i>IPRU(INV)</i></u> Chapter 3 apply) must submit the quarterly reporting statement in the manner and to the timescales set out in <u><i>SUP</i> 16.7.27R</u>, and <u><i>SUP</i> 16.7.31R to <i>SUP</i> 16.7.34G</u>;</p> <p>(2) ...</p>	<p>December³⁰ <u>August</u> 2008</p>	
	...				

Part 10

Amendments to SUP 16

SUP 16 Annex 24R

In this Annex, the entire data item FSA009 is deleted, and replaced by '[deleted]'.

SUP 16 Annex 25G

In this Annex, the guidance notes and validations relating to FSA009 are deleted and replaced, in each case, by '[deleted]'.

Part 11

Amendments to SUP 16

The amendments included in Part 9 of Annex E of the *Integrated Regulatory Reporting Instrument 2007* (FSA 2007/10) which were to come into force on 1 July 2009 will now come into force on 1 April 2009.

Part 12

SUP Transitional provisions TP1

...
SUP TP 1.2

12R	(1)	SUP 16.12.14	R	<p>(1) An investment management firm that is not a BIPRU firm and is authorised by the FSA on or after 6 April 2007, and which carries on only the activity of establishing, operating or winding up a personal pension scheme, must submit FSA029, FSA030 and either FSA034 or FSA035 (subject to (2) below) six monthly, based on the firm's accounting reference date, and within 20 business days in the manner set out in (3) below;</p> <p>(2) FSA034 must be completed by a firm not subject to the exemption in IPRU(INV) 5.2.3(2)R, while FSA035 must be completed by a firm subject to the exemption in IPRU(INV) 5.2.3(2)R; and</p> <p>(3) FSA029, FSA030, FSA034 and FSA035 should be submitted to the FSA in the manner to be specified by the FSA. [deleted]</p>	1 February 2008 to 31 December 2008	1 February 2008
	(2)	SUP 16.12.11R	R	<p>An exempt BIPRU commodity firm that, at the reporting date for large exposures data item FSA008, satisfies the conditions of BIPRU TP 16 is not required to submit FSA008 for that reporting date.</p>	1 February <u>30 June 2008</u> to 31 December 2010	1 February <u>30 June 2008</u>

...

Annex D

Amendments to the Electronic Money sourcebook (ELM)

The amendments included in Annex G of the *Integrated Regulatory Reporting (Credit Institutions and Investment Firms) (No 2) Instrument 2006* (FSA 2006/67) which were to come into force on 1 January 2009 will now come into force on 31 August 2008.

**DISPUTE RESOLUTION: COMPLAINTS (SIMPLIFICATION AND MiFID)
INSTRUMENT 2007**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes:
- (1) the rules and guidance in Annexes A and B to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
 - (2) the standard terms and guidance in Annexes A and B to this instrument for VJ participants relating to the Voluntary Jurisdiction;
- in exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 226A (Consumer credit jurisdiction);
 - (b) section 227 (Voluntary Jurisdiction);
 - (c) paragraph 16B (Consumer credit jurisdiction) of Schedule 17;
 - (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17;
 - (e) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
 - (f) paragraph 8 (Guidance) of Schedule 17.
- B. In each case the Financial Services Authority approves the rules and standard terms and guidance to be made by the Financial Ombudsman Service Limited.

Powers exercised by the Financial Services Authority

- C. The Financial Services Authority makes the rules and guidance in this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 226 (Compulsory jurisdiction);
 - (e) section 234 (Industry funding); and
 - (f) paragraph 13(4) (Authority’s procedural rules) of Schedule 17;
 - (2) article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326); and

- (3) article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454).

- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- E. This instrument comes into force on 1 November 2007.

Amendments to the Dispute Resolution: Complaints sourcebook

- F. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex A to this instrument.

Consequential amendments to the Handbook

- G. The modules of the FSA'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 B
Mortgages: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D
Credit Unions sourcebook (CRED)	Annex E
Professional Firms sourcebook (PROF)	Annex F

Notes

- H. In Annex A to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

- I. This instrument may be cited as the Dispute Resolution: Complaints (Simplification and MiFID) Instrument 2007.

By order of the Board of the Financial Ombudsman Service Limited
7 June 2007

By order of the Board of the Financial Services Authority
28 June 2007

Annex A

Amendments to Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

The whole of *DISP* 1 is deleted and replaced with the following:

1 Treating complainants fairly

1.1 Purpose and application

Purpose

- 1.1.1 G This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom* or by certain *branches* of *firms* in the *EEA*. It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

Background

- 1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:
- (1) *persons* carrying on *regulated activities* and covered by the *Compulsory Jurisdiction (firms)*;
 - (2) *persons* covered by the *Consumer Credit Jurisdiction (licensees)*; and
 - (3) *persons* who have opted in to the *Voluntary Jurisdiction (VJ participants)*.

Application to firms

- 1.1.3 R (1) This chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom*.
- (2) For *complaints* relating to the *MiFID business* of a *firm*, the *complaints handling rules* and the *complaints record rule*:
- (a) apply to *complaints* from *retail clients* and do not apply to *complaints* from *eligible complainants* who are not *retail clients*;

- (b) also apply in respect of activities carried on from a *branch* of a *UK firm* in another *EEA State*; and
 - (c) do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom*.
- 1.1.4 R Where a *firm* has outsourced activities to a *third party processor*, *DISP* 1.1.3R does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.
- 1.1.5 R This chapter does not apply to:
 - (1) a *UCITS qualifier*;
 - (2) a *credit union*; and
 - (3) an *authorised professional firm* in respect of expressions of dissatisfaction about its *non-mainstream regulated activities*.
- 1.1.6 G Analogous obligations relevant to *credit unions* are set out in *CRED* 17.
- 1.1.7 R This chapter applies to the *Society*, *members* of the *Society* and *managing agents*, subject to the *Lloyd's complaint rules*.
- 1.1.8 R An *insurance intermediary*, that is not also an *insurer*, must have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a *person* who is not an *eligible complainant*.

[**Note:** article 10 of the *Insurance Mediation Directive*]
- 1.1.9 G A *complaint* about pre-commencement investment business which was regulated by a *recognised professional body* will be handled under the arrangements of that professional body and is outside the scope of this sourcebook.
- 1.1.10 R In relation to a *firm's* obligations under this chapter, references to a *complaint* also include an expression of dissatisfaction which is capable of becoming a *relevant new complaint* or a *relevant transitional complaint*.

FSAVC Review

- 1.1.11 R Where the subject matter of a *complaint* is subject to a review directly or indirectly under the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the *FSA* on 28 February 2000, the *complaints resolution rules*, the *complaints time limit rules*, the *complaints record rule* and the *complaints reporting rules* will apply only if the *complaint* is about the outcome of the review.

Exemptions

- 1.1.12 R (1) A *firm* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FSA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.
- (2) Notwithstanding (1), the *complaints handling rules* and *complaints record rule* will continue to apply in respect of *complaints* concerning *MiFID business*.
- (3) The exemption takes effect from the date on which the written notice is received by the *FSA* and will cease to apply when the conditions relating to the exemption no longer apply.

- 1.1.13 G *SUP 15.6* refers to and contains requirements regarding the steps that *firms* must take to ensure that information provided to the *FSA* is accurate and complete. Those requirements apply to information submitted to the *FSA* under this chapter.

Application to licensees and VJ participants

- 1.1.14 R This chapter (except the *complaints record rule* and the *complaints reporting rules*) applies to *licensees* for *complaints* from *eligible complainants*.
- 1.1.15 R This chapter (except the *complaints record rule* and the *complaints reporting rules*) applies to *VJ participants* for *complaints* from *eligible complainants* as part of the *standard terms*.
- 1.1.16 G Although *licensees* and *VJ participants* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should it be necessary.
- 1.1.17 R In relation to the *Consumer Credit Jurisdiction* only, *FOS Ltd* may dispense with, or modify, the application of the *rules* in this chapter to *licensees* where it considers it appropriate to do so and is satisfied that:
- (1) compliance by the *licensee* with the *rules* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
- (2) it would not result in undue risk to the *persons* whose interests the *rules* were intended to protect.
- 1.1.18 G This power is intended to deal with exceptional circumstances, for example, where it is not possible for a *licensee* to meet the specified time limits, and any dispensation or modification is likely to be rare.

Outsourcing of complaint handling

- 1.1.19 G (1) This chapter does not prevent:
- (a) the use by a *respondent* of a third party administrator to handle or resolve *complaints* (or both); or
 - (b) two or more *respondents* arranging a one-stop shop for handling or resolving *complaints* (or both) under a service level agreement.
- (2) These arrangements do not affect *respondents'* obligations as set out in *DISP* or the provisions relating to *outsourcing* by a *firm* set out in *SYSC* 8 and *SYSC* 13.
- 1.1.20 G Further *guidance* on the application of this chapter is set out in the table in *DISP* 1 Annex 2G.

1.2 Consumer awareness rules

- 1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:
- (1) publish appropriate summary details of their internal process for dealing with *complaints* promptly and fairly;
 - (2) refer *eligible complainants* in writing to the availability of these summary details at, or immediately after, the point of sale; and
 - (3) provide such summary details in writing to *eligible complainants*:
 - (a) on request; and
 - (b) when acknowledging a *complaint*.
- 1.2.2 R Where the activity does not involve a sale, the obligation in *DISP* 1.2.1R(2) shall apply at, or immediately after, the point when contact is first made with an *eligible complainant*.
- 1.2.3 G These summary details should cover at least:
- (1) how the *respondent* fulfils its obligation to handle and seek to resolve relevant *complaints*; and
 - (2) that, if the *complaint* is not resolved, the complainant may be entitled to refer it to the *Financial Ombudsman Service*.
- 1.2.4 G The summary details may be set out in a leaflet, and their availability may be referred to in contractual documentation.
- 1.2.5 G *Respondents* may also display or reproduce the *Financial Ombudsman Service* logo (under licence) in :

- (1) branches and sales offices to which *eligible complainants* have access;
or
- (2) marketing literature or correspondence directed at *eligible complainants*;

provided it is done in a way which is not misleading.

1.3 Complaints handling rules

- 1.3.1 R Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by:
- (1) a *respondent*; and
 - (2) a *branch* of a *UK firm* in another *EEA State*.
- [**Note:** article 10 of the *MiFID implementing Directive*]
- 1.3.2 G These procedures should:
- (1) allow *complaints* to be made by any reasonable means; and
 - (2) recognise *complaints* as requiring resolution.
- 1.3.3 R In respect of *complaints* that do not relate to *MiFID business*, a *respondent* must put in place appropriate management controls and take reasonable steps to ensure that in handling *complaints* it identifies and remedies any recurring or systemic problems, for example, by:
- (1) analysing the causes of individual *complaints* so as to identify root causes common to types of *complaint*;
 - (2) considering whether such root causes may also affect other processes or products, including those not directly complained of; and
 - (3) correcting, where reasonable to do so, such root causes.
- 1.3.4 G A *firm* should use the information it gains from dealing with *complaints* that relate to *MiFID business* in accordance with this chapter to inform its compliance with its obligations to monitor the adequacy and effectiveness of its measures and procedures to detect and minimise any risk of compliance failures (*SYSC 6.1*).
- 1.3.5 G A *firm* should have regard to *Principle 6* (Customers' interests) when it identifies problems, root causes or compliance failures and consider whether it ought to act on its own initiative with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by such factors, but who have not complained.

1.4 Complaints resolution rules

- 1.4.1 R Once a *complaint* has been received by a *respondent*, it must:
- (1) investigate the *complaint* competently, diligently and impartially;
 - (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the *complaint*;
 - (b) whether the *complaint* should be upheld;
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in the *complaint*;taking into account all relevant factors;
 - (3) offer redress or remedial action when it decides this is appropriate;
 - (4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the *complaint*, its decision on it, and any offer of remedial action or redress; and
 - (5) comply promptly with any offer of remedial action or redress accepted by the complainant.
- 1.4.2 G Factors that may be relevant in the assessment of a *complaint* under *DISP* 1.4.1R(2), include the following:
- (1) all the evidence available and the particular circumstances of the *complaint*;
 - (2) similarities with other *complaints* received by the *respondent*;
 - (3) relevant *guidance* published by the *FSA*, other relevant regulators, the *Financial Ombudsman Service* or *former schemes*; and
 - (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar *complaints* received by the *respondent*.
- 1.4.3 G The *respondent* should aim to resolve *complaints* at the earliest possible opportunity, minimising the number of unresolved *complaints* which need to be referred to the *Financial Ombudsman Service*.

- 1.4.4 R Where a *complaint* against a *respondent* is referred to the *Financial Ombudsman Service*, the *respondent* must cooperate fully with the *Financial Ombudsman Service* and comply promptly with any settlements or awards made by it.
- 1.4.5 G *DISP* App 2 contains *guidance* to *respondents* on the approach to assessing financial loss and appropriate redress where a *respondent* upholds a *complaint* concerning the sale of an endowment policy for the purposes of repaying a *mortgage*.

1.5 Complaints resolved by close of the next business day

- 1.5.1 R The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the *business day* following its receipt:
- (1) the *complaints time limit rules*;
 - (2) the *complaints forwarding rules*;
 - (3) the *complaints reporting rules*; and
 - (4) the *complaints record rule*, if the *complaint* does not relate to *MiFID business*.
- 1.5.2 G *Complaints* falling within this section are still subject to the *complaint resolution rules*.
- 1.5.3 G For the purposes of this section:
- (1) a *complaint* received on any day other than a *business day*, or after close of business on a *business day*, may be treated as received on the next *business day*; and
 - (2) a *complaint* is resolved where the complainant has indicated acceptance of a response from the *respondent*, with neither the response nor acceptance having to be in writing.

1.6 Complaints time limit rules

Keeping the complainant informed

- 1.6.1 R On receipt of a *complaint*, a *respondent* must:
- (1) send the complainant a prompt written acknowledgement providing early reassurance that it has received the *complaint* and is dealing with it; and

- (2) ensure the complainant is kept informed thereafter of the progress of the measures being taken for the *complaint's* resolution.

Final or other response within eight weeks

- 1.6.2 R The *respondent* must, by the end of eight weeks after its receipt of the *complaint*, send the complainant:
- (1) a *final response*; or
 - (2) a written response which:
 - (a) explains why it is not in a position to make a *final response* and indicates when it expects to be able to provide one;
 - (b) informs the complainant that he may now refer the *complaint* to the *Financial Ombudsman Service*; and
 - (c) encloses a copy of the *Financial Ombudsman Service* standard explanatory leaflet.

- 1.6.3 G *Respondents* are not obliged to comply with the requirements in *DISP* 1.6.2R where they are able to rely on any of the following *rules*:
- (1) the complainant's written acceptance *rule* (*DISP* 1.6.4R);
 - (2) the *rules* for *respondents* with two-stage *complaints* procedures (*DISP* 1.6.5R); or
 - (3) the *complaints forwarding rules* (*DISP* 1.7).

Complainant's written acceptance

- 1.6.4 R *DISP* 1.6.2R does not apply if the complainant has already indicated in writing acceptance of a response by the *respondent*, provided that the response informs the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied.

Respondents with two-stage complaints procedures

- 1.6.5 R If, within eight weeks of receiving a *complaint*, the *respondent* sends the complainant a written response which:
- (1) offers redress or remedial action (whether or not it accepts the *complaint*) or rejects the *complaint* and gives reasons for doing so;
 - (2) informs the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied;
 - (3) refers to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response; and

- (4) indicates it will regard the *complaint* as closed if it does not receive a reply within eight weeks of the complainant's receipt of the response;

the *respondent* is not obliged to continue to comply with *DISP* 1.6.2R unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with *DISP* 1.6.2R resumes.

- 1.6.6 R If the complainant takes more than a week to reply to a written response of the kind described in *DISP* 1.6.5R, the additional time in excess of a week will not count for the purposes of the time limits in *DISP* 1.6.2R or the *complaints reporting rules*.

Speed and quality of response

- 1.6.7 G It is expected that within eight weeks of their receipt, almost all *complaints* to a *respondent* will have been substantively addressed by it through a *final response* or response as described in *DISP* 1.6.4R or *DISP* 1.6.5R.
- 1.6.8 G When assessing a *respondent's* response to a *complaint*, the *FSA* may have regard to a number of factors, including, the quality of response, as against the *complaints resolution rules*, as well as the speed with which it was made.

1.7 Complaints forwarding rules

- 1.7.1 R A *respondent* that has reasonable grounds to be satisfied that another *respondent* may be solely or jointly responsible for the matter alleged in a *complaint* may forward the *complaint*, or the relevant part of it, in writing to that other *respondent*, provided it:
- (1) does so promptly;
 - (2) informs the complainant promptly in a *final response* of why the *complaint* has been forwarded by it to the other *respondent*, and of the other *respondent's* contact details; and
 - (3) where jointly responsible for the fault alleged in the *complaint*, it complies with its own obligations under this chapter in respect of that part of the *complaint* it has not forwarded.

Dealing with a forwarded complaint

- 1.7.2 R When a *respondent* receives a *complaint* that has been forwarded to it under *DISP* 1.7.1R, the *complaint* is treated for the purposes of *DISP* as if made directly to that *respondent*, and as if received by it when the forwarded *complaint* was received.
- 1.7.3 G On receiving a forwarded *complaint*, the standard time limits will apply from the date on which the *respondent* receives the forwarded *complaint*.

1.8 Complaints time barring rule

- 1.8.1 R If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see *DISP* 2.3) it may reject the *complaint* without considering the merits, but must explain this to the complainant in a *final response* in accordance with *DISP* 1.6.2R and indicate that the *Ombudsman* may waive the time limits in exceptional circumstances.

1.9 Complaints record rule

- 1.9.1 R A *firm*, including, in the case of *MiFID business*, a *branch* of a *UK firm* in another *EEA state*, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:
- (1) at least five years where the *complaint* relates to *MiFID business*; and
 - (2) three years for all other *complaints*;
- from the date the *complaint* was received.

[**Note:** article 10 of the *MiFID implementing Directive*]

1.10 Complaints reporting rules

- 1.10.1 R Twice a year a *firm* must provide the *FSA* with a complete report concerning *complaints* received from *eligible complainants*. The report must be set out in the format in *DISP* 1 Annex 1R.
- 1.10.2 R *DISP* 1 Annex 1R requires (for the relevant reporting period) information about:
- (1) the total number of *complaints* received by the *firm*, broken down according to the categories and generic product types described in *DISP* 1 Annex 1R which are relevant to the *firm*;
 - (2) the total number of *complaints* closed by the *firm*:
 - (a) within four weeks or less of receipt;
 - (b) within four to eight weeks of receipt; and
 - (c) more than eight weeks after receipt;
 - (3) the total number of *complaints*:

- (a) upheld by the *firm* in the reporting period;
 - (b) that the *firm* knows have been referred to, and accepted by, the *Financial Ombudsman Service* in the reporting period;
 - (c) outstanding at the beginning of the reporting period; and
 - (d) outstanding at the end of the reporting period; and
- (4) the total amount of redress paid in respect of *complaints* during the reporting period.

1.10.3 G For the purpose of *DISP* 1.10.2R, when completing the return, the *firm* should take into account the following matters.

- (1) If a *complaint* could fall into more than one category, the *complaint* should be recorded in the category which the *firm* considers to form the main part of the *complaint*.
- (2) Under *DISP* 1.10.2R(3)(a), a *firm* should report any *complaint* to which it has given a *final response* which upholds the *complaint*, even if any redress offered is disputed by the complainant. Where a *complaint* is upheld in part, a *firm* should treat the whole *complaint* as upheld for reporting purposes. However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.
- (3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
 - (a) amounts paid for distress and inconvenience;
 - (b) a free transfer out to another provider which transfer would normally be paid for;
 - (c) goodwill payments and goodwill gestures;
 - (d) interest on delayed settlements;
 - (e) waiver of an excess on an insurance policy; and
 - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.

- (4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.
- 1.10.4 R The relevant reporting periods are:
- (1) the six *months* immediately following a *firm's accounting reference date*; and
 - (2) the six *months* immediately preceding a *firm's accounting reference date*.
- 1.10.5 R Reports are to be submitted to the *FSA* within 30 *business days* of the end of the relevant reporting periods through, and in the electronic format specified in, the *FSA* Complaints Reporting System or the appropriate section of the *FSA* website.
- 1.10.6 R If a *firm* is unable to submit a report in electronic format because of a systems failure of any kind, the *firm* must notify the *FSA*, in writing and without delay, of that systems failure.
- 1.10.7 R A closed *complaint* is a *complaint* where:
- (1) the *firm* has sent a *final response*; or
 - (2) the complainant has indicated in writing acceptance of the *firm's* earlier response under *DISP* 1.6.4R; or
 - (3) for a *firm* which operates a two-stage *complaints* procedure, the complainant has not indicated that he remains dissatisfied within eight weeks of the response sent by the *firm* under *DISP* 1.6.5R.
- 1.10.8 G If a *complaint* is reported as closed under *DISP* 1.10.2R(2) because the complainant has not replied to the *firm* within eight weeks of a written response which meets the requirements in *DISP* 1.6.5R, the *firm* may treat the date of that response as the date when the *complaint* was closed for the purposes of the reporting requirements in *DISP* 1.10.2R(2).

Notification of contact point for complainants

- 1.10.9 R For the purpose of inclusion in the public record maintained by the *FSA*, a *firm* must:
- (1) provide the *FSA*, at the time of its *authorisation*, with details of a single contact point within the *firm* for complainants; and

- (2) notify the *FSA* of any subsequent change in those details when convenient and, at the latest, in the *firm's* next report under the *complaints reporting rules*.

1.11 The Society of Lloyd's

- 1.11.1 R The *Society* must establish and maintain appropriate and effective procedures for handling *complaints* by *policyholders* against *members* of the *Society* which comply with this chapter.
- 1.11.2 R A *member* of the *Society* must, in complying with this chapter, ensure that the arrangements which the *member* maintains are compatible with the *Lloyd's complaint procedures*, so that, taken as a whole, the requirements of this sourcebook are met.
- 1.11.3 R The *Society* must take reasonable steps to ensure that *complaints* by *policyholders* against *members* of the *Society* are dealt with under the *Lloyd's complaint procedures* and that *members* comply with the requirements of those procedures.
- 1.11.4 R A *complaint* by a *policyholder* against a *member* of the *Society* may not be referred to the *Financial Ombudsman Service* until after the *Lloyd's complaint procedures* have been completed or until after the end of eight weeks from receipt of the *complaint*, whichever is the earlier.
- 1.11.5 R (1) A notification claiming exemption under *DISP* 1.1.12R from the *complaints reporting rules* and the *rules* relating to the funding of the *Financial Ombudsman Service* must be given to the *FSA* by the *Society* on behalf of any *member* eligible for an exemption.
- (2) The *Society* must notify the *FSA* if the conditions relating to such an exemption no longer apply to a *member* who is exempt.
- 1.11.6 R The report to be sent to the *FSA* under the *complaints reporting rules* must be provided by the *Society* and must cover all *complaints* by *policyholders* against *members* falling within the scope of the *complaints reporting rules*.
- 1.11.7 G Each *member* of the *Society* is individually subject to the *rules* in this chapter as a result of the *insurance market direction* given in *DISP* 2.5.4D under section 316 of the *Act* (Direction by Authority).
- 1.11.8 G However, the *Society* operates a two-tier internal complaints handling procedure, currently set out in the "Code for Underwriting agents: UK Personal Lines Claims and Complaints Handling". Under this procedure, *complaints* by *policyholders* against *members* of the *Society* are considered by the *managing agent* and then, if necessary, by the *Society's* in-house Complaints Department. This procedure (and any procedure that may replace it) will be subject to the requirements in this chapter.

- 1.11.9 G *Members* will individually comply with this chapter if and only if all *complaints* by *policyholders* against *members* are dealt with under the *Lloyd's complaints procedures*. Accordingly, certain of the obligations under this chapter, for example the obligation to report on *complaints* received and the obligation to pay fees under the *rules* relating to the funding of the *Financial Ombudsman Service (FEES 5)*, must be complied with by the *Society* on behalf of *members*. *Managing agents* will not have to make a separate report to the *FSA* on *complaints* reported under the *complaints reporting rules* sent by the *Society*.
- 1.11.10 R A *members' adviser* must establish and maintain effective arrangements for handling any *complaint* from a *member* of the *Society* regarding advice given to the *member* in connection with the acquiring or disposing of *syndicate* participation.
- 1.11.11 G *Complaints* from *members* of the *Society* regarding the activities of *members' advisers*, which cannot be resolved by the *members' adviser*, cannot be referred to the *Financial Ombudsman Service*.
- 1.11.12 G The *Financial Ombudsman Service* is not able to deal with the *complaints* listed in *DISP 1.11.13R* and separate *rules* and *guidance* are therefore required.
- 1.11.13 R The *Society* must establish and maintain appropriate and effective arrangements for handling any complaint from a *member* or a *former member* about:
- (1) *regulated activities* carried on by the *Society*;
 - (2) the *Society's regulatory functions* carried on by the *Society*, the *Council* or those to whom the *Council* delegates authority to carry out such functions;
 - (3) advice given by an *underwriting agent* to a *person* to become, continue or cease to be, a member of a particular *syndicate*; and
 - (4) the management by a *managing agent* of the underwriting capacity of a *syndicate* on which the complainant participates or has participated.
- 1.11.14 R The *Society* must maintain by *byelaw* one or more appropriate effective schemes for the resolution of disputes between an *individual member* or a *former member* who was an *individual member* and:
- (1) his *underwriting agent*; or
 - (2) the *Society*.
- 1.11.15 R For the purposes of *DISP 1.11.13R* "*individual member*" includes a *member* which is a *limited liability partnership* or a *body corporate* whose members consist only of, or of the nominees for, a single natural person or a group of *connected persons*.

- 1.11.16 G The schemes to which *DISP* 1.11.13R currently refers are the *Lloyd's Arbitration Scheme* and the *Lloyd's Members' Ombudsman* respectively, but the *Society* may maintain other independent dispute resolution schemes in addition to, or instead of, either of these schemes.
- 1.11.17 G The schemes referred to in *DISP* 1.11.13R should be operationally independent of the *Society*.
- 1.11.18 G An *individual member* or *former member* who was an *individual member* should not have access to the schemes referred to in *DISP* 1.11.13R unless the *complaints* arrangements maintained by the *Society* have failed to resolve the *complaint* to his satisfaction within eight weeks of receiving it.
- 1.11.19 G The *Society* should give the *FSA* adequate notice of all proposed changes to the *byelaws* relating to the schemes referred to in *DISP* 1.11.13R.
- 1.11.20 G When considering what is required to ensure the operational independence of the schemes referred to in *DISP* 1.11.13R, or proposed changes in such schemes, the *Society* should take account of similar arrangements operated by the *Financial Ombudsman Service*.
- 1.11.21 R A contravention of *DISP* 1.11.13R or *DISP* 1.11.14R does not give rise to a right of action by a *private person* under section 150 of the *Act* (Actions for damages) and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action.

...

DISP 1 Annex 1R

COMPLAINTS RETURN

(DISP 1 Ann 1R)

Illustration of the reporting requirements regarding *complaints*, referred to in *DISP* 1.10.1R and 1.10.2R

NIL RETURN DECLARATION

A Nil Return may only be declared where:

- a) no *complaints* were received during the reporting period,

AND

- b) no *complaints* were outstanding at the beginning of the period.

We wish to declare a Nil Return

Yes / No

RETURN DETAILS REQUIRED

Include Private Individual Complaints
(click if applicable)

Include Small Business Complaints
(click if applicable)

Private Individual Complaints

	Overcharging	Delays	Other admin	Misleading Advice	Failure to carry out instructions	Poor customer service	Misleading advertising	Disputes over sums/amounts	Switching/churning	Breach of contract	Arrears handling	Other	Total
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Cash Deposit ISA													
Investment Trust													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Other Regulated Investments													
Current Account													
Deposit/Savings													
Credit Card													
Lifetime Mortgage													
Flexible Mortgage													
Impaired Credit Mortgage													
Self Cert Mortgage													
Other Regulated Mortgage													
Other unregulated loan secured on land													
Other loans													
Standard Annuity													
Investment based Annuity													
Income Withdrawal Product													
Income Protection													
Long Term Care													
Private Medical Insurance													
Critical Illness													
Motor													
Property													
Other GI/Pure protection													
Other													
Total													

Small Business Complaints

	Overcharging	Delays	Other admin	Misleading Advice	Failure to carry out instructions	Poor customer service	Misleading advertising	Disputes over sums/amounts	Switching/churning	Breach of contract	Arrears handling	Other	Total
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Cash Deposit ISA													
Investment Trust													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Other Regulated Investments													
Current Account													
Deposit/Savings													
Credit Card													
Lifetime Mortgage													
Flexible Mortgage													
Impaired Credit Mortgage													
Self Cert Mortgage													
Other Regulated Mortgage													
Other unregulated loan secured on land													
Other loans													
Standard Annuity													
Investment based Annuity													
Income Withdrawal Product													
Income Protection													
Long Term Care													
Private Medical Insurance													
Critical Illness													
Motor													
Property													
Other GI/Pure protection													
Other													
Total													

COMPLAINTS CLOSED DURING REPORTING PERIOD

Number of *complaints* closed within 4 weeks

Number of *complaints* closed between 4 and 8 weeks

Number of *complaints* closed after more than 8 weeks

COMPLAINTS OUTSTANDING

Number of *complaints* outstanding as at reporting period start date

Number of *complaints* outstanding as at reporting period end date

COMPLAINTS MANAGEMENT

Number of *complaints* upheld by the firm in the period

Total amount of redress paid to consumers in the period

Number of *complaints* referred to, and accepted by, the FOS in the period

NOTES ON THE COMPLETION OF THIS RETURN

Complaints Helptext

This is the return referred to in *DISP* 1.10.1R and only *complaints* subject to *DISP* 1.6 – *DISP* 1.10 should be included in this return.

Nil returns

If no *complaints* of any kind have been received during the reporting period and no *complaints* were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box.

Complaints contact details

Details of a contact point for *complaints* must be provided in accordance with *DISP* 1.10.9R for inclusion in the public record. This must include at least a name, or a job title, or a department name, but need not include all three. This information was previously supplied as part of the *complaints* return but now no longer forms part of the return. This information will be captured by the Firm's Online System. Please check that the details of your *complaints* contact are correct in the Firm's Online System and update if necessary.

Private individual complaint returns

This section relates to records of *complaints* subject to *DISP* 1.6 – *DISP* 1.10, received from private individuals. *Firms* should report all *complaints* received during the reporting period, even where the *complaint* has not been, or is unlikely to be upheld by the *firm*. If a *firm* has received private individual *complaints* then it should click on the box marked "include private individual complaints".

Firms should report *complaints* received in the single category that best reflects the main cause of dissatisfaction (whether financial loss, material distress or material inconvenience) as described by the complainant.

DISP 2.4.3R provides further definition of an *eligible complainant*.

Firms should enter the total number of private individual *complaints* in the box marked "Grand Total Number of Complaints made by private individuals".

Select the type of product from the drop down list. You will need to create a new line for each produce according to the category of *complaint*. Enter the number of *complaints* for each product according to the category of the *complaint*. Zeroes must be entered where no *complaints* have been received under that category of *complaint*.

Enter a total for each product type on the right hand side of each row and for each category of *complaint* at the bottom of each column. Then complete the total number of *complaints* made by private individuals box in the "total" box in the bottom right hand corner of the table. Check that this total is the same as the "Grand total number of *complaints* made by private individuals" entered at the start of section.

Small business complaint returns

This section relates to records of *complaints* subject to *DISP* 1.6 – *DISP* 1.10 received from *eligible complainants* as defined in *DISP* 2.4.3R other than private individuals. This section should include *complaints* from:

- Small business customers (with an annual turnover of less than £1 million a year);
- Charities (with an annual income of less than £1 million); and
- Trustees of a trust (with net assets of less than £1 million).

Firms should report all *complaints* received during the reporting period, even where the *complaint* has not been, or is unlikely to be upheld by the firm. If a *firm* has received small business complaints then they should click on the box marked "include small business complaints".

Firms should report *complaints* received in the single category that best reflects the main cause of dissatisfaction (whether financial loss, material distress or material inconvenience) as described by the complainant.

Firms should enter the total number of small business *complaints* in the box marked "Grand Total Number of Complaints made by small businesses".

Select the type of product from the drop down list. You will need to create a new line for each different product you wish to report for. Enter the number of *complaints* for each product according to the category of complaint. Zeroes must be entered where no *complaints* have been received under that category of *complaint*.

Enter a total for each product type on the right hand side of each row and for each category of *complaint* at the bottom of each column. Then complete the total number of *complaints* made by small businesses box in the "total" box in bottom right hand corner of the table. Check that this total is the same as the "Grand total number of complaints made by small businesses" entered at the start of section.

Complaints closed during the reporting period

Indicate the number of *complaints* subject to *DISP* 1.6 – *DISP* 1.10 closed during the reporting period within the timescales shown. See *DISP* 1.10.7R for the *rules* governing when a-*complaint* is considered to be closed.

Complaints outstanding

Give the number of *complaints* subject to *DISP* 1.6 - *DISP* 1.10 outstanding at the start of the reporting period and the end of the reporting period.

Uphold rates and redress

The *firm* must indicate the total number of *complaints* upheld in the customer's favour. The *firm* must also state the total amount of redress paid to its customers within the reporting period (this includes payments made to customers that have had their *complaints* rejected or partially upheld as well as *complaints* that have been fully upheld). See *DISP* 1.10.3G.

FOS

The *firm* must state how many of its *complaints* (private and small business) it knows to have been referred to the Financial Ombudsman Service within the reporting period.

...

The following is inserted after *DISP* 1 Annex 1R. This text is new and is not underlined.

DISP 1 Annex 2G

1. The table below summarises the application of *DISP* 1. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in *DISP* 1.

2. In some cases the application of *DISP* 1 to *firms* depends on whether responsibility for the matter is reserved under a European Community instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in *DISP* 1.

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules
<i>firm</i> in relation to <i>complaints</i> concerning non-MIFID <i>business</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (<i>DISP</i> 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>firm</i> in relation to <i>complaints</i> concerning MiFID <i>business</i>	Applies for <i>eligible complainants</i>	Applies for <i>retail clients</i> (<i>DISP</i> 1.3.3R does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>retail clients</i>	Applies for <i>eligible complainants</i>

<i>branch of a UK firm in another EEA State in relation to complaints concerning non-MiFID business</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</i>	Does not apply	Applies for <i>retail clients</i> (DISP 1.3.3R does not apply)	Does not apply	Applies for <i>retail clients</i>	Does not apply
<i>incoming branch of an EEA firm in relation to complaints concerning non-MiFID business</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>incoming branch of an EEA firm in relation to complaints concerning MiFID business</i>	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>
<i>incoming EEA firm providing cross-border services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<i>branch of an overseas firm (in relation to all complaints)</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
<i>licensee</i>	Applies for <i>eligible complaints</i>	Applies for <i>eligible complaints</i> (DISP 1.3.4G to DISP 1.3.5G do not apply)	Applies for <i>eligible complaints</i> (DISP 1.6.8G does not apply)	Does not apply	Does not apply
<i>VJ participant</i>	Applies for <i>eligible complaints</i>	Applies for <i>eligible complaints</i> (DISP 1.3.4G to DISP 1.3.5G do not apply)	Applies for <i>eligible complaints</i> (DISP 1.6.8G does not apply)	Does not apply	Does not apply

2.4 Who can refer a complaint to the Financial Ombudsman Service?

...

Classes of person

2.4.3 R (1) Subject to (2), a *person* is an *eligible complainant* if he is:

...

(2) The following are not *eligible complainants*:

(a) (in the *Compulsory Jurisdiction*); an individual, business, charity, or trustee (of a trust which is not a *pension scheme* trust falling under (1)(d) above), who was ~~an *intermediate customer*~~ a *professional client* or ~~*market counterparty*~~ *eligible counterparty* in relation to the *firm* in question at the time of the act or omission, and in respect of the activity, which is the subject of the ~~complaint~~ *complaint*;

(aa) ...

- (b) (in the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*); a *firm*, *licensee* or *VJ participant* whose ~~complaint~~ complaint relates in any way to an activity which the *firm* itself has *permission* to carry on or which the *licensee* or *VJ participant* itself conducts, and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

...

2.5 Which firms are subject to the jurisdiction of the Financial Ombudsman Service?

Firms and VJ participants

...

- 2.5.2 G *Firms* may, however, be exempt from the requirements of *DISP 1* (~~Complaint handling procedures for firms~~ Treating complainants fairly) and *FEES 5* (*Financial Ombudsman Service* funding), if they qualify under ~~*DISP 1.1.7R*~~ 1.1.12R (Exemption).

...

3.2 The investigation and consideration of complaints by the Ombudsman

...

- 3.2.3 R Where the *firm* or *licensee* has not had eight weeks from receipt of the complaint ~~provided for under *DISP 1.4.5R*~~ in which to consider the ~~complaint~~ it, the *Ombudsman* will refer the ~~complaint~~ complaint to the *firm* or *licensee*, unless the *firm* or *licensee* has already issued a *final response*.

...

4.2 The standard terms

...

Complaint handling procedures

- 4.2.2 R The rules and guidance contained in *DISP 1* (Complaint handling procedures for firms) will apply to *VJ participants* for the purposes of the *Voluntary Jurisdiction* as if they were *firms*, with the exception of *DISP 1.1.R* (Application) and *DISP 1.5* (Record keeping and reporting). *DISP 1.2* (Internal complaint handling procedures: general requirements) applies in relation to complaints above activities of the *VJ participant* specified in ~~*DISP 2.6.9R*~~. By agreeing to participate in the *Voluntary Jurisdiction*, a *VJ participant* agrees to handle *complaints* in accordance with the provisions of *DISP 1* which apply to *VJ participants*.

TP1 Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provisions: coming into force
...					
1A	<i>DISP 1</i>	R	A <i>complaint</i> received by a <i>firm</i> <i>respondent</i> on or before 31 October 2007 should be handled, resolved, recorded and reported in accordance with the requirements of <i>DISP</i> as they stood at the date the <i>complaint</i> was received.	From 1 November 2007	1 November 2007
<u>1B</u>	<u><i>DISP 2.4.3</i></u>	<u>R</u>	<u>In relation to a <i>complaint</i> concerning an act or omission before 1 November 2007, in <i>DISP 2.4.3 R (1)(a)</i> substitute "an <i>intermediate customer or market counterparty</i>" for "a <i>professional client or eligible counterparty</i>".</u>	<u>From 1 November 2007</u>	<u>1 November 2007</u>
...					
10	<i>DISP 1.5.4R</i> <i>1.10.1R</i> and <i>DISP 1.10.2R</i>	R	<i>DISP 1.5.4R</i> <i>1.10.1R</i> and <i>DISP 1.10.2R</i> does not apply to a <i>firm</i> with permission to carry on only <i>insurance mediation activity</i> , <i>mortgage mediation activity</i> , or	...	...

			both.		
11	DISP 1.5.4R <u>1.10.1R</u> and <u>DISP 1.10.2R</u>	R	Where a <i>firm</i> is required under DISP 1.5.4R <u>1.10.1R</u> and <u>DISP 1.10.2R</u> to submit information using a report in the format set out in <i>DISP 1 Ann 1R</i> on a half-yearly basis, this must be read as a reference to providing the first and second report in accordance with transitional provision 12R.	...	...
12	DISP 1.5.4R <u>1.10.1R</u> and <u>DISP 1.10.2R</u>	R	...		
...					
13	<i>DISP 1</i>	R	Where, at the <i>relevant commencement date</i> , a <i>firm</i> is still dealing with a complaint that is capable of being referred to the <i>Financial Ombudsman Service</i> as a <i>relevant transitional complaint</i> :	31 October 2004 (for a complaint to which the <i>MCAS Scheme</i> applied immediately before that date)	31 October 2004
			(1) it may continue to try to resolve the complaint in accordance with the complaints procedures that applied previously; but	14 January 2005 (for a complaint to which the <i>GISC Facility</i> applied immediately before that date)	
			(2) it must, within eight weeks of the <i>relevant commencement date</i> , send the complainant a response which satisfies DISP 1.4.5R <u>1.6.3R</u> , unless DISP 1.5.4.3A R or DISP 1.4.9 R <u>1.6.4R</u> or <u>1.6.5R</u> applies.		
...					

17	DISP 1.4.18R <u>DISP 1.3.12R</u> – DISP 1.4.20G <u>DISP 1.3.17R</u>	R	A <i>firm</i> must apply <i>DISP</i> as it applied before amendment by the Depolarisation Instrument to complaints received before 14 January 2005. ...	From 14 January 2005	14 January 2005
18	DISP 1.5.4 <u>DISP 1.10.1R</u> and <u>DISP 1.10.2R</u> , DISP 1.5.6 <u>DISP 1.10.4R</u> and <i>DISP 1 Annex 1R</i>	R	(1) Solely in respect of information regarding any <i>reversion activity</i> or <i>home purchase activity</i> required to be reported in <u>DISP 1.10.1R</u> and <u>DISP 1.10.2R</u> –1.5.4R , a <i>firm</i> is not required to include such information in respect of relevant reporting periods (as set out in <i>DISP 1.10.4R</i> –1.5.6R) ending before 1 October 2007;	...	...

Schedule 1 (Record keeping requirements) is amended as follows:

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
DISP 1.9.1R 1.5.1R	<i>Complaints</i> subject to DISP 1.1.1.3 – DISP 1.8 (other than DISP 1.5)	Each <i>complaint</i> received and the measures taken for its resolution	On receipt	5 years for <i>complaints</i> relating to <i>MiFID business</i> and 3 years for all other <i>complaints</i>

Schedule 2 (Notification requirements) is amended as follows:

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
DISP 1.1.7R 1.1.12R	...	...	Conditions in DISP 1.1.7 1.1.12R apply	...
DISP 1.1.10R	End of exemption	Confirmation that the conditions in DISP 1.1.7R no longer apply	Conditions in DISP 1.1.7R no longer apply	As soon as reasonably practicable.
DISP 1.5.4R 1.10.1R	...	...	...	...
DISP 1.5.11R 1.10.8R	...	...	...	...
DISP 1.7.5R 1.11.5R(1)	...	...	...	...
DISP 1.7.6R 1.11.5R(2)	...	...	...	...
DISP 1.7.7R 1.11.6R	...	...	...	...
...				

...

Schedule 4 (Powers Exercised) is amended as follows:

Sch 4.1 G

1.	<p>The following powers and related provisions in the <i>Act</i>, in the <i>Mortgages and General Insurance Complaints Transitional Order</i> and in the <i>Ombudsman Transitional Order</i> have been exercised by the <i>FSA</i> to make the rules in <i>DISP</i>:</p> <p>...</p> <p><u>(8A) Schedule 17 paragraph 13(4)</u></p> <p>...</p> <p><u>(10) Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the <i>Mortgages and General Insurance Complaints Transitional Order</i></u></p>
...	
3.	<p>The following powers and related provisions in the <i>Act</i> have been exercised by <i>FOS Ltd</i> to make the rules in <i>DISP</i></p> <p><u>(1A) Section 226A (Consumer Credit Jurisdiction)</u></p> <p>...</p> <p><u>(5A) Schedule 17 paragraph 16B (Consumer Credit Jurisdiction)</u></p> <p>...</p>

Sch 4.2 G

Table:	The powers to make rules relating to the new ombudsman scheme are shared between the <i>FSA</i> and the <i>Financial Ombudsman Service</i> (<i>FOS Ltd</i>). <i>FOS Ltd</i> 's rules are subject to <i>FSA</i> consent or approval. The rules made exclusively by <i>FOS Ltd</i> are:
DISP 1	1.1.1BR
	1.1.1DR
...	

Schedule 5 (Actions for damages for contravention under section 150 of the Act) is amended as follows:

...

Sch 5.2 G

Chapter /Appendix	Section / Annex	Paragraph	Right of Action under s150		
			For private person?	Removed?	For other person?
1 Complaints handling arrangements	All rules apart from <i>DISP</i>	-	Yes	-	-

for <i>firms</i>	1.7.14R 1.11.13R and <i>DISP</i> 1.11.14R 1.7.15R				
1	7	14 and 15	No	Yes - <i>DISP</i> 1.11.21R 1.7.22R	No
...					

Schedule 6 (Rules that can be waived) is amended as follows:

Sch 6.1 G No rules in *DISP* may be waived, other than *DISP* ~~1.5.4R~~ 1.10.1R, and *DISP* ~~1.4.1R~~ 1.6. to *DISP* ~~1.4.16R~~ 1.8.

Annex B

Amendments to the Glossary of definitions

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

<i>complaint</i>	<p>(1) (in <i>COAF</i>) any expression of dissatisfaction about the manner in which the <i>FSA</i> has carried out its statutory functions other than its legislative functions.</p> <p>(2) <u>(in <i>DISP</i>, except <i>DISP</i> 1.1 and the <i>complaints handling rules</i> and the <i>complaints record rule</i> in relation to <i>MiFID business</i>) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a <i>person</i> about the provision of, or failure to provide, a financial service, which:</u></p> <p>(a) <u>alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and</u></p> <p>(b) <u>relates to an activity of that <i>respondent</i>, or of any other <i>respondent</i> with whom that <i>respondent</i> has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the <i>Financial Ombudsman Service</i>.</u></p> <p>(2) (only in relation to <i>MiFID business</i> in <i>DISP</i> 1.1, the <i>complaints handling rules</i> and the <i>complaints record rules</i>) (in <i>DISP</i> 1.1 and the <i>complaints handling rules</i> and the <i>complaints record rule</i> only in relation to <i>MiFID business</i>) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a <i>person</i> about the provision of, or failure to provide, a financial service, where such complaint involves an allegation that the complainant has suffered, or may suffer, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.</p>
<i>complaints handling rules</i>	<u><i>DISP</i> 1.23.</u>
<i>complaints record rule</i>	<u><i>DISP</i> 1.59.</u>
<i>complaints reporting rules</i>	<u><i>DISP</i> 1.10.</u>
<i>complaints resolution rules</i>	<u><i>DISP</i> 1.4.</u>

complaints
time barring
rule DISP 1.7

complaints
time limits
rules DISP 1.6.

consumer
awareness
rules DISP 1.42.

final response (1) (in CRED) a written response from the firm which:
...
(2) (in DISP) a written response from a respondent which:
(a) accepts the complaint and, where appropriate, offers redress or remedial action; or
(b) offers redress or remedial action without accepting the complaint; or
(c) rejects the complaint and gives reasons for doing so;
and which:
(d) encloses a copy of the Financial Ombudsman Service's standard explanatory leaflet; and
(e) informs the complainant that if he remains dissatisfied with the respondent's response, he may now refer his complaint to the Financial Ombudsman Service and must do so within six months.

Lloyd's
complaint
procedures the procedures established and maintained by the Society under DISP 1.11.1R.

Lloyd's
complaint
rules DISP 1.11

respondent (in DISP) a firm, licensee or VJ participant covered by the Compulsory Jurisdiction, Consumer Credit Jurisdiction or Voluntary Jurisdiction.

Annex C

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

6.4 Mortgages: content of the offer document

...

- 6.4.14 G *DISP 1-2.1R* requires a *firm* to deal promptly and fairly with complaints, ~~have in place a complaints handling policy for handling complaints about its services, and also for including referring to another *firm* complaints~~ *complaints* about that other *firm's* services.

Annex D

Amendments to the Supervision manual (SUP)

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

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

12.4.5E G (1) ...

- (2) Under *DISP* 1.2.91R, a *firm* must among other things, supply ~~a copy of its~~ summary details of its internal process for dealing promptly and fairly with *complaints* ~~internal-complaint handling process~~ to the *customer* when it receives a ~~complaint~~ *complaint*. In complying with *DISP* 1.2.91 R, a *firm* should ensure that the "lead-principal" is clearly identified in the procedures.

...

Annex E

Amendments to the Credit Unions sourcebook (CRED)

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

17.1 Application and Purpose

...

- 17.1.2 G This chapter replaces *DISP* 1 (~~Complaints Handling Procedures for firms Treating complainants fairly~~), which does not apply to *credit unions* (*DISP* 1.1.45R(2)).

Annex F

Amendments to the Professional Firms sourcebook (PROF)

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

5.3 Reference to other sourcebooks and manuals

...

Dispute resolution: Complaints sourcebook

- 5.3.6 G *DISP* 1.1.45R(43)(e) provides that *DISP* 1 (~~Complaints Handling Procedures for firms~~ Treating complainants fairly) does not apply to an *authorised professional firm* in so far as its *non-mainstream regulated activities* are concerned. *DISP* 2.6.7R further provides that a complaint about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction of the Financial Ombudsman Service* if it relates solely to *non-mainstream regulated activity* and can be handled by a *designated professional body*. This is because such a complaint will be handled by the relevant professional body.

**LISTING RULES (INVESTMENT ENTITIES INTERIM REGIME) (AMENDMENT)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
 - (2) section 79 (Listing particulars and other documents);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 157(1) (Guidance); and
 - (6) Schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 28 September 2007.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules (LR) are amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules (Investment Entities Interim Regime) (Amendment) Instrument 2007.

By order of the Board
28 June 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where new definitions are being inserted, the text is not underlined.

Delete the following definition from the Glossary:

investment company

Insert the following definition in the appropriate alphabetical position:

closed-ended investment fund (in *LR*) an entity:

- (a) which is an undertaking with limited liability, including a company, limited partnership, or *limited liability partnership*; and
- (b) whose primary object is investing and managing its assets (including pooled funds contributed by holders of its *listed securities*):
 - (i) in property of any description; and
 - (ii) with a view to spreading investment risk.

Amend the following definitions as shown:

investment manager (1) (except in *LR*) a person who, acting only on behalf of a client:

- (a) ...
- (b) ...

(2) (in *LR*) a person who, on behalf of a client, manages investments and is not a wholly-owned subsidiary of the client.

...

property investment company

~~(1)~~ (in *CIS*) a *body corporate*, a substantial activity of which relates to *permitted immovables* (whether by way of investing, dealing in, developing, redeveloping or refurbishing them and whether directly or indirectly).

~~(1)~~ (in *LR*) an *investment company* or an *investment trust* which invests or intends to invest 20% or more of its gross assets directly in *property* and satisfies the requirements of LR 15.5 in addition to any other relevant requirements of LR 15.

Annex B

Amendments to the Listing Rules (LR)

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

...

Reconstruction or refinancing

9.5.12 R ...

- (2) The requirement for a working capital statement set out in paragraph (1) does not apply to a ~~venture capital trust or an investment entity listed in accordance with LR 15.~~ closed-ended investment fund.

...

Purchase of own equity securities

13.7.1 (1) ...

(2) ...

- (f) Annex 3 item 3.1 - Working capital (this must be based on the assumption that the authority sought will be used in full at the maximum price allowed and this assumption must be stated). This information is not required to be included in a circular issued by a closed-ended investment fund.

...

LR13 Annex 1 R

Class 1 circulars

...	
3	The information required by the Annex is modified as follows:
	...
(3)	information referred to in Annex 3 item 3.1 (Working capital) is not required to be included in a <i>class 1 circular</i> if the listed company is an investment entity referred to in LR 15.1.1 R or a venture capital trust. <u>published by a closed-ended investment fund.</u>

Delete chapters LR 15 and LR 16 and replace them with the following new text. All the text is new and is not underlined.

15 Closed-Ended Investment Funds

15.1 Application

15.1.1 R This chapter applies to a *closed-ended investment fund* applying for, or with, a *primary listing of equity securities*.

15.2 Requirements for listing

15.2.1 R To be *listed*, an *applicant* must comply with:

- (1) *LR 2* (Requirements for listing);
- (2) only the following provisions of *LR 6* (Additional requirements for listing for equity securities);
 - (a) *LR 6.1.3R(1)(d)* and (e), if the *applicant* is a *new applicant* for the *admission of shares or securities* convertible into its own *shares* and it has published or filed audited accounts;
 - (b) *LR 6.1.3R(2)*;
 - (c) *LR 6.1.16R* to *LR 6.1.24G*; and
- (3) *LR 15.2.2R* to *LR 15.2.13G*.

Investment activity

15.2.2 R An *applicant* must invest and manage its assets in a way which is consistent with its object of spreading investment risk.

Control of investee companies

15.2.3 G Although there is no restriction on a *closed-ended investment fund* taking a controlling stake in an investee company, to ensure a spread of investment risk a *closed-ended investment fund* should avoid:

- (1) cross-financing between the businesses forming part of its investment portfolio including, for example, through the provision of undertakings or security for borrowings by such businesses for the benefit of another; and
- (2) the operation of common treasury functions as between the *closed-ended investment fund* and investee companies.

Trading activity

15.2.4 R (1) A *closed-ended investment fund* and its subsidiaries must not conduct any trading activity which is significant in the context of its *group* as a

whole.

- (2) This rule does not prevent the businesses forming part of the investment portfolio of the *closed-ended investment fund* from conducting trading activities themselves.

Cross-holdings

- 15.2.5 R (1) No more than 10%, in aggregate, of the value of the total assets of a *closed-ended investment fund* at admission may be invested in other *listed closed-ended investment funds*.
- (2) The restriction in (1) does not apply to *investments* in *closed-ended investment funds* which themselves have published investment policies to invest no more than 15% of their total assets in other *listed closed-ended investment funds*.

Feeder funds

- 15.2.6 R If an *applicant* principally invests its funds in another *company* or fund (“A”) and A invests in a portfolio of *investments*, the *applicant* must control the investment policy of A and ensure that A complies with the requirements relating to the spread of investment risk set out in this chapter (see LR 15.2.2R to LR 15.2.5R).

Investment policy

- 15.2.7 R An *applicant* must have a published investment policy that contains information about the policies which the *closed-ended investment fund* will follow relating to asset allocation, risk diversification, and gearing, and that includes maximum exposures.
- 15.2.8 G The information in the investment policy, including quantitative information concerning the exposures mentioned in LR 15.2.7R, should be sufficiently precise and clear as to enable an investor to:
- (1) assess the investment opportunity;
 - (2) identify how the objective of risk spreading is to be achieved; and
 - (3) assess the significance of any proposed change of investment policy.

Sufficient and appropriate experience of directors and investment managers

- 15.2.9 R An *applicant* must ensure that, collectively, its *directors* and *investment managers* have sufficient and appropriate experience in the management of assets on a scale and type in which the *applicant* proposes to invest.
- 15.2.10 G (1) An *applicant* is likely to have sufficient and appropriate experience if:
- (a) its assets are or will be managed by a *person* or *persons* who have permission from the *FSA* or from a *competent authority* to

manage *investments*; or

(b) it can otherwise demonstrate that the *persons* who will have responsibility for managing its assets have appropriate experience (over at least the preceding three years) of managing a portfolio of assets which is comparable to its portfolio.

(2) An *applicant* will have appropriate experience under (1)(b) if the *persons* within the entity responsible for managing the assets have managed a portfolio of *investments* that has a value of at least 50% of the funds the *applicant* is proposing to raise.

Independence

15.2.11 R The board of *directors* or equivalent body of the *applicant* must be able to act independently of any *investment manager* appointed to manage *investments* of the *applicant*.

15.2.12 G To satisfy LR 15.2.11R a majority of the board or equivalent body of the *applicant* (including the Chairman) should not be:

(1) *directors, employees, partners, officers* or professional advisers of or to:

(a) an *investment manager* of the *applicant*; or

(b) any other *company* in the same *group* as the *investment manager* of the *applicant*; or

(2) *directors, employees* or professional advisers of or to other *investment entities* that are:

(a) managed by the same *investment manager* as the *investment manager* to the *applicant*; or

(b) managed by any other *company* in the same *group* as the *investment manager* to the *applicant*.

15.2.13 G To comply with LR 15.2.11R:

(1) the board of the *applicant* should have no more than one *director* who is also a *director, partner, employee* or professional adviser of or to:

(a) the *investment manager* to the *applicant*; or

(b) any other *company* in the same *group* as the *investment manager* to the *applicant*; and

(2) a *director* described in (1) should be subject to annual re-election by *shareholders*.

15.3 Listing applications and procedures

15.3.1 G An *applicant* is required to comply with LR 3 (Listing applications).

Sponsors

15.3.2 G An *applicant* that is seeking *admission* of its *equity securities* is required to retain a *sponsor* in accordance with LR 8 (Sponsors).

15.3.3 R In addition to the circumstances set out in LR 8.2.1R when a *sponsor* must be appointed, an *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission* of *equity securities* which requires the production of *listing particulars*.

Multi-class fund or umbrella fund

15.3.4 R An application for the *listing* of *securities* of a multi-class fund or umbrella fund must provide details of the various classes or designations of *securities* intended to be issued by the *applicant*.

15.4 Continuing obligations

Compliance with LR 9

15.4.1 R A *closed-ended investment fund* must comply with all of the requirements of LR 9 (Continuing obligations) subject to the modifications and additional requirements set out in this section.

Investment activity and compliance with investment policy

15.4.2 R A *close-ended investment fund* must, at all times, invest and manage its assets:

- (1) in a way which is consistent with its object of spreading investment risk; and
- (2) in accordance with its published investment policy.

Control of investee companies

15.4.3 G A *closed-ended investment fund* should have regard to the guidance in LR 15.2.3G at all times.

Trading activity

15.4.4 R A *closed-ended investment fund* must comply with LR 15.2.4R at all times.

Cross-holdings

15.4.5 R A *closed-ended investment fund* must, when making an acquisition of a constituent investment, observe the principles relating to cross-holdings in LR 15.2.5R.

Feeder funds

- 15.4.6 R If a *closed-ended investment fund* principally invests its funds in another *company* or fund ("A") and A invests in a portfolio of *investments*, the *closed-ended investment fund* must ensure that LR 15.2.6R is complied with at all times.

Independence

- 15.4.7 R LR 15.2.11R – LR 15.2.13G apply at all times to a *closed-ended investment fund*.

Shareholder approval for material changes to investment policy

- 15.4.8 R A *closed-ended investment fund* must obtain the prior approval of the holders of the majority of its ordinary *equity shares* to any material change to its published investment policy.
- 15.4.9 G In considering what is a material change to the published investment policy, the *closed-ended investment fund* should have regard to the cumulative effect of all the changes since its *shareholders* last had the opportunity to vote on the investment policy or, if they have never voted, since the *admission to listing*.

Conversion of an existing listed class of equity securities

- 15.4.10 R An existing *listed class* of *equity securities* may not be converted into a new *class* or an *unlisted class* unless prior approval has been given by the holders of the majority of the *closed-ended investment fund's* ordinary *equity shares* in that existing *class*.

Further issues

- 15.4.11 R (1) Unless authorised by the holders of the majority of its *shares*, a *closed-ended investment fund* may not issue further *shares* of the same class as existing *shares* (including issues of *treasury shares*) for cash at a price below the net asset value per *share* of those *shares* unless they are first offered pro rata to existing holders of *shares* of that class.
- (2) When calculating the net asset value per *share*, *treasury shares* held by the *closed-ended investment fund* should not be taken into account.

15.5 Transactions

Compliance with the Model Code

- 15.5.1 R (1) A *closed-ended investment fund* must comply with the provisions of the *Model Code*.
- (2) LR 9.2.7R to LR 9.2.10R do not apply to a *closed-ended investment fund*.

- (3) Paragraph (1) does not apply to:
- (a) dealings by *persons discharging managerial responsibilities* in the *closed-ended investment fund*;
 - (b) purchases by the *closed-ended investment fund* of its own *securities*; and
 - (c) sales of *treasury shares* for cash or transfers (except for sales and transfers by the *closed-ended investment fund* of *treasury shares* in the circumstances set out in *LR 12.6.2R*);
- if the *closed-ended investment fund* satisfies the requirements of (4).
- (4) The transactions described in (3) may be entered into during a *close period* if:
- (a) the *closed-ended investment fund* is satisfied that all *inside information* which the *directors* and the entity may have in periods leading up to an announcement of results has previously been notified to a *RIS*; and
 - (b) the *closed-ended investment fund* notifies a *RIS* that it is satisfied that all *inside information* has previously been notified.

Significant transactions

- 15.5.2 R A *closed-ended investment fund* must comply with *LR 10* (Significant transactions), except in relation to transactions that are executed in accordance with the scope of its published investment policy.

Transactions with related parties

- 15.5.3 G *LR 11* (Related party transactions) applies to a *closed-ended investment fund*.
- 15.5.4 R In addition to the definition in *LR 11.1.4 R* a *related party* includes any *investment manager* of the *closed-ended investment fund*.

15.6 Notifications and periodic financial information

Changes to tax status

- 15.6.1 R A *closed-ended investment fund* must notify any change in its taxation status to a *RIS* as soon as possible.

Annual financial report

- 15.6.2 R In addition to the requirements in *LR 9.8* (Annual financial report), a *closed-ended investment fund* must include in its annual financial report:
- (1) a statement (including a quantitative analysis) explaining how it has

invested its assets with a view to spreading investment risk in accordance with its published investment policy;

- (2) a statement, set out in a prominent position, as to whether in the opinion of the *directors*, the continuing appointment of the *investment manager* on the terms agreed is in the interests of its shareholders as a whole, together with a statement of the reasons for this view;
- (3) a summary of the principal contents of any agreements between the *closed-ended investment fund* and each of the *investment managers*, including but not limited to any provisions relating to compensation payable in the event of termination of the agreement;
- (4) the name of the *investment managers* together with an indication of the terms and duration of their appointment, the basis for their remuneration and any arrangements relating to the termination of their appointment;
- (5) the full text of its *investment policy*; and
- (6) a comprehensive and meaningful analysis of its portfolio.

Annual financial report – additional requirements for property investment entities

- 15.6.3 R A *closed-ended investment fund* that, as at the end of its financial year, has invested more than 20% of its assets in *property* must include in its annual financial report a summary of the valuation of its portfolio, carried out in accordance with LR 15.6.4R.
- 15.6.4 R A valuation required by LR 15.6.3R must:
- (1) either:
 - (a) be made in accordance with the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or
 - (b) where the valuation does not comply in all applicable respects with the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors, include a statement which sets out a full explanation of such non-compliance; and
 - (2) be carried out by an external valuer as defined in the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors.
- 15.6.5 R The summary described in LR 15.6.3R must include:
- (1) the total value of *properties* held at the year end;
 - (2) totals of the cost of *properties* acquired;

- (3) the net book value of *properties* disposed of during the year; and
- (4) an indication of the geographical location and type of *properties* held at the year end.

Statement regarding compliance with Combined Code

- 15.6.6 R (1) This *rule* applies to a *closed-ended investment fund* that has no executive *directors*.
- (2) A *closed-ended investment fund's* statement required by LR 9.8.6R(6) need not include details about the following principles and provisions of the *Combined Code* except to the extent that those principles or provisions relate specifically to non-executive *directors*:
- (a) Principle B.1 (including Code Provisions B.1.1 to B.1.6); and
 - (b) Principle B.2 (including Code Provisions B.2.1 to B.2.4).

Annual financial and half yearly report

- 15.6.7 R In addition to the requirements in LR 9 (Continuing obligations), half-yearly reports and, if applicable, preliminary statements of annual results must include information showing the split between:
- (1) dividend and interest received; and
 - (2) other forms of income (including income of associated companies).

Notification of investments

- 15.6.8 R A *closed-ended investment fund* must notify a *RIS* of the following:
- (1) within two *business days* of the end of each calendar *month*, a list of all investments in other *listed closed-ended investment funds*, as at the last *business day* of that *month*, which themselves do not have stated investment policies to invest no more than 15% of their total assets in other *listed closed-ended investment funds*; and
 - (2) within two *business days* of the end of each quarter, a list of all investments with a value greater than 5% of the *closed-ended investment fund's* total assets and at least the 10 largest investments as at the last *business day* of that quarter.

16 Open-ended investment companies

16.1 Application

- 16.1.1 R This chapter applies to an *open-ended investment company* applying for, or with, a *primary listing* of *equity securities* which is:

- (1) an *ICVC* that has been granted an *authorisation order* by the *FSA*; or
- (2) an *overseas collective investment scheme* that is a *recognised scheme*.

16.2 Requirements and eligibility for listing

- 16.2.1 R To be *listed*, an *applicant* must comply with:
- (1) *LR 2* (Requirements for listing); and
 - (2) only *LR 6.1.22R* to *LR 6.1.24R* of *LR 6* (Additional requirements for listing for equity securities).

16.3 Listing applications

- 16.3.1 G An *applicant* for admission is required to comply with *LR 3* (Listing applications).
- 16.3.2 G The *FSA* will admit to *listing* such number of *securities* as the *applicant* may request for the purpose of future issues. At the time of issue the *securities* will be designated to the relevant *class*.

Sponsors

- 16.3.3 G An *applicant* that is seeking *admission* of its *equity securities* must retain a *sponsor* in accordance with *LR 8* (Sponsors).
- 16.3.4 R In addition to the circumstances set out in *LR 8.2.1R* when a *sponsor* must be appointed, an *applicant* must appoint a *sponsor* when it makes an application for *admission* of *equity securities* which requires the production of *listing particulars*.
- 16.3.5 G *LR 8.4.5R(3)* is modified to require the notification of interests of 10% or more for an *open-ended investment company*.

Multi-class fund or umbrella fund

- 16.3.6 R An *applicant* which is a multi-class or umbrella fund which seeks to create a new *class* of *security* without increasing its share capital for which *listing* has previously been granted, must provide the *FSA* with the details of the new *class* and no further application for *listing* is required.

16.4 Requirements with continuing application

- 16.4.1 R An *open-ended investment company* must comply with:
- (1) *LR 9* (Continuing obligations) except *LR 9.2.6B*;
 - (2) *LR 15.5.1R*; and
 - (3) *LR 15.6.1R*.

- 16.4.2 R *LR 15.6.6R applies to an open-ended investment company if it has no executive directors.*
- 16.4.3 R The interests of a single *person* or entity which exceeds 10% of the issued *shares* (calculated exclusive of *treasury shares*) of any *class* of *share* in the capital of the *open-ended investment company* must, so far as they are known to it, be notified to a *RIS* as soon as possible following the *open-ended investment company* becoming aware of those interests.
- 16.4.4 R *LR 10 (Significant transactions) and LR 12 (Dealing in own securities and treasury shares) do not apply to an open-ended investment company.*

Appendix 1

Relevant definitions

1.1 Relevant Definitions

App ...
1.1.1 ...

closed-ended investment fund

an entity:

- (a) which is an undertaking with limited liability, including a company, limited partnership, or limited liability partnership; and
- (b) whose primary object is investing and managing its assets (including pooled funds contributed by holders of its listed securities):
 - (i) in property of any description; and
 - (ii) with a view to spreading investment risk.

...

investment company

~~a company whose object is to invest its funds wholly or mainly in:~~

- (a) ~~any of the following investments specified in the Regulated Activities Order:~~
 - (i) ~~share (article 76);~~
 - (ii) ~~debenture (article 77);~~
 - (iii) ~~government and public security (article 78);~~

- (iv) ~~warrant (article 79);~~
- (v) ~~certificate representing certain securities (article 80);~~
- (vi) ~~unit (article 81);~~
- (vii) ~~option (article 83);~~
- (viii) ~~future (article 84);~~
- (ix) ~~contract for differences (article 85);~~
- (x) ~~rights to or interests in investments in (i) to (ix) (article 89);~~

- (b) ~~interests in partnership arrangements, participations, joint ventures and other forms of non-corporate investment provided that the conditions of listing are met; or~~
- (c) ~~interests in any other property provided that the relevant requirements of this chapter are met;~~

~~with the object of spreading investment risk and managing its portfolio for the benefit of its shareholders.~~

...

investment manager

~~a person who, acting only on behalf of a client, manages investments; and is not a wholly-owned subsidiary of the client.~~

- (a) ~~manages designated investments in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement; or~~
- (b) ~~manages designated investments in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.~~

...

property investment company

~~an investment company or an investment trust which invests or intends to invests 20% or more of its gross assets directly in property and satisfies the requirements of LR 15.5 in addition to any other relevant requirements of LR 15.~~

LR TR Transitional Provisions for Sponsors and Venture Capital Trusts

...

Transitional Provisions for venture capital trusts

(1)	(2) <u>Material to which the Transitional provisions applies</u>	(3)	(4) <u>Transitional provision</u>	(5) <u>Transitional Provision: dates in force</u>	(6) <u>Handbook Provision coming into force</u>
<u>2</u>	<u>LR 15.2.11R – LR 15.2.13G and LR 15.4.7R</u>	<u>R</u>	<u>Do not apply in respect of a <i>venture capital trust</i> listed before the date this instrument comes into force.</u>	<u>From 28 September 2007 to 28 September 2010</u>	<u>28 September 2007</u>
<u>3</u>	<u>LR 15.6.8R</u>	<u>R</u>	<u>Does not apply in respect of a <i>venture capital trust</i> listed before the date this instrument comes into force.</u>	<u>From 28 September 2007 to 28 September 2010</u>	<u>28 September 2007</u>
<u>4</u>	<u>LR 11.1.5R(2)</u>	<u>R</u>	<u>Does not apply to arrangements between a <i>venture capital trust</i> and its <i>investment manager</i> where:</u> <u>(1) the arrangements are such that each invests in or provides finance to a <i>company</i> and the investment or provision of finance is made either</u> <u>(a) at the same time and on the same terms; or</u> <u>(b) in accordance with a pre-existing agreement between the <i>venture capital trust</i> and its <i>investment manager</i>;</u> <u>and</u> <u>(2) the <i>venture capital trust</i> was listed before the date this instrument comes into force.</u>	<u>From 28 September 2007 to 28 September 2010</u>	<u>28 September 2007</u>

**LISTING, PROSPECTUS AND DISCLOSURE RULES (MISCELLANEOUS
AMENDMENTS) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
 - (2) section 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 88(3) (Sponsors);
 - (4) section 96 (Obligations of issuers of listed securities);
 - (5) section 101 (Listing rules: general provisions);
 - (6) section 157(1) (Guidance); and
 - (7) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. (1) Subject to (2) this instrument comes into force on 6 August 2007.
(2) Part 2 of Annex C comes into force 6 October 2007.

Amendments to the Handbook

- C. The modules of the FSA'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
Prospectus Rules (PR)	Annex B
Listing Rules (LR)	Annex C
Disclosure Rules and Transparency Rules (DTR)	Annex D

Notes

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

Citation

- E. This instrument may be cited as the Listing, Prospectus and Disclosure Rules (Miscellaneous Amendments) Instrument 2007.

By order of the Board
28 June 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, except where otherwise indicated, underlining indicates new text and striking through indicates deleted text.

Amend the following definitions as shown:

associate

- (1) (in *LR*) (in relation to a *director, substantial shareholder, ~~50/50 joint venture partner~~* or *person exercising significant influence*, who is an individual):

...

- (2) (in *LR*) (in relation to a *substantial shareholder, ~~50/50 joint venture partner~~* or *person exercising significant influence*, which is a *company*):

- (a) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

- (b) any *company* whose *directors* are accustomed to act in accordance with the *substantial shareholder's, ~~50/50 joint venture partner's~~* or *person exercising significant influence's* directions or instructions; ;

- (c) any company in the capital of which the *substantial shareholder* or *person exercising significant influence* and any other *company* under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (1)(c)(i) or (ii) of this definition.

...

controlled undertaking

any subsidiary undertaking within the meaning of the *Act* other than section ~~258(4)(b)~~ 1162 of the Companies Act ~~1985~~ 2006 or section 420(2)(b) of the *Act*;

...

employees' share scheme

has the same meaning as in section ~~743~~ 1166 of the Companies Act ~~1985~~ 2006;

group

...

- (4) (in *LR*):
- (a) (except in *LR* 6.1.19R, *LR* 8.3.6R, *LR* 8.3.7G and *LR* 8.7.8R(10), an *issuer* and its *subsidiary undertakings* (if any); and
 - (b) in *LR* 6.1.19R, *LR* 8.3.6R, *LR* 8.3.7G and *LR* 8.7.8R(10), as defined in section 421 of the *Act*.
- ...

parent undertaking

- (1) (in accordance with section 420 of the *Act* (Parent and subsidiary undertaking) and section ~~258~~ 1162 of the Companies Act ~~1985~~ 2006 (Parent and subsidiary undertakings)):
- (a) ...
 - (i) ...
- ...
- in relation to (ii) and (iv); the undertaking will be treated as a member of S if any of its subsidiary undertakings is a member of S, or if any shares in S are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings; the provisions of Schedule ~~10A~~ 7 to the Companies Act ~~1985~~ 2006 (Parent and subsidiary undertakings: supplementary provisions) explain the expressions used in and supplement paragraphs (i) to (iv);
- ...

person exercising significant influence

(in *LR*) in relation to a *listed company*, a *person* or entity which exercises significant influence over that *listed company* (~~other than a 50/50 joint venture partner~~).

property valuation report

(in *LR*) a *property valuation report* prepared by an independent expert in accordance with: ~~the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors.~~

- (1) for an *issuer* incorporated in the *United Kingdom*, the *Channel Islands* or the *Isle of Man*, the *Appraisal and Valuation Standards (5th edition)* issued by the *Royal Institution of Chartered Surveyors*; or
- (2) for an *issuer* incorporated in any other place, either the standards referred to in paragraph (1) or the *International Valuation Standards (7th edition)* issued by the *International Valuation Standards*

Committee.

public international body

...

- (2) (in *LR* and *DR*)...the Caribbean Development Bank, ~~the Council of Europe Resettlement Fund,~~ the Council of Europe Development Bank, the European Atomic Energy Community...

share

...

- (3) In *DTR* and *LR*, and in *FEES* where relevant to *DTR* or *LR*, (in accordance with section ~~744~~ 540 of the Companies Act ~~1985~~ 2006) a share in the share capital of a *company*, and includes:

(a) ...

...

subsidiary undertaking

...

- (3) (in *LR*) as defined in section ~~258~~ 1162 of the Companies Act ~~1985~~ 2006.

Delete the definition of "substantial shareholder" and substitute the following:

substantial shareholder

(in *LR*) any *person* who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the *company* (or of any *company* which is its *subsidiary undertaking* or *parent undertaking* or of a fellow *subsidiary undertaking* of its *parent undertaking*). Disregard for this purpose any voting rights which such a *person* exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long term insurer in respect of its linked long term business if no *associate* of that *person* interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such *person* confers or collaborates with such an *associate* which also acts in its capacity as investment manager, collective investment undertaking or long term insurer).

treasury shares

qualifying shares to which sections ~~162A to 162G~~ Chapter 6 of the Companies Act ~~1985~~ 2006 ~~apply~~ applies.

undertaking

(as defined in section ~~259-1161~~ of the Companies Act ~~1985~~ 2006 (Meaning of "undertaking" and related expressions)):

...

Insert the following new definitions in the appropriate alphabetical position; the new text is not underlined:

deferred bonus

(in *LR*) any arrangement pursuant to the terms of which an *employee* or *director* may receive a bonus (including cash or any security) in respect of service and/or performance in a period not exceeding the length of the relevant financial year notwithstanding that the bonus may, subject only to the *person* remaining a *director* or *employee* of the group, be receivable by the *person* after the end of the period to which the award relates.

defined benefit scheme

in relation to a *director*, means a pension scheme which is not a *money purchase scheme*.

equivalent document

(in *LR*) a document containing information equivalent to a *prospectus* for the purposes of *PR* 1.2.2R(2) or (3) or *PR* 1.2.3R(3) or (4).

money purchase scheme

in relation to a *director*, means a pension scheme under which all of the benefits that may become payable to or in respect of the *director* are money purchase benefits.

Delete the following definitions of:

50/50 joint venture

~~(in *LR*) a joint venture where the two parties to the joint venture have a deadlocked interest in the joint venture. [deleted]~~

50/50 joint venture partner

~~(in *LR*) a party to a 50/50 joint venture with a listed company or its subsidiary undertaking. [deleted]~~

Annex B

Amendments to the Prospectus Rules (PR)

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

Minimum information

2.3.1 EU ...

Article 3

...

A prospectus shall contain the information items required in Annexes I to XVII depending on the type of issuer and securities involved, provided for in the schedules and building blocks set out in Articles 4 to 20. Subject to Article 4a(1), a ~~A~~ competent authority shall not request that a prospectus contains information items which are not included in Annexes I to XVII.

...

Article 4a

Share registration document schedule in cases of complex financial history or significant financial commitment

1. Where the issuer of a security covered by Article 4(2) has a complex financial history, or has made a significant financial commitment, and in consequence the inclusion in the registration document of certain items of financial information relating to an entity other than the issuer is necessary in order to satisfy the obligation laid down in Article 5(1) of Directive 2003/71/EC, those items of financial information shall be deemed to relate to the issuer. The competent authority of the home Member State shall in such cases request that the issuer, the offeror or the person asking for admission to trading include those items of information in the registration document.

Those items of financial information may include pro forma information prepared in accordance with Annex II. In this context, where the issuer has made a significant financial commitment any such pro forma information shall illustrate the anticipated effects of the transaction that the issuer has agreed to undertake, and references in Annex II to “the transaction” shall be read accordingly.

2. The competent authority shall base any request pursuant to paragraph 1 on the requirements set out in item 20.1 of Annex I as regards the content of financial information and the applicable

accounting and auditing principles, subject to any modification which is appropriate in view of any of the following factors:

- (a) the nature of the securities;
- (b) the nature and range of information already included in the prospectus, and the existence of financial information relating to an entity other than the issuer in a form that might be included in a prospectus without modification;
- (c) the facts of the case, including the economic substance of the transactions by which the issuer has acquired or disposed of its business undertaking or any part of it, and the specific nature of that undertaking;
- (d) the ability of the issuer to obtain financial information relating to another entity with reasonable effort.

Where, in the individual case, the obligation laid down in Article 5(1) of Directive 2003/71/EC may be satisfied in more than one way, preference shall be given to the way that is the least costly or onerous.

- 3. Paragraph 1 is without prejudice to the responsibility under national law of any other person, including the persons referred to in Article 6(1) of Directive 2003/71/EC, for the information contained in the prospectus. In particular, those persons shall be responsible for the inclusion in the registration document of any items of information requested by the competent authority pursuant to paragraph 1.
- 4. For the purposes of paragraph 1, an issuer shall be treated as having a complex financial history if all of the following conditions apply:
 - (a) its entire business undertaking at the time that the prospectus is drawn up is not accurately represented in the historical financial information which it is required to provide under item 20.1 of Annex I;
 - (b) that inaccuracy will affect the ability of an investor to make an informed assessment as mentioned in Article 5(1) of Directive 2003/71/EC; and
 - (c) information relating to its business undertaking that is necessary for an investor to make such an assessment is included in financial information relating to another entity.
- 5. For the purposes of paragraph 1, an issuer shall be treated as having made a significant financial commitment if it has entered into a binding agreement to undertake a transaction which, on completion, is likely to give rise to a significant gross change.

In this context, the fact that an agreement makes completion of the

transaction subject to conditions, including approval by a regulatory authority, shall not prevent that agreement from being treated as binding if it is reasonably certain that those conditions will be fulfilled.

In particular, an agreement shall be treated as binding where it makes the completion of the transaction conditional on the outcome of the offer of the securities that are the subject matter of the prospectus or, in the case of a proposed takeover, if the offer of securities that are the subject matter of the prospectus has the objective of funding that takeover.

6. For the purposes of paragraph 5 of this Article, and of item 20.2 of Annex I, a significant gross change means a variation of more than 25%, relative to one or more indicators of the size of the issuer's business, in the situation of an issuer.

Incorporation by reference

- 2.4.1 R (1) Information may be incorporated in the *prospectus* by reference to one or more previously or simultaneously published documents that have been approved by the *FSA competent authority of the Home State* or filed with or notified to it in accordance with the ~~prospective directive~~ *prospectus directive* or titles IV and V of *CARD*.
- (2) In particular under paragraph (1), information may be incorporated by reference to information ~~filed under PR 5.2 (Annual information update)~~ contained or referred to in an annual information update.
[Note: article 11.1 PD]

Applying for approval

- 3.1.1 R An *applicant* must submit to the *FSA* the following information:
- ...
- (7) ~~the application form to purchase or subscribe for the transferable securities;~~ [deleted]
- (8) ~~a copy of the resolution of the board of the issuer allotting the transferable securities or if a copy of the resolution is not available, confirmation that the resolution will be submitted to the FSA no later than 3 working days after the prospectus is approved;~~ written confirmation of the number of securities to be allotted or issued (pursuant to a board resolution allotting or issuing the securities);
- ...

Copy of resolution to be kept

- 3.1.5A R An applicant must keep a copy of the board resolution allotting or issuing the transferable securities for six years after the application for approval of the prospectus for those securities.
- 3.1.15 R The person must submit the documents referred to in PR 3.1.14R at least ten working days before the date on which it wishes the vetting to be completed or at least 20 working days before that date if the person does not have transferable securities admitted to trading and has not previously made an offer.

Supplementary prospectus to be submitted as soon as possible

- 3.4.3 R A person referred to in section 87G(2) of the Act must submit a supplementary prospectus referred to in that section to the FSA for approval as soon as practicable after the new factor, mistake or inaccuracy arises or is noted.

Language customary in the sphere of international finance

- 4.1.5A G The FSA will consider a language to be customary in the sphere of international finance if documents in that language are accepted for scrutiny and filing in at least three international capital markets in each of the following:
- (1) Europe;
 - (2) Asia; and
 - (3) the Americas.

Summary to be translated into English

- 4.1.6 R If:
- ...
- (3) the prospectus is not drawn up in a language other than English that is customary in the sphere of international finance English;

the offeror must ensure that the summary is translated into English. [Note: article 19.2 PD]

5.2.2 R *PR 5.2.1R* does not apply in relation to *non-equity transferable securities* whose denomination per unit amounts to at least 50,000 Euros (or an equivalent amount)-, unless the issuer of the securities has elected by notice in writing sent to the FSA to comply with PR 5.2. [Note: article 10.3 PD]

Note: A copy of an election form may be found on the UKLA section of the FSA website.

5.2.2A R If an issuer elects under PR 5.2.2R to comply with PR 5.2 it must comply with the requirements in PR 5.2 (and the relevant requirements of the PD regulation as if they applied to it) on an ongoing basis until it withdraws the election. An issuer may withdraw the election by notice in writing given to the FSA, but may not do so within three years from the date of making the initial election.

5.2.3 G The FSA would expect the *annual information update* to refer to or contain information that is published or made available under:

...

(4) the Companies Act ~~1985~~ 2006 or, for an *overseas company*, the relevant companies legislation of the place where it is incorporated, relating to the regulation of securities, issuers and securities markets; and

...

Certificate received from another competent authority

5.3.4 G If the FSA receives information referred to in section 87H from another competent authority it will as soon as practicable give notice on the FSA website that it has received the information.:

(1) ~~inform the issuer, offeror or person requesting admission (as the case may be) that it has received the information; and~~

(2) ~~give notice on the FSA's website that it has received the information.~~

Delete *PR 5.6.5G* and the heading "Property company valuation reports" and substitute the following:

Property valuation reports

5.6.5 G To comply with paragraph 130 of the *CESR recommendations*, the *FSA* would expect a valuation report for a property company to be in accordance with either:

(1) the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or

(2) the International Valuation Standards (7th edition) issued by the International Valuation Standards Committee.

5.6.6 G To comply with paragraph 2.7 of Annex XV of the *PD Regulation*, the *FSA* would also expect a valuation report for a property collective investment undertaking to comply with a relevant standard set out in *PR 5.6.5G*.

Appendix 3

...

Annex 1

...

20.1 Historical financial information

... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers...

...

Annex IV

...

13.1 Historical financial information

... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers ...

...

Annex VII

8.2 Historical financial information

... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable, to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers ...

8.2 bis ... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers ...

...

Annex IX

...

11.1 Historical financial information

... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers ...

Annex X

...

20.1 Historical financial information

... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third

country issuers ...

20.1 bis ... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers ...

Annex XI

...

11.1 Historical Financial Information

... Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. For third country issuers ...

Annex C

Amendments to the Listing Rules (LR)

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

Part 1 comes into force on 6 August 2007, and Part 2 comes into force on 6 October 2007.

Part 1

No conditional admission

- 2.1.5 G The FSA is not able to make the admission of securities conditional on any event. The FSA may, in particular cases, seek confirmation from an issuer before the admission of securities that the admission does not purport to be conditional on any matter.

Transferability

- 2.2.4 R ...
- (2) To be *listed, shares* must be fully paid and free from all liens and from any restriction on the right of transfer (except any restriction imposed for failure to comply with a notice under section ~~212-793~~ of the Companies Act ~~1985~~ 2006 (~~Company investigations~~ Notice by company requiring information about interests in its shares)).

Method of application

- 3.2.2 R An *applicant for admission* must apply to the FSA by:
- (1) submitting, in final form:
- (a) ...
- (b) ...
- (c) the documents described in LR 3.5 in the case of a block listing ~~or a formal application~~;
- (2) ...

Grant of an application for admission to listing

- 3.2.5 G The *FSA* will admit *securities* to *listing* if all relevant documents required by ~~LR 3.3, LR 3.4 or LR 3.5~~ LR 3.2.2R have been submitted to the *FSA*.

Delete *LR 3.3.1R* and substitute the following:

Application

- 3.3.1 R LR 3.3.2R to LR 3.3.7R apply to an *applicant* which is applying for:
- (1) a primary listing of its equity shares;
 - (2) a primary listing of its preference shares;
 - (3) a primary listing of its securities that are convertible into equity shares; or
 - (4) a secondary listing of its equity shares.

Documents to be provided 48 hours in advance

- 3.3.2 R The following documents must be submitted, in final form, to the *FSA* by midday two *business days* before the *FSA* is to consider the application:
- ...
- (2) ...
 - (c) ~~where a prospectus has not been produced, a written confirmation, signed by a director or duly authorised officer of the issuer or offeror of the securities if the offeror is not the issuer that:~~
 - (i) ~~a prospectus is not required to be published by the prospectus directive, setting out the exemptions on which the issuer or offeror is relying; and~~
 - (ii) ~~the issuer or offeror will not make an offer of transferable securities to the public of, or admit to trading on a regulated market in the UK, the securities which are the subject of the application until those securities are admitted to the official list; [deleted]~~
 - (3) any *circular* that has been published in connection with the application, if applicable;
 - (4) any approved *supplementary prospectus* or approved *supplementary listing particulars*, if applicable; ~~and~~
 - (5) ~~a copy of the resolution of the board of the applicant allotting the~~

securities; written confirmation of the number of securities to be allotted (pursuant to a board resolution allotting the securities); and [Note: if this is not possible, see LR 3.3.4R]

- (6) if a prospectus or listing particulars have not been produced, a copy of the RIS announcement detailing the number and type of securities that are the subject of the application and the circumstances of their issue.

Note: The Application for Admission of Securities to the Official List form can be found on the UKLA section of the FSA website.

- 3.3.2A R If a prospectus or listing particulars have not been produced then the Application for Admission of Securities to the Official List must contain confirmation that a prospectus or listing particulars are not required and details of the reasons why they are not required.

Documents to be provided on the day

- 3.3.3 R ~~Either of the~~ The following documents signed by a sponsor (if a sponsor is required under LR 8) or by a duly authorised officer of the applicant (if a sponsor is not required under LR 8) must be submitted, in final form, to the FSA before 9 a.m. on the day the FSA is to consider the application:
- (1) a completed Shareholder Statement, ~~signed by a sponsor~~, in the case of an applicant that is applying for a listing of a class of equity shares or preference shares for the first time; or [Note: see LR 8.4.3R and LR 8.4.9R]
 - (2) a completed Pricing Statement, ~~signed by a sponsor~~, in the case of a placing, open offer, vendor consideration placing, offer for subscription of equity shares or an issue out of treasury by an applicant of equity shares of a class already listed. [Note: see LR 8.4.3R and LR 8.4.9R]

Note: The Shareholder Statement and the Pricing Statement forms can be found on the UKLA section of the FSA website.

- 3.3.4 R ~~If a copy of the resolution of the board allotting the securities written confirmation of the number of securities to be allotted pursuant to a board resolution cannot be submitted to the FSA by the deadline set out in LR 3.3.2R or, the number of securities to be admitted is lower than the number notified under LR 3.3.2R, the resolution or a written confirmation of the number of securities to be allotted or admitted must be provided to the FSA by from the applicant or its sponsor that the securities have been allotted must be submitted to the FSA at least one hour before the admission to~~

listing is to become effective.

- 3.3.4A R If the FSA has considered an application for *listing* and the *securities* the subject of the application are not all allotted and *admitted* following the initial allotment of the *securities* (for example, under an *offer for subscription*), further allotments of *securities* may be *admitted* if before 4pm on the day before *admission* is sought the FSA has been provided with:
- (1) written confirmation of the number of *securities* allotted pursuant to a board resolution; and
 - (2) a copy of the *RIS* announcement detailing the number and type of *securities* and the circumstances of their issue.

Delete LR 3.3.5R and substitute the following rule:

Other documents to be submitted

- 3.3.5 R Written confirmation of the number of *securities* that were allotted (pursuant to a board resolution allotting the *securities*) must be submitted to the FSA as soon as practicable after *admission* if the number is lower than the number that was announced under LR 3.2.7G as being *admitted* to *listing*.

~~Additional documents~~ Documents to be kept

- 3.3.6 R An *applicant* must keep copies of the following for six years after the *admission* to *listing*:
- ...
- (7) in the case of an application in respect of *securities* issued pursuant to an *employees' share scheme*, the scheme document; ~~and~~
 - (8) ... issued by the Registrar of Companies; ; and
 - (9) copies of board resolutions of the *applicant* allotting or issuing the *securities*.

Delete LR 3.3.8R in its entirety.

Application – debt securities etc

- 3.4.1 R LR 3.4.4R to LR ~~3.4.6R~~ 3.4.7R apply to an *applicant* that is seeking

admission of any of the following types of *securities*:

- (1) *debt securities*;
- (2) *asset-backed securities*;
- (3) *certificates representing certain securities*; and
- (4) ~~*specialist securities* of the following types:~~
 - (a) ~~*convertible securities* which convert to *debt securities*~~;
 - (b) ~~*convertible securities* which convert to *equity securities*~~; and
 - (c) ~~*convertible securities* which are exchangeable for *securities* of another company. [deleted]~~
- (5) *convertible securities* other than those referred to in LR 3.3.1R(3).

Application - issuance programmes

- 3.4.2 R ~~LR 3.4.4R~~ LR 3.4.7R to LR 3.4.8R apply to an *applicant* for the *admission* of a *debt securities* or *asset-backed securities* issuance programme, ~~where the applicant is:~~
- (1) ~~a new applicant; or~~
 - (2) ~~seeking an admission to listing for an issue made more than 12 months after publication of the base prospectus or listing particulars.~~

Application - public sector issuers

- 3.4.3 R LR 3.4.9R to LR 3.4.13R apply to an *applicant* that is a *public sector issuer*.

~~Securities referred to in LR 3.4.1R:~~ Documents to be provided 48 hours in advance

- 3.4.4 R ~~An applicant referred to in LR 3.4.1R~~ must submit, in final form, to the FSA by midday two *business days* before the FSA is to consider the application:
- (1) ...
 - (2) ...; and
 - (3) any approved *supplementary prospectus* or approved *supplementary*

listing particulars, if applicable - ; and

- (4) written confirmation of the number of securities to be issued (pursuant to a board resolution). [Note: if this is not possible, see LR 3.4.5R]

...

Delete LR 3.4.5R and substitute the following:

Documents to be provided on the day of admission

- 3.4.5 R If confirmation of the number of securities to be issued pursuant to a board resolution cannot be submitted to the FSA by the deadline set out in LR 3.4.4R or, the number of securities to be admitted is lower than the number notified under LR 3.4.4R, written confirmation of the number of securities to be issued or admitted must be provided to the FSA by the applicant at least one hour before the admission to listing is to become effective.

~~Securities referred to in LR 3.4.1R: additional documents~~ Documents to be kept

- 3.4.6 R ~~An applicant referred to in LR 3.4.1R~~ must keep, for six years after the admission to listing, a copy of the items set out in LR 3.3.6R(1) to (6) and LR 3.3.6(9) and must provide any of those documents to the FSA if requested to do so.

Procedure for issuance programmes: initial offering and increase to programme size

- 3.4.7 R ~~An applicant referred to in LR 3.4.2R~~ must comply with LR 3.4.4R to LR 3.4.6R with the following modifications:
- (1) ~~an applicant must submit a supplementary prospectus or supplementary listing particulars instead of the document required by LR 3.4.4R(2) in the case of an increase in the maximum amount of debt securities which may be in issue and listed at any one time under an issuance programme; and [deleted]~~
 - (2) if the FSA approves the application it will admit to listing all *debt securities* which may be issued under the programme within 12 months after the publication of the *base prospectus* or *listing particulars* subject to the FSA:
 - (a) being advised of the *final terms* of each issue for which a *listing* is sought; and

- (b) receiving and approving for publication any supplementary documents that may be appropriate; ~~and~~ .
- (c) ~~receiving confirmation that the *debt securities* in question have been authorised.~~ ~~[deleted]~~

(3) an applicant must submit a *supplementary prospectus* or *supplementary listing particulars* instead of the document required by LR 3.4.4R(2) in the case of an increase in the maximum amount of *debt securities* which may be in issue and *listed* at any one time under an issuance programme.

3.4.7A G An applicant for the admission of securities under an issuance programme must confirm in its Application for Admission of Securities to the Official List that at admission all of the securities the subject of the application will be in issue pursuant to board resolutions authorising the issue.

Issuance programmes: final terms

3.4.8 R ...

- (2) The *final terms* may be submitted by:
 - (a) the *applicant*: or
 - (b) ~~the *applicant's* agent if a letter of appointment signed by a duly authorised officer of the *applicant* has been delivered to the FSA.~~ a duly authorised officer of the *applicant*.
- (3) ~~The Application for Admission of Securities to the Official List need not be submitted for issues made after the first issue in any 12 month period after publication of the *base prospectus* or *listing particulars*.~~ ~~[deleted]~~

Note: For further details on *final terms*, see PR 2.2.9R and PR 2.3.2R.

Exempt pPublic sector issuers

3.4.9 R ~~A public sector issuer of an EEA State~~ that seeks admission of *debt securities* referred to in paragraphs 2 and 4 of Schedule 11A of the Act must submit to the FSA in final form a completed Application for Admission of Securities to the Official List.

- 3.4.9A G An application referred to in LR 3.4.9R should be made in accordance with the timetable referred to in LR 3.4.8R.
- 3.4.9B G A public sector issuer that is not required to produce a prospectus or listing particulars must confirm on its application form that no prospectus or listing particulars are required.
- 3.4.9C G Apart from LR 3.4.9R, LR 3.4.9AG and LR 3.4.9BG no other provisions in LR 3.4 apply to the admission of debt securities referred to in paragraphs 2 and 4 of Schedule 11A of the Act.

Other public sector issuers

- 3.4.10 R LR 3.4.7R, LR 3.4.8R and LR 3.4.11R to LR 3.4.13R apply...
- 3.4.11 R An applicant referred to in LR 3.4.10R must submit the items set out in LR 3.4.4R to the FSA in final form by midday two business days before the FSA is to consider the application:
- ~~(1) the items set out in LR 3.4.4R;~~
 - ~~(2) a copy of any consent, order or resolution, authorising the issue of the debt securities; and~~
 - ~~(3) where a regional or local authority has offered debt securities for sale to or subscription by the public, a Public Sector Issuer Certificate.~~

~~**Note:** The Public Sector Issuer Certificate can be found on the UKLA section of the FSA's website.~~

- 3.4.12 R ~~An applicant referred to in LR 3.4.10 R must submit to the FSA as soon as practicable after the FSA has considered the application the item set out in LR 3.3.5R (1). [deleted]~~
- 3.4.13 R ~~An applicant referred to in LR 3.4.10R must keep, for six years after the admission to listing, a copy of the items set out in LR 3.3.6R(1) to LR 3.3.6R(6) and in LR 3.3.6R(9) and must provide any of those documents to the FSA if requested to do so.~~

3.5 Block listing and formal application

Application

3.5.1 R This section applies to an *applicant* that wishes to apply for *admission* of *securities* using:

(1) a block listing; ~~or~~

(2) a formal application.

Delete LR 3.5.2G and substitute the following:

When a block listing can be used

3.5.2 G If the process of applying for admission of securities is likely to be very onerous due to the frequent or irregular nature of allotments and if no prospectus or listing particulars are required for the securities, an applicant may apply for a block listing of a specified number of the securities.

3.5.3 G The grant of a block listing constitutes *admission to listing* for the *securities* that are the subject of the block. ~~An applicant therefore needs to take this into consideration when applying for admission of further securities in order to ensure compliance with its obligations under PR 1.2.3R(1).~~ Separately, the provisions of PR 1.2.2R will need to be considered by the *applicant* when the *securities* that are the subject of the block listing are being issued.

Delete LR 3.5.4R and the heading "Block listing" substitute the following:

3.5.4 R An applicant applying for admission to listing by way of a block listing must submit in final form, at least two business days before the FSA is to consider the application, a completed Application for Admission of Securities to the Official List. An application in respect of multiple schemes must identify the schemes but need not set out separate block listing amounts for each scheme.

Note: The Application for Admission of Securities to the Official List form can be found on the UKLA section of the FSA website.

3.5.6 R Every six *months* the *applicant* must notify a *RIS* of the details of the number of *securities* covered by the block listing which have been allotted in the previous six *months*, using the Block Listing Six Monthly Return. ~~A copy of the notification must also be lodged with the FSA.~~

Note: A copy of the Block Listing Six Monthly Return can be found on the UKLA section of the FSA website.

Delete LR 3.5.7R and LR 3.5.8R and the heading "Formal application" and substitute the following:

3.5.7 G An issuer that wishes to synchronise block listing six monthly returns for a number of block listing facilities may do so by providing the return required by LR 3.5.6R earlier than required to move the timing of returns onto a different six monthly cycle. An issuer with multiple block listing facilities should ensure that allotments under each facility are separately stated.

Final terms

4.4.3 R If final terms of the offer are not included in the listing particulars:

(1) the final terms must be provided to investors and filed with the FSA, and made available to the public, as if the relevant requirements in PR 3.2 and the PD Regulation applied to them; and

(2) the listing particulars must disclose the criteria and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price.

5.2.4A G LR 5.2.4R applies even if the listing of the securities is suspended.

Cancellation of listing of ~~equity securities~~ ordinary shares

5.2.5 R Subject to the provisions of LR 5.2.6 R₂ and LR 5.2.7R, LR 5.2.10R and LR 5.2.12R, an issuer that wishes the FSA to cancel the listing of any of its ordinary equity ~~securities~~ shares with a primary listing must:

(1) ...

5.2.5A R An issuer that wishes to cancel the secondary listing of its ordinary equity shares must also comply with the requirements in LR 5.2.5R if:

(1) the shares have previously been converted from being primary listed to secondary listed; and

(2) the conversion has taken place within 2 years before the proposed cancellation of the secondary listing of the shares.

5.2.6 R An issuer is not required to seek the prior approval of the holders of the ~~securities~~ ordinary equity shares for which a cancellation is being sought in accordance with LR 5.2.5R (2) or LR 5.2.5AR if the ~~securities shares~~ are admitted to trading on a *regulated market* in an *EEA State* when the cancellation takes effect.

5.2.7 R LR 5.2.5R (2) and LR 5.2.5AR will also not apply where an issuer of ordinary equity shares ~~equity securities with a primary listing~~ notifies a *RIS*:

(1) ...

Requirements for cancellation of other securities

5.2.8 R An issuer that wishes the *FSA* to cancel the listing of *listed securities* (other than ordinary equity shares ~~securities~~ with a *primary listing* or ordinary equity shares to which LR 5.2.5AR apply) must notify a *RIS*, giving at least 20 *business days* notice of the intended cancellation but is not required to obtain the approval of the holders of those *securities* contemplated in LR 5.2.5R(2).

Cancellation in relation to takeover offers

5.2.10 R ~~A circular need not be sent to holders of listed securities where that listing is intended to be cancelled, and the prior approval of the holders of those securities in a general meeting need not be obtained, LR 5.2.5R and LR 5.2.5AR do not apply to the cancellation of ordinary equity shares of an issuer when, in the case of a takeover offer:~~

(1) ...

(2) the offeror has stated in the offer document or any subsequent circular sent to the security holders that a notice period of not less than 20 *business days* prior to cancellation will commence either on the offeror attaining the required 75% as described in LR 5.2.10R(1) or on the first date of issue of compulsory acquisition notices under section ~~429~~ 979 of the Companies Act ~~1985~~ 2006 (*Right of offeror to buy out minority shareholders shareholder*).

Cancellation as a result of schemes of arrangement etc

5.2.12 R LR 5.2.5R, LR 5.2.5AR and LR 5.2.8R do not apply to the cancellation of

ordinary equity shares of an issuer as a result of:

- (1) a takeover or restructuring of the issuer effected by a scheme of arrangement under Part 26 of the Companies Act 2006; or
- (2) an administration or liquidation of the issuer pursuant to a court order under the Insolvency Act 1986.

Information to be included in request to suspend or cancel

- 5.3.2 R The *issuer* must also include with a request to cancel the *listing* of its *securities* the following:
- (1) if the cancellation is to take effect after the completion of the compulsory acquisition procedures under ~~Part XIII A~~ Chapter 3 of Part 28 of the Companies Act ~~1985~~ 2006, a copy of the notice sent to dissenting shareholders of the offeree together with written confirmation that there have been no objections made to the court within the prescribed period;
 - (2) ...
 - (3) if a cancellation is to take place after a scheme of arrangement becomes effective under section ~~425~~ 899 of the Companies Act ~~1985~~ 2006 (court sanction for compromise or arrangement) and a new *company* is to be *listed* as a result of that scheme, either:
 - (a) a copy of the certificate from the Registrar of Companies that the scheme has become effective; or
 - (b) ...

Shares in public hands

- 6.1.19 R (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
- ...
- (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly by:
- ...
- (e) any person or persons in the same group or persons acting in concert who have an interest in 5% or more of the *shares* of the relevant *class*.

...

6.1.20 G The *FSA* may modify *LR 6.1.19R* to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. For that purpose, the *FSA* may take into account *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*. [Note: article 48 *CARD*]

8.4.8 R ...

(3) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement required by *LR 6.1.16R* or a qualified working capital statement in accordance with *LR 6.1.17G* (as the case may be).

8.4.10 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm in writing to the *FSA* the number of securities to be allotted or admitted. ~~that the board of the *applicant* has allotted the *securities*.~~ [Note: see *LR 3.3.4R*]

Notifications to FSA

8.5.1 R A *listed company* or *applicant* must ~~inform~~ ensure that the *FSA* is informed promptly of the name and contact details of a *sponsor* appointed in accordance with the *listing rules* (either by the *listed company* or *applicant* or by the *sponsor* itself).

8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:

...

(3) take into account any information which it considers appropriate in relation to the application; ~~and~~ .

(4) ~~request that any information provided by the applicant is verified in such a manner as the *FSA* may specify.~~ [deleted]

General notifications

8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:

- (9) a review carried out under *LR 8.6.14G* reveals any material deficiencies in the *sponsor's* systems and controls; or
- (10) there is a change of control of the *sponsor*, or the *sponsor's group* carries out any restructuring, which results in a re-organisation of the *directors*, partners or *employees* involved in providing services as a *sponsor*.

...

Transaction notification rules: appointment of FSA liaison

- 8.7.11 R ... of the name of the suitably experienced ~~senior~~ *employee*, whose name appears ...

Application: preference shares

- 9.1.2 R A *company* that has a *primary listing* of *preference shares* must comply with:

...

- (11) *LR 9.8*, but not:

...

- (d) *LR 9.8.6R(5)*, (6) and (7);

Control of assets and independent business

- 9.2.2A R A *listed company* that has *shares listed*, or *securities convertible into its own shares listed*, must comply with *LR 6.1.4R(2)* and (3) at all times. This rule does not apply to a *mineral company*, a *scientific research based company*, *venture capital trust* or other investment entity.

- 9.2.8 R A *listed company* must require:
 - (1) every *person discharging managerial responsibilities*, including *directors*; ~~and~~
 - (2) ~~every employee of the company or any group company with access to inside information;~~

to comply with the *Model Code* and to take all proper and reasonable steps to secure their compliance.

Proxy forms

- 9.3.6 R ~~A listed company must ensure that, in addition to its obligations under the Companies Act 2006, a proxy form:~~
- (1) ~~is sent with the notice convening a meeting of holders of listed shares to each person entitled to vote at the meeting; [deleted]~~
 - (2) provides for at least ~~two~~three-way voting on all resolutions intended to be proposed (except that it is not necessary to provide proxy forms with ~~two~~three-way voting on procedural resolutions); and
 - (3) ~~states that a shareholder is entitled to appoint a proxy of his own choice and that it provides a space for insertion of the name of the proxy; and [deleted]~~
 - (4) states that if it is returned without an indication as to how the proxy shall vote on any particular matter, the proxy will exercise his discretion as to whether, and if so how, he votes.

Proxy forms for re-election of retiring directors

- 9.3.7 R ~~A listed company must ensure that, if the resolutions to be proposed include the re-election of retiring directors and the number of retiring directors standing for re-election exceeds five, the proxy form may give shareholders the opportunity to vote for or against (or abstain from voting on) the re-election of the retiring directors as a whole but may must also allow votes to be cast for or against (or for shareholders to abstain from voting on) the re-election of the retiring directors individually.~~

- 9.3.12 R LR 9.3.11R does not apply if:
- ...
- (1) a general disapplication of statutory pre-emption rights has been authorised by shareholders in accordance with section ~~95~~ 570, 571 and 573 of the Companies Act ~~1985-2006~~ (Disapplication of pre-emption rights) and the issue of *equity securities* or sale of *treasury shares* that are *equity shares* by the *listed company* is within the terms of the authority; or

...

Discounts not to exceed 10%

- 9.5.10 R ...
- (3) ...

- (b) it is an issue of *shares* for cash or the sale of *treasury shares* for cash under a pre-existing general authority to disapply section ~~89~~ 561 of the Companies Act ~~1985~~ 2006 (~~Offers to shareholders to be on a pre-emptive basis~~ Existing shareholders' right of pre-emption).

...

Reconstruction or refinancing

- 9.5.12 R (1) If a *listed company* produces a *circular* containing proposals to be put to shareholders in a general meeting relating to a reconstruction or a re-financing, the *circular* must be produced in accordance with *LR* 13.3 and must include a working capital statement.
- (2) ...

Notifications relating to capital

- 9.6.4 R ...
- (6) (except in relation to a block listing of securities) the results of any new issue of *equity securities* or *preference shares* or of a public offering of existing *shares* or other *equity securities*.

Delete *LR* 9.6.14R in its entirety and substitute the following rule:

- 9.6.14 R *A listed company* must, in respect of any current *director*, notify a *RIS* as soon as possible of:
- (1) any changes in the information set out in *LR* 9.6.13R(2) to *LR* 9.6.13R(6); and
- (2) any new directorships held by the *director* in any other publicly quoted *company*.

Information to be included in annual report and accounts

- 9.8.4 R In addition to the requirements set out in DTR 4.1, a *listed company* must include in its annual financial report, where applicable, the following:
- (1) ...
- ...
- (7) in the case of any allotment for cash of *equity securities* made during the period under review otherwise than to the holders of the

company's equity shares in proportion to their holdings of such *equity shares* and which has not been specifically authorised by the *company's* shareholders:

- (a) ~~the details required by paragraph 39 of Schedule 4 to the Companies Act 1985 (Form and content of company accounts);~~ the classes of shares allotted and for each class of shares, the number allotted, their aggregate nominal value and the consideration received by the company for the allotment;
- (b) the names of the allottees, if less than six in number, and in the case of six or more allottees a brief generic description of each new class of equity holder (e.g. holder of loan stock);
- (c) the market price of the allotted *securities* on the date on which the terms of the issue were fixed; and
- (d) the date on which the terms of the issue were fixed;

...

Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

- (1) a statement setting out all the beneficial and non-beneficial interests of each *person who has been a director* of the *listed company* ~~that have been disclosed to the company under the Companies Act 1985 as at the end of~~ during the period under review; including:

- (a) all changes in the beneficial and non-beneficial interests of each *director* that have occurred between the end of the period under review and a date not more than one month prior to the date of the notice of the annual general meeting, or;
- (b) if there have been no changes in the period described in paragraph (a), a statement that there have been no changes in the beneficial or non-beneficial interests of each *director*;

stating the date each interest commenced (and the date it came to an end or if ongoing, a statement to that effect). Interests of each *director* includes the interests of connected persons as defined in the Companies Act 2006).

- (2) a statement showing, as at a date not more than one month prior to the date of the notice of the annual general meeting:
 - (a) all information disclosed to the *listed company* in accordance with ~~sections 198 to 208~~ Part 22 of the Companies Act 1985

~~2006 (Disclosure of certain major interests in the share capital of a company~~ Information about interests in a company's shares) or DTR 5; or

- (b) that there have been no disclosures, if no disclosures have been made.

....

Report to shareholders

- 9.8.8 R The report to the shareholders by the Board required by LR 9.8.6R (7) must contain the following:

...

- (11) for ~~money purchase schemes~~ money purchase schemes (as in Part I of Schedule 6 to the Companies Act 1985 (Disclosure of information: emoluments and other benefits of directors and others)) details of the contribution or allowance payable or made by the *listed company* in respect of each *director* during the period under review; and

- (12) for ~~defined benefit schemes~~ defined benefit schemes (as in Part I of Schedule 6 to the Companies Act 1985 (Disclosure of information: emoluments and other benefits of directors and others)):

- (a) ...
- (b) ...
- (c) no disclosure of voluntary contributions and benefits.

...

Summary financial statements

- 9.8.13 R Any summary financial statement issued by a *listed company* as permitted under the Companies Act ~~1985~~ 2006, must disclose:

- (1) earnings per share; and
- (2) the information required for summary financial statements set out in the Companies Act ~~1985~~. 2006.

...

The Model Code

Introduction

This code imposes restrictions on dealing in the *securities* of a *listed company* beyond those imposed by law. Its purpose is to ensure that *persons discharging managerial responsibilities* and ~~employee insiders~~ do not abuse, and do not place themselves under suspicion of abusing, *inside information* that they may be thought to have, especially in periods leading up to an announcement of the *company's* results.

...

(1) ...

(d) ~~*employee insider* means an employee of the *company*, its parent undertaking or any member of its *group* whose name is required to be placed on an *insider list* in accordance with DTR 2.8.1 R; [deleted]~~

...

(f) *restricted person* means a *person discharging managerial responsibilities* ~~or *employee insider*~~; and

...

Dealings not subject to the provisions of this code

(2) ...

(g) transactions conducted between a *person discharging managerial responsibilities* and their spouse, civil partner, child or step-child ~~(as defined in within the meaning of section 346 96B(2) of the *Act* Companies Act 1985);~~

(h) transfers of *shares* arising out of the operation of an *employees' share scheme* into a savings scheme investing in *securities* of the *company* following:

(i) exercise of an option under a ~~savings related share~~ an approved SAYE option scheme; or

(ii) release of *shares* from a ~~profit sharing scheme~~ HM Revenue and Customs approved share incentive plan;

(i) with the exception of a disposal of *securities* of the *company* received by a restricted person as a participant, dealings in

connection with the following employees' share schemes: an HM Revenue and Customs approved employees' share scheme, or any other employees' share scheme under which participation is extended on similar terms to those contained in an HM Revenue and Customs approved employees' share scheme, to all or most employees of the participating companies in that scheme;

(i) an HM Revenue and Customs approved SAYE option scheme or share incentive plan, under which participation is extended on similar terms to all or most employees of the participating companies in that scheme; or

(ii) a scheme on similar terms to a HM Revenue and Customs approved SAYE option scheme or share incentive plan, under which participation is extended on similar terms to all or most employees of the participating companies in that scheme; or

Clearance to deal

(4) ...

(a) ...

(b) The chairman must not deal in any *securities* of the *company* without first notifying the chief executive and receiving clearance to deal from him or, if the chief executive is not present, without first notifying the senior independent director, or a committee of the board or other officer of the company nominated for that purpose by the chief executive, and receiving clearance to deal from that director, committee or officer.

(c) The chief executive must not deal in any *securities* of the *company* without first notifying the chairman and receiving clearance to deal from him or, if the chairman is not present, without first notifying the senior independent director, or a committee of the board or other officer of the company nominated for that purpose by the chairman, and receiving clearance to deal from that director, committee or officer.

(d) If the role of chairman and chief executive are combined, that *person* must not deal in any *securities* of the *company* without first notifying the board and receiving clearance to deal from the board.

(e) *Persons discharging managerial responsibilities* (who are not *directors*) ~~and employee insiders~~ must not deal ...

...

- 10.2.5 G For the purposes of LR 10.2.4R(1) the FSA considers the following indemnities not to be exceptional:
- ...
- (4) any other indemnity that is specifically permitted to be given to a *director* or auditor under the Companies Act ~~1985~~ 2006.

...

Material change to terms of transaction

- 10.5.2 R If, after the production of a *circular* and before the completion of a *class 1 transaction* or a *reverse takeover*, there is a material change to the terms of the transaction, the *listed company* must comply again separately with LR 10.5.1 in relation to the transaction.

- 10.5.3 G The FSA would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.

Material change to terms of reverse takeover

- 10.6.1A G LR 10.5.2R and LR 10.5.3G will apply if there is a material change to the terms of a *reverse takeover*.

Suspending listing

- 10.6.3 G Before a *listed company* announces a *reverse takeover* which has been agreed or is in contemplation or where details of the *reverse takeover* have leaked, a *listed company* should consider whether a suspension of *listing* is appropriate. Generally, when a *reverse takeover* is announced or leaked, because of its significant size there will be insufficient information in the market about the proposed transaction and the company will be unable to assess accurately its financial position and inform the market accordingly. So, suspension will often be appropriate (see LR 5.1.2G (3) and (4)). But, if the FSA is satisfied that there is sufficient information in the market about the proposed transaction it may agree with the company that a suspension is not required.

Joint ventures

10.8.9 G ...

- (4) If the *listed company* does retain sole discretion over the triggering event, or if the *listed company* is making a choice to purchase or sell following an event which has been triggered by the joint venture partner, the purchase or sale must be classified when this discretion is exercised or when the choice to purchase or sell is made. ~~In the case of a 50/50 joint venture regard should also be had to LR 11 (related party transactions).~~

LR 10 Annex 1

...

The Consideration test

5R ...

- (3) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be a class 2 transaction) the transaction is to be treated as a *class 1 transaction* ~~(irrespective of the class into which it otherwise falls)~~.

- (3A) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be a class 3 transaction) the transaction is to be treated as a class 2 transaction.

...

Figures used to classify assets and profits

8R ...

- (2) If a balance sheet has been published in a subsequently published interim statement then gross assets and gross capital should be taken from the balance sheet published in the interim statement.

Definition of "related party"

11.1.4 R In *LR*, a "*related party*" means:

- (1) ...
- (2) ...
- (3) ~~a 50/50 joint venture partner;~~ or [deleted]
- (4) ...

- (5) an *associate* of a *related party* referred to in paragraph (1), (2), ~~(3)~~ or (4).

...

11.1.5A G In assessing whether a transaction is in the ordinary course of business under this chapter, the FSA will have regard to the size and incidence of the transaction and also whether the terms and conditions of the transaction are unusual.

Delete LR 11.1.12G in its entirety.

LR 11 Annex 1R

...

Transaction agreed before person became a related party

1A A transaction the terms of which:

- (1) were agreed at a time when no party to the transaction or person who was to receive the benefit of the transaction was a *related party*; and
- (2) have not been amended, or required the exercise of discretion by the *listed company* under those terms, since the party or person become a *related party*.

Issue of new securities and sale of treasury shares

2 A transaction that consists of:

- (1) ...
- (2) an issue of new *securities* ~~either:~~
- (a) made under the exercise of conversion or subscription rights attaching to a *listed class of securities*; ~~or~~ .
- (b) ~~previously approved by the *listed company's* shareholders in general meeting.~~

...

Directors' indemnities and loans

5 (1) A transaction that consists of:

- (a) granting an indemnity to a *director* of the *listed company* (or any of its *subsidiary undertakings*) if the terms of the indemnity are in accordance with those specifically permitted to be given to a *director* under the Companies Act 2006 ~~1985~~; ~~or~~
- (b) maintaining a contract of insurance if the insurance is in accordance with that specifically permitted to be maintained for a *director* under that the Companies Act 2006 ~~1985~~ (whether for a *director* of the *listed company* or for a *director* of any of its *subsidiary undertakings*); ~~or~~
- (c) a loan to a *director* by a *listed company* or any of its *subsidiary undertakings* if the terms of the loan are in accordance with those specifically permitted to be given to a *director* under section 204 or 205 of the Companies Act 2006.

- (2) Paragraph (1) applies to a *listed company* that is not subject to the Companies Act ~~1985~~ 2006 if the terms of the indemnity or contract of insurance are in accordance with those that would be specifically permitted under that Act (if it applied).

...

~~Transactions not related to joint venture~~

7 ~~A transaction or arrangement that:~~

- (1) ~~is with a *person* who is only a *related party* because it is a *50/50 joint venture partner* or its *associate*; and~~
- (2) ~~does not relate to the terms of the joint venture or to the assets or business of the joint venture. [deleted]~~

...

Delete paragraph 10 of LR 11 Annex 1 in its entirety.

- 12.4.9 R A *circular* convening a meeting required by LR 12.4.7 R must include (in addition to the information in LR 13 (Contents of circulars)):
 - (1) a statement of the effect ~~of~~ on the conversion ~~on~~ the expectations of holders in terms of attributable assets and earnings, ...
 - (2) ...

- 12.5.1 R Except where the purchases will consist of individual transactions made in accordance with the terms of issue of the relevant securities, ~~W~~ where a listed company intends to purchase any of its equity securities (other than equity shares) or preference shares it must:
- (1) ensure that no dealings in the relevant securities are carried out by or on behalf of the company or any member of its group until the proposal has either been notified to a RIS or abandoned; and
 - (2) notify a RIS of its decision to purchase ~~unless the purchases will consist of individual transactions made in accordance with the terms of issue of the relevant securities.~~

LR 12.6.2R is deleted and the following rule is substituted:

Exemptions

- 12.6.2 R LR 12.6.1R does not apply to the following sales or transfers by a listed company of treasury shares:
- (1) transfers of treasury shares in connection with the operation of an employees' share scheme where the transfer facilitates dealings that do not fall within the provisions of the Model Code; or
 - (2) sales or transfers by the company of treasury shares (other than equity shares) of a class whose price or value would not be likely to be significantly affected by the publication of the information giving rise to the prohibited period.

...

Pro forma financial information in certain circulars

- 13.3.3 R If a listed company includes pro forma financial information in a class 1 circular, a related party circular or a circular relating to the purchase by the company of 25% or more its issued equity shares (excluding treasury shares), it must comply with the requirements for pro forma financial information set out in the PD Regulation.

...

- 13.4.1A G The information necessary under LR 13.3.1R(3) includes all the material terms of the class 1 transaction including the consideration.

...

Acquisition of a scientific research based company or related assets

- 13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or related assets, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in ~~paragraph 134~~ Section 1c of Part III (Scientific research based companies) of the *CESR recommendations*.

Delete *LR 13.5.31R* and substitute the following:

Pro forma financial information

- 13.5.31 G *LR 13.3.3R* sets out requirements for pro forma information in a *class 1 circular*.

...

Pro forma financial information

- 13.6.4 G *LR 13.3.3R* sets out requirements for pro forma information in *related party circulars*.

- 13.7.1 R (1) A *circular* relating to a resolution proposing to give the *company* authority to purchase its own *equity securities* must also include:
- (a) ...
- ...
- (2) ... must also include the following information referred to in the *PD Regulations*:
- ...

Pro forma financial information

- 13.7.2 G *LR 13.3.3R* sets out requirements for pro forma information in a *circular* relating to the purchase by the *company* of 25% or more of the *company's* issued *equity shares* (excluding *treasury shares*).

Disapplying pre-emption rights

- 13.8.2 R A *circular* relating to a resolution proposing to disapply the statutory pre-emption rights under section ~~89-561~~ of the Companies Act ~~1985~~ 2006 (~~Offers to shareholders to be on pre-emptive basis~~ Existing shareholders' right of pre-emption) must include:

- (1) ...

13.8.7 R (1) A *circular* relating to any proposal where shareholders are entitled to complete a mandate in order to receive *shares* instead of future cash dividends must include:

(a) the information in *LR 13.78.6R(21)*(d) and (f);

...

Notice of meetings

13.8.8 R ...

(3) A *circular* or other document convening an annual general meeting where only ordinary business is proposed does not need to comply with *LR 13.3.1R (3), (4) and (5)* (4), (5) and (6).

13.8.9 G A *circular* or other document convening an annual general meeting where special business is proposed will need to comply with all of *LR 13.3.1R* (including paragraphs ~~(3), (4) and (5)~~ (4), (5) and (6) in respect of special business).

LR 13 Annex 1R

Annex 1.1 ...

3 The information required by this Annex is modified as follows:

(1) ...

(2) information required by Annex 1 item 19 (related party transactions) and Annex 1 item 16.2 (directors' service contracts) does not need ~~not to~~ be given if it has already been published before the circular is sent; and

...

...

Shares in public hands

14.2.2 R (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.

...

(4) For the purposes of paragraphs (1), (2) and (3), shares are not held in public hands if they are held, directly or indirectly by:

...

(e) any *person or persons* in the same *group* or persons acting in concert who have an interest in 5% or more of the *shares* of the relevant *class*.

14.2.3 G The *FSA* may modify *LR* 14.2.2R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. For that purpose, the *FSA* may take into account *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*. [Note: Article 48 *CARD*]

Documents of title

17.3.13 R ...

(4) if applicable, the minimum amount and multiples thereof in which the *security* is transferable; and

(5) ~~the date of the certificate; and~~ [deleted]

(6) the interest payable and the interest payment dates and on the reverse (with reference shown on the face) an easily legible summary of the rights as to redemption or repayment and (where applicable) conversion.

18.2.5 R ...

(2) For the certificates to be *listed*, the *securities* which the certificates represent must be fully paid and free from all liens and from any restriction on the right of transfer (except any restriction imposed for failure to company with a notice under section ~~212~~ 793 of the Companies Act ~~1985~~ 2006 (~~Company investigations~~ Notice by company requiring information about interests in its shares)).

...

Certificates representing equity securities of an overseas company

18.2.8 R (1) If an application is made for the *admission* of a *class* of *certificates representing shares* of an *overseas company*, a sufficient number of certificates must, no later than the time of *admission*, be

distributed to the public in one or more *EEA States*.

...

(4) For the purposes of paragraphs (1), (2) and (3), certificates are not held in public hands if they are held, directly or indirectly by:

...

(e) any *person* or *persons* in the same *group* or *persons acting in concert* who have an interest in 5% or more of the certificates of the relevant *class*.

18.2.9 G The *FSA* may modify *LR* 18.2.8R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of certificates of the same *class* and the extent of their distribution to the public. For that purpose, the *FSA* may take into account certificates of the same *class* that are held (even though they are not listed) in states that are not *EEA States*. [Note: Article 48 *CARD*]

18.3.1 R *An applicant for admission of certificates representing certain securities* must comply with *LR* 3.2 and *LR* 3.4.4 R to ~~*LR* 3.4.7~~ *3.4.8R* subject to the following modifications.

18.3.1A R *An applicant for admission of certificates representing certain securities* must submit a letter to the *FSA* setting out how it satisfies the requirements in *LR* 2 and *LR* 18.2 no later than when the first draft of a *prospectus* for the certificates is submitted, or if the *FSA* is not approving a *prospectus*, at a time agreed with the *FSA*.

Delete *LR* 18.3.2R and substitute the following:

18.3.2 R In addition to the documents referred to in *LR* 3.4.6R, an *applicant for admission of certificates representing certain securities* must keep a copy of the executed deposit agreement for six years after the *admission* of the relevant certificates.

18.3.3 G ~~Following submission of the relevant documents, *listing* may be granted, subject to the issue of the *certificates representing certain securities*.~~
[deleted]

18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:

- (1) ...
- (2) the continuing obligations set out in *LR 14.3* (Continuing obligations) (other than in *LR 14.3.2R* and *LR 14.3.15R*, *LR 18.2.8R* and *LR 18.4.3AR*); and
- (3) ...

18.4.3B R For the purposes of *LR 18.4.3R(2)*, a reference to complying with the obligations in *LR 14.3* is to be read as a reference to complying with those obligations in respect of the certificates.

Listing application procedures

19.3.1 R An *applicant* for *admission* of *securitised derivatives* must comply with:

- (1) *LR 3.2* (Application for admission to listing); and
- (2) *LR 3.4.4R* to ~~*LR 3.4.10R*~~ *LR 3.4.8R*.

~~subject to the following modification.~~

Delete *LR 19.3.2R* and substitute the following:

19.3.2 R In addition to the documents referred to in *LR 3.4.6R*, an *applicant* for *admission* of *securitised derivatives* must keep a copy of the securitised derivative agreement or securitised derivative instrument or similar document for six years after the *admission* of the relevant *securitised derivative*.

LR Appendix 1

The reproduced definitions in *LR* Appendix 1 are amended as follows:

associate

(in relation to a *director*, *substantial shareholder*, *shareholder*, ~~*50/50 joint venture partner*~~ or *person exercising significant influence*, who is an individual):

- (1) ...

(2) ...

(3) ...

...

in relation to a *substantial shareholder*, ~~50/50 joint venture partner~~ or person exercising significant influence, which is a company:

(1) any other company which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(2) any company whose *directors* are accustomed to act in accordance with the *substantial shareholder's*, ~~50/50 joint venture partner's~~ or person exercising significant influence's directions or instructions; ;

(3) any company in the capital of which the substantial shareholder or person exercising significant influence and any other company under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (3)(a) or (b) above of this definition.

employees' share scheme

has the same meaning as in section 743 ~~1166~~ of the Companies Act ~~1985~~ 2006;

Delete the following definitions of:

50/50 joint venture

~~(in LR) a joint venture where the two parties to the joint venture have a deadlocked interest in the joint venture. [deleted]~~

50/50 joint venture partner

~~(in LR) a party to a 50/50 joint venture with a listed company or its subsidiary undertaking. [deleted]~~

group

(1) except in *LR 6.1.19R*, *LR 8.3.6R*, *LR 8.3.7G* and *LR 8.7.8R(10)*, an *issuer* and its *subsidiary undertakings* (if any); and

(2) in *LR 6.1.19R*, *LR 8.3.6R*, *LR 8.3.7G* and *LR 8.7.8R(10)*, as defined in section 421 of the *Act*.

parent undertaking

As defined in section ~~258~~ 1162 of the Companies Act ~~1985~~ 2006.

person exercising significant influence

in relation to a *listed company*, a *person* or entity which exercises significant influence over that *listed company* (~~other than a 50/50 joint venture partner~~).

property valuation report

a *property valuation report* prepared by an independent expert in accordance with: ~~the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors.~~

- (1) for an issuer incorporated in the United Kingdom, the Channel Islands or the Isle of Man, the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or
- (2) for an issuer incorporated in any other place, either the standards referred to in paragraph (1) of this definition or the International Valuation Standards (7th edition) issued by the International Valuation Standards Committee.

public international body

... the Caribbean Development Bank, ~~the Council of Europe Resettlement Fund,~~ the Council of Europe Development Bank, the European Atomic Energy Community...

share

(in accordance with section 744 540 of the Companies Act ~~1985~~ 2006) a share in the share capital of a *company*, and includes:

- (a) ...
- (b)...

subsidiary undertaking

as defined in section 258 1162 of the Companies Act ~~1985~~ 2006.

Delete the definition of "substantial shareholder" and substitute the following:

substantial shareholder

any person who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company (or of any company which is its subsidiary undertaking or parent undertaking or of a fellow subsidiary undertaking of its parent undertaking). Disregard for this purpose any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long term insurer in respect of its linked long term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long term insurer).

treasury shares

qualifying shares to which ~~sections 162A to 162G~~ Chapter 6 of the Companies Act ~~1985~~ 2006 ~~apply~~ applies.

Insert the following new definitions in the appropriate alphabetical position:

deferred bonus

any arrangement pursuant to the terms of which an employee or director may receive a bonus (including cash or any security) in respect of service and/or performance in a period not exceeding the length of the relevant financial year notwithstanding that the bonus may, subject only to the person remaining a director or employee of the group, be receivable by the person after the end of the period to which the award relates.

defined benefit scheme

in relation to a director, means a pension scheme which is not a money purchase scheme.

equivalent document

a document containing information equivalent to a prospectus for the purposes of PR 1.2.2R(2) or (3) or PR 1.2.3R(3) or (4).

money purchase scheme

in relation to a *director*, means a pension scheme under which all of the benefits that may become payable to or in respect of the *director* are money purchase benefits.

Part 2

When a sponsor must be appointed

8.2.1 R A *company* with, or applying for, a *primary listing* of its *equity securities* must appoint a *sponsor* on each occasion that it:

(1) makes an application for *admission* of *equity securities* which:

(a) requires the production of a *prospectus* or equivalent document; or

...

8.4.1 R LR 8.4.2R to LR 8.4.6R apply in relation to an application for *admission* of *equity securities* if an *applicant* does not have *equity securities* already listed and:

(1) the production of a *prospectus* or equivalent document is required; or

(2) ...

...

New applicants: procedure

8.4.3 R A *sponsor* must:

(1) submit a completed Sponsor's Declaration on an Application for Listing to the FSA either:

(a) on the day the *FSA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; or

(b) at a time agreed with the *FSA*, if the *FSA* is not approving the *prospectus* or if it is determining whether a document is an equivalent document;

(2) ...

(3) ...

(a) ...

(b) ...

... have been disclosed with sufficient prominence in the *prospectus* or *equivalent document* or otherwise in writing to the *FSA*; and

- (4) submit a letter to the *FSA* setting out how the *applicant* satisfies the criteria in *LR 2* (Requirements for listing - all securities) and *LR 6* (Additional requirements for listing for equity securities) no later than when the first draft of the *prospectus* is submitted (or, if the *FSA* is not approving a *prospectus* or if it is determining whether a document is an *equivalent document*, at a time to be agreed with the *FSA*).

Note: the Sponsor's Declaration on an Application for Listing, the Shareholder Statement and the Pricing Statement forms can be found on the UKLA section of the *FSA* website.

...

Further issues: procedure

8.4.9 R A *sponsor* must:

- (1) submit a completed Sponsor's Declaration on an Application for listing to the *FSA* either:
- (a) on the day the *FSA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; ~~and~~ or
 - (b) at a time agreed with the *FSA* if the *FSA* is not approving the *prospectus* or if it is determining whether a document is an *equivalent document*;
- (2) ...
- (3) ... disclosed with sufficient prominence in the *prospectus* or *equivalent document* or otherwise in writing to the *FSA*.

...

8.6.9 G ...

- (2) ...
- (a) transactions where a *prospectus* is required under the *Prospectus Directive* or an *equivalent document* is produced;

and

...

Annex D

Amendments to the Disclosure Rules and Transparency Rules (DTR)

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

Amend the following definitions as shown:

- DTR* Notification of transactions by issuers to a *RIS*
- 3.1.4 R (1) An *issuer* must notify a *RIS* of any information notified to it in accordance with:
- (a) *DTR* 3.1.2R (Notification of transactions by persons discharging material responsibilities); and
 - (b) ~~section 324 as extended by section 328 of the Companies Act 1985 or entered into the issuer's register in accordance with section 325(3) or (4) of the Companies Act 1985.~~
LR 9.8.6R(1) (Additional information); and
 - (c) section 793 of the Companies Act 2006 (Notice requiring information about interests in shares).
- ...
- 3.1.6 R If an *issuer* receives notification of the same dealing under both *DTR* 3.1.2R, *LR* 9.8.6R(1) and section 793 ~~324 as extended by section 328~~ of the Companies Act ~~1985-2006~~, it must make clear in its notification to the *RIS* that a single transaction in respect of the same *financial instrument* has taken place.
- 5.1.1 R In this chapter:
- (1) ...
 - (2) references to a "non-UK issuer" are to an *issuer* whose *shares* are admitted to trading on a *regulated market* and whose *Home State* is the United Kingdom other than:
 - (a) a public company within the meaning of section ~~4(3)~~ 4 of the Companies Act ~~1985~~ 2006; and
 - (b) ...

PROVIDERS AND DISTRIBUTORS REGULATORY GUIDE INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 16 July 2007.

General guidance for providers and distributors

- C. General guidance on the responsibilities of providers and distributors for the fair treatment of customers is made in the form of the Annex to this instrument. This guidance is a Regulatory Guide and does not form part of the Handbook.

Notes

- D. In the Annex to this instrument, the “notes” (indicated by “Note”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- E. This instrument may be cited as the Providers and Distributors Regulatory Guide Instrument 2007.
- F. The Regulatory Guide in the Annex to this instrument may be cited as The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (or RPPD).

By order of the Guidance Committee
12 July 2007

Annex

The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

This Annex sets out the text of the new Regulatory Guide “The Responsibilities of Providers and Distributors for the Fair Treatment of Customers”. All the text is new and is not shown underlined.

Introduction

- 1.1 In this Regulatory Guide ("Guide") we give our view on what the combination of Principles for Businesses ("the Principles") and detailed rules require respectively of providers and distributors in certain circumstances to treat customers fairly. However, it is not, and does not seek to be, a complete exposition of all of a provider's or a distributor's responsibilities to the customer or to each other; nor does it alter, replace or substitute applicable Principles, rules, guidance or law, such as those relating to unfair contract terms (Note (1)).
- 1.2 A customer's experience should not be affected by whether a product or service was provided and distributed by a single institution or by two or more institutions.
- 1.3 This Guide is guidance issued under section 157 of the Financial Services and Markets Act 2000 ("the Act"). As such, it is not binding on those to whom the Act and rules apply and need not be followed in order to achieve compliance with rules or other requirements. There is no presumption that departing from this Guide indicates a breach of a rule. However, the Guide may be relevant in an enforcement context, for example to explain the regulatory context. If a person acts in accordance with the Guide in the circumstances contemplated by the Guide, then the FSA will not take action against that person in relation to the aspects of the rules to which the Guide relates. The Guide will also be a useful tool for supervisors, particularly when they deal with TCF issues at firms. Supervisors may use the Guide in their discussions with firms. The issues it covers will continue to be dealt with in our supervision work as they are now, for example in the risk assessment framework we use for supervising firms (ARROW) or in pieces of focused thematic work.

The applicable rules

- 1.4 Under the Principles (Note (2)), providers and distributors of products and services have various responsibilities that have an impact on customers. Detailed rules within the FSA Handbook further specify what these responsibilities are in certain defined circumstances.
- 1.5 The Principles apply to all authorised firms. This Guide looks particularly to the following Principles (Note (3)):
 - Principle 2 ('A firm must conduct its business with due skill, care and diligence');
 - Principle 3 ('A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems');

- Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly'); and
- Principle 7 ('A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading').

1.6 What a firm has to do to meet the requirements of a Principle will depend on the circumstances, including the riskiness or complexity of the product or portfolio, who the firm is dealing with (another firm or a customer, for example) and the financial sophistication of the target market (Note (4)). Firms should bear all of these factors in mind in order to interpret the requirements of the Principles in a way that is proportionate. The responsibilities described in this Guide apply to the extent that the Principles themselves apply.

Scope

1.7 This Guide is intended to be relevant to all regulated firms involved in the supply of products or services to retail customers. Although we have drafted it to be of particular relevance where there is more than one firm in the supply chain, many of the responsibilities described in the Guide are also relevant where there is only one firm involved in providing and distributing a product or service. Our intention is not to change the existing responsibilities of providers or distributors in delivering fair outcomes for consumers. Rather, it is to articulate the existing regulatory responsibilities. Nor does this Guide seek to determine or change whether or how consumers can seek redress in any individual case or from which firm in the supply chain. This Guide does not determine or change whether or how one firm in a distribution chain may seek redress from another firm; this too will depend on the circumstances of the case.

1.8 The supply chain may not comprise only authorised firms, but this Guide does not deal with the position where an unauthorised firm is involved unless expressly stated otherwise. Where there is a non-U.K. element to the supply chain, the Guide only applies to the extent that the Principles themselves apply.

1.9 This Guide is not intended to imply that a firm must take on the regulatory responsibilities of other firms in the distribution chain nor that there is a requirement for any firm to 'police' any other firm in the chain.

Interpretation

1.10 In this Guide we use 'must' where an action is required by a Principle or detailed Rule. We use 'should' where we think a firm ought to consider a particular action (not specified in a Principle or Rule) at a reasonably high level to comply with a Principle (not that they should follow a detailed a prescribed course of action). We use 'may' where an action is only one of a number of ways of complying with a Principle.

1.11 Where we refer to the 'customer' in this Guide we use it as a convenient name for the end-customer in the retail supply chain (which may include potential customers). However, it is important to note that the term 'customer' as used in the Principles or

detailed rules themselves is a defined term in the FSA Handbook. This Guide does not seek to alter or affect any definitions within the Handbook.

- 1.12 We use 'provider' to include persons who offer services such as portfolio management (through distributors or otherwise) as well as those who develop, manage or package products such as life insurance, general insurance or investment products or who develop or enter into home finance transactions (i.e. mortgages, home reversion plans and home purchase plans).
- 1.13 We use 'distributor' to mean those persons who then make up the rest of the supply chain taking the product or service to the customer. This could include, for example, financial advisers, third party administrators, appointed representatives, banks, building societies, and those who sell insurance as a secondary part of their business.

The responsibilities

- 1.14 Providers and distributors should consider the impact of their action (or inaction) on the customer in various stages of the product life-cycle, or the various stages of provision of the service (Note (5)). Depending on the precise nature of a firm's business, this could mean addressing the fair treatment of customers at the following stages: design and governance; identifying target markets; marketing and promotion; sales and advice processes; after-sales information and service; and complaints handling. This Guide gives our view of the respective responsibilities of providers and distributors under the Principles during the product life cycle or while the service is provided.
- 1.15 In this Guide we have distinguished between providers and distributors. While we consider the labels 'provider' and 'distributor' useful for the purposes of this Guide, we recognise that responsibilities flow from the actual roles or functions undertaken in a transaction, and firms should take this into account in considering their responsibilities under the Principles. In considering which responsibilities apply to it, a firm should consider the functions and roles that it undertakes in the product life-cycle. Whether a particular role or function is fulfilled by the distributor or provider (or both) may vary based on the product or service, or particular arrangements in place, and it may be possible for a firm to act as both provider and distributor at the same time in respect of different products or services. For example:
- (1) It is possible that a provider creates a product or service to meet criteria or designs specified by a distributor. In such instances, many of the responsibilities fall to the commissioning distributor, as 'retail manufacturer' of the product (Note 6)) or service (Note 7)), rather than the 'pure manufacturer' of the commissioned product or service. Of course, if what the pure manufacturer delivers fails to meet the agreed specification, the retail manufacturer may seek its own redress under the contract between them or the applicable law. That said, the pure manufacturer must act with due skill, care and diligence in accordance with Principle 2 and, where it conducts a regulated activity for the underlying customer (for example, it enters into a contract with a customer), must treat that customer fairly. Other Principles and detailed rules may also apply.

- (2) It is also possible that a product manufacturer creates components that are later (and possibly without the component manufacturer's knowledge) subsumed into retail products designed and marketed to customers by 'retail manufacturers'. In such instances, the pure manufacturer may not have a contractual or other relationship with the underlying customer. The pure manufacturer may not be aware (nor is it necessarily the case that it ought to be aware) of whether the retail manufacturer is using the product for itself or for an underlying customer. However, the pure manufacturer should act with due skill, care and diligence in designing its products (Principle 2). The skill, care and diligence that are 'due' under Principle 2 will be determined taking all the circumstances into account. These may include the manufacturer's knowledge of whether the product or service is provided to a firm, rather than an underlying customer, and the information needs of the firm. In addition, the pure manufacturer will normally be obliged to communicate information to the retail manufacturer in a way that is not misleading (Principle 7) (Note (8)).

1.16 Whether providers and distributors can agree between themselves how to apportion responsibilities between themselves will depend on the circumstances. In particular, it depends on the nature of the regulatory responsibility, the extent to which such an agreement would be reasonable, whether the arrangement is clear to both parties and properly recorded and the systems and controls used to monitor whether the agreement continues to be appropriate in the circumstances.

Provider responsibilities (Note (9))

1.17 **When undertaking product or service design, Principles 2, 3 and 6 are particularly relevant.** In particular, a firm:

- (1) should identify the target market, namely which types of customer the product or service is likely to be suitable (or not suitable) for;
- (2) should stress-test the product or service to identify how it might perform in a range of market environments and how the customer could be affected;
- (3) should have in place systems and controls to manage adequately the risks posed by product or service design (Note (10)).

1.18 **When providing information to distributors, Principle 2 is particularly relevant.** In particular, a firm:

- (1) should make clear if that information is not intended for customer use;
- (2) should ensure the information is sufficient, appropriate and comprehensible in substance and form, including considering whether it will enable distributors to understand it enough to give suitable advice (where advice is given) and to extract any relevant information and communicate it to the end customer. As part of meeting this standard, the provider may wish to consider, with regard to each distribution channel or type of distributor, what information distributors of that type already have, their likely level of knowledge and understanding, their information needs and what form or medium would best

meet those needs (which could include discussions, written material or training as appropriate).

1.19 When providing information to customers (Note (11)), Principles 3, 6 and 7 are particularly relevant. In particular, a firm:

- (1) should pay regard to its target market, including its likely level of financial capability;
- (2) should take account of what information the customer needs to understand the product or service, its purpose and the risks, and communicate information in a way that is clear, fair and not misleading (Note (12));
- (3) should have in place systems and controls to manage effectively the risks posed by providing information to customers.

1.20 When selecting distribution channels, Principles 2, 6 and 7 are particularly relevant. In particular, a firm:

- (1) should decide whether this is a product where customers would be wise to seek advice;
- (2) should review how what is occurring in practice corresponds to (or deviates from) what was originally planned or envisaged for the distribution of its products or services given the target market. This involves collecting and analysing appropriate Management Information (MI) (Note (13)) such that the firm can detect patterns in distribution as compared with the planned target market, and can assess the performance of the distribution channels through which its products or services are being distributed;
- (3) should act when it has concerns, for example by ceasing to use a particular distribution channel.

1.21 In the area of post-sale responsibility, Principles 2, 6 and 7 are particularly important. In particular, a firm:

- (1) in supplying information direct to the customer, must ensure that the information is communicated in a way which is clear, fair and not misleading (Note (14));
- (2) should periodically review products whose performance may vary materially to check whether the product is continuing to meet the general needs of the target audience that it was designed for, or whether the product's performance will be significantly different from what the provider originally expected and communicated to the distributor or customer at the time of the sale (Note (15)). If this occurs, the provider should consider what action to take, such as whether and how to inform the customer of this (to the extent the customer could not reasonably have been aware) and of their option to seek advice, and whether to cease selling the product;

- (3) should communicate to the customer contractual 'breakpoints' such as the end of a long tie-in period that may have a material impact on a customer that the customer cannot reasonably be expected to recall or know about already;
- (4) should act fairly and promptly when handling claims or when paying out on a product that has been surrendered or reached maturity. In doing this, the provider should meet any reasonable customer expectations that it may have created with regard to the outcomes or how the process would be handled;
- (5) must establish, implement and maintain effective and transparent customer complaint-handling systems.

Distributor responsibilities

1.22 In the area of financial promotions, Principles 3, 6 and 7 are particularly relevant. In particular, a firm:

- (1) should have in place systems and controls to manage effectively the risks posed by financial promotions;
- (2) in passing on a promotion created by a provider, must act with due skill, care and diligence. A firm will not contravene the financial promotions rules where it communicates a promotion produced by another person provided the firm takes reasonable care to establish that another firm has confirmed compliance with the relevant detailed rules, amongst other matters (Note (16)).

1.23 When providing information at or before the point of sale to a customer, Principles 2, 6 and 7 are particularly relevant. In particular, a firm:

- (1) should consider, when passing provider materials to customers, whether it understands the information provided (Note (17));
- (2) should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately;
- (3) should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice;
- (4) when providing information to another distributor in a distribution chain, should consider how the further distributor will use the information, such as whether it will be given to customers. Firms should consider what information the further distributor requires and the likely level of knowledge and understanding of the further distributor and what medium may suit it best for the transmission of information.

1.24 When advising on selection of a provider, Principles 2 and 6 are particularly relevant (Note (18)). In particular, a firm:

- (1) should consider the nature of the products or services offered by the provider and how they fit with the customer's needs and risk appetite;

- (2) should consider what impact the selection of a given provider could have on the customer in terms of charges or the financial strength of the provider, or possibly, where information is available to the distributor, how efficiently and reliably the provider will deal with the distributor or customer at the point of sale (or subsequently, such as when queries/complaints arise, claims are made, or a product reaches maturity).

1.25 **In the area of post-sale responsibility, Principles 3 and 6 are particularly relevant.** In particular, a firm:

- (1) should comply with any contractual obligation it has to the customer, for example to provide ongoing advice or periodic reviews. In connection with this, it should also consider its responsibility to maintain adequate systems and controls to deliver on such reviews;
- (2) should consider any implied or express representation it made (during meetings, correspondence or promotional material, for example). Where a customer has reasonable expectations based on the prior statements of a distributor, for example that performance will be monitored, the distributor should meet these expectations;
- (3) where involved in handling claims or paying out on a product that has been surrendered or reached maturity, should meet any reasonable expectations that the distributor has created in the customer's mind with regard to how the process would be handled;
- (4) must establish, implement and maintain effective and transparent customer complaint-handling systems;
- (5) should pass any communications received from customers (intended for or suited to providers to act upon) to providers in a timely and accurate way.

Notes:

- (1) The Guide represents our view based on the law, regulation and other circumstances that exist as at the publication date, but also takes into account changes to the Handbook including those to implement the Markets in Financial Instruments Directive (MiFID) that have already been made or consulted on and are due to come into force on 1 November 2007. (*Paragraph 1.1*)
- (2) The Principles are set out in PRIN 2. (*Paragraph 1.4*)
- (3) Of course, other Principles apply as appropriate. For example, under Principle 9, a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment. (*Paragraph 1.5*)
- (4) PRIN 1.2.1G. (*Paragraph 1.6*)

- (5) For example, many brokers and investment managers have on-going relationships with intermediaries by virtue of which their services are provided to the intermediary's underlying clients. (*Paragraph 1.14*)
- (6) For example, an insurer could be commissioned by a distributor to create a payment protection insurance product where the criteria for the product are specified by the distributor. (*Paragraph 1.15(1)*)
- (7) For example, a portfolio manager could be commissioned to develop a branded service specifically for a distributor where the criteria for the service are specified by the distributor. (*Paragraph 1.15(1)*)
- (8) Principle 2 may not apply to a pure manufacturer that is a MiFID investment firm in certain circumstances, for example in relation to eligible counterparty business: see PRIN 4 for further guidance. In some circumstances Principles 6 and 7 will apply even when the retail manufacturer is the only client of the pure manufacturer. (*Paragraph 1.15(2)*)
- (9) As explained in paragraph 1.15, although we use the terms 'provider' and 'distributor' we recognise that responsibilities flow from the actual roles or functions undertaken by a firm. (*Paragraph 1.17*)
- (10) For example, SYSC (Senior Management Arrangements, Systems and Controls). (*Paragraph 1.17(3)*)
- (11) This includes providing information to distributors for onward transmission to customers. (*Paragraph 1.19*)
- (12) For example, COBS 4 (Communicating with clients, including financial promotions); ICOB 3.8 (Form and content of non-investment financial promotions); MCOB 3.6 (Form and content of non-real time qualifying credit promotions); MCOB 3.8A (Form and content of financial promotions of home reversion plans); MCOB 2.2.6AR (Clear, fair and not misleading promotions for home purchase plans). (*Paragraph 1.19*)
- (13) See, for example, SYSC 3.2.11 -12. See also TCF cluster report on TCF considerations for Management Information:
http://www.fsa.gov.uk/pages/Doing/Regulated/tcf/pdf/management_info.pdf
(*Paragraph 1.20(2)*)
- (14) For example, COBS 4 (Communicating with clients, including financial promotions), ICOB 2.2.3R (Clear, fair and not misleading communication), MCOB 2.2.6R (Clear, fair and not misleading communication). (*Paragraph 1.21(1)*)
- (15) For example, SYSC 3.2.11G (Management information); SYSC 3.2.17G (Business Strategy). (*Paragraph 1.21(2)*)
- (16) COBS 4.10.10R, ICOB 3.7.5R, MCOB 3.9.5R (Communicating a financial promotion where another firm has confirmed compliance). This exemption is not available in relation to MiFID or equivalent third country business.

(Paragraph 1.22(2))

- (17) For regulated activities other than designated investment business, a firm must take reasonable steps to communicate information in a way that is clear, fair and not misleading (e.g. ICOB 2.2.3R and MCOB 2.2.6R). In doing so, it may be reasonable for a distributor to rely on information produced by a provider unless the distributor is, or ought to be, aware of grounds to question its compliance. For designated investment business, a firm must ensure that any communication to a client is fair, clear and not misleading regardless of whether it has been produced by a provider (COBS 4.2.1R). The standard for designated investment business is an absolute standard, which does not permit reliance unless an exemption applies. *(Paragraph 1.23(1))*
- (18) These Principles are also relevant for non-advised sales, where there may be a need to consider a customer's needs and circumstances, for example see COBS 10 (Appropriateness (for non-advised services)), COBS 7.2.4R (Specifying demands and needs), ICOB 4.4 (Statement of demands and needs). *(Paragraph 1.24)*

MARKETS (MiFID) (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance); and
 - (4) paragraph 17 of Schedule 1 (Fees).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA'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
Fees manual (FEES)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Market Conduct sourcebook (MAR)	Annex E
Supervision manual (SUP)	Annex F
Credit Unions sourcebook (CRED)	Annex G
Electronic Money sourcebook (ELM)	Annex H
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex I

Citation

- E. This instrument may be cited as the Markets (MiFID) (Consequential Amendments) Instrument 2007.

By order of the Board
26 July 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

~~*alternative trading system*~~ a system that brings together multiple buying and selling interests in *designated investments* (other than *life policies*, *personal pension schemes*, *stakeholder pension schemes* or rights to or interests in any of those investments), in the system and according to non-discretionary rules set by the system's operator in a way that results in a contract but does not include: (a) a system that is operated by an *RIE* or that is a *regulated market* or an *EEA commodities market*; or (b) a *bilateral system*.

ATS ~~*alternative trading system*~~.

ATS operator a *firm* that operates an *ATS* or that has accepted responsibility for the operation of an *ATS* by an *appointed representative*.

~~*bilateral system*~~ a system that brings together buying and selling interests in the way described in the definition of an *alternative trading system*, where a single *person* enters into one side of every transaction effected using the system, on his own account and not merely as a central counterparty interposed between a buyer and seller, or would enter into every trade in that way but for *client* orders that are crossed occasionally. This definition includes such a system where, rather than a single *person*, it is one of a number of *persons* in the same *group* that enters into one side of every transaction effected using the system.

~~*CESR ATS standards*~~ the Standards for the Regulation of Alternative Trading Systems published by the Committee of European Securities Regulators.

~~*large order, quote or transaction*~~ (in relation to an *ATS*) an order, quote or transaction relating to an investment traded on an *ATS*, the publication of details of which at the time of the order, quote or transaction might significantly affect the price of the relevant investment to the detriment of the *person* placing the order, providing the quote or entering into the transaction (as the case may be).

~~*price taking system*~~ an *ATS* that facilitates transactions by reference to prices established on a market or another *ATS*.

Annex B

Amendments to the Fees manual (FEES)

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

Late Payments

- 2.2.1 R If a *person* does not pay the total amount of a periodic fee (including fees relating to ~~*transactions reported*~~ *transaction reports* to the *FSA* using the *FSA's* Transaction Reporting System (see SUP 17)), *FOS* levy or case fee, or share of the *FSCS* levy, on the date on which it is due, under the relevant provision in FEES 4, 5 or 6, that *person* must pay an additional amount as follows: ...

...

Annex C

Amendments to Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

2.2.68 G Counterparty risk *rules* only partially capture the risk of settlement failure as the quantification of risk is only based on mark-to-market values and does not take account of the volatility of the securities over the settlement period. A securities *firm's* assessment of its exposure to counterparty risk should take into account:

- (1) ...
- (2) the types of execution venues which it uses; for example, the London Stock Exchange or a retail service provider (RSP) have more depth than ~~alternative trading systems (ATS)~~ multilateral trading facilities; and

...

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

- 11.4.4 G *MAR 5.8.2EU* sets out the conditions required for an arrangement to make client limit the orders public under this section. *MAR 5.8.3G* and *MAR 5.8.4G* provide guidance on these conditions.

Annex E

Amendments to the Market Conduct sourcebook (MAR)

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

Disapplication of the pre-trade transparency requirements

5.7.1 R ~~(1)~~ Unless disapplication of this rule under MAR 5.7.6 G is relevant, Unless (2),(3) or (4) applies, in respect of shares admitted to trading on a regulated market, a firm operating an MTF must make public, on reasonable commercial terms and on a continuous basis during normal trading hours:

~~(1)~~ (a) the current bid and offer prices which are advertised through its systems; and

~~(2)~~ (b) the depth of trading interests at those prices.

[Note: Article 29(1) of MiFID]

(2) Paragraph (1) does not apply to systems operated by an MTF to the extent that those systems satisfy one of the criteria in (a) or (b), subject to (c):

(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;

(b) they formalise negotiated transactions, each of which meets the criteria in (i) and (ii), subject to the provisions in (iii) and (iv):

(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;

(ii) it is subject to conditions other than the current market price of the share.

(iii) For the purposes of (b), the other conditions specified in the rules of the MTF for a transaction of this kind must also have been fulfilled.

(iv) Negotiated transaction has the meaning given in Article 19 of the MiFID Regulation.

[Note: Article 19 of the MiFID Regulation is reproduced in MAR 5.7.9]

EU.]

(c) In the case of systems having functionality other than as described in (a) or (b), the disapplication does not apply to that other functionality.

(3) Paragraph (1) does not apply in relation to orders held in an order management facility maintained by the MTF pending their being disclosed to the market.

(4) (a) Paragraph (1) does not apply in relation to orders that are large in scale compared to normal market size for the share or type of share in question.

(b) An order will be considered to be large in scale if it meets the criteria set out in Article 20 of the MiFID Regulation.

[Note: Article 20 of the MiFID Regulation is reproduced in MAR 5.7.10EU.]

...

5.7.6 G The obligation in *MAR 5.7.1R(1)* to make public certain pre-trade information ~~will not be~~ is disappplied in *MAR 5.7.1R(2)* based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in *MAR 5.7.8EU* In particular, the obligation ~~will not be~~ is disappplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

...

5.8 Provisions common to pre- and post-trade transparency requirements for shares

5.8.2 EU ...

5.8.3 G The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see *MAR 5.8.2EU(a)*), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

5.8.4 G (1) In respect of arrangements facilitating the consolidation of data as required in *MAR 5.8.2EU(b)*, the FSA considers information as being made public in accordance with *MAR 5.8.2EU(b)*, if it:

(a) is accessible by automated electronic means in a machine-readable way;

- (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
- (c) is accompanied by instructions outlining how users can access the information.

(2) The FSA considers that an arrangement fulfils the 'machine-readable' criteria where the data:

- (a) is in a physical form that is designed to be read by a computer;
- (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
- (c) is in a format that is known in advance by the party wishing to access the data.

(3) The FSA considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.

(4) The FSA considers that information that is made public in accordance with *MAR 5.8.2EU* should conform to a consistent and structured format based on industry standards. *Firms* operating an *MTF* can choose the structure that they use.

...

5.9.1 R (1) In respect of shares *admitted to trading* on a *regulated market*, ~~and subject to the deferred publication provisions in *MAR 5.9.6EU* and *MAR 5.9.7R*,~~ unless *MAR 5.9.1 R(2)* applies and *MAR 5.9.7R* is satisfied, a *firm* operating an *MTF* must make public, on reasonable commercial terms and as close to real-time as possible, the price, volume and time of the transactions which are advertised through its systems. This requirement does not apply to the details of a transaction executed on an *MTF* that is made public under the systems of a *regulated market*.

[Note: article 30(1) of *MiFID*]

(2) A *firm* may defer publication of trade information required in (1) for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and transaction concerned, provided that the following criteria in (a) and (b) are satisfied and subject to the provision in (c):

- (a) the transaction is between an *investment firm dealing on own account* and a *client* of that firm;
- (b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.
- (c) In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading* on a *regulated*

market must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the MiFID Regulation.

Note: Table 4 of Annex II of the MiFID regulation is reproduced in MAR 7 Annex 1.

...

5.9.6A G The deferred publication of information, referred to in MAR 5.9.6EU, is authorised by the FSA, to the extent set out in that provision, and, in particular, is given effect in MAR 5.9.1 R(2).

...

6.9.5 EU ...

6.9.6 G For the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see MAR 6.9.5EU(a)), and in respect of arrangements facilitating the consolidation of data as required in MAR 6.9.5EU(b), the guidance in MAR 5.8.3G and 5.8.4G applies equally to firms falling within this chapter, and should be read as if references to provisions and types of firm in MAR 5 were references to the corresponding provisions and types of firm in this chapter.

...

Deferred publication of large transactions

7.2.1 R (1) Unless (2) applies, the information required by MAR 7.1.2R shall be made public as close to real time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

[Note: article 28(1) of MiFID]

(2) A firm may defer publication of trade information required in (1), for no longer than the period specified in Table 4 in Annex II of the MiFID Regulation for the class of share and transaction concerned, provided that the criteria in (a) and (b) are satisfied, subject to the provision in (c):

(a) the transaction is between an investment firm dealing on own account and a client of that firm;

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

(c) In order to determine the relevant minimum qualifying size for the purposes of (b), all shares admitted to trading on a regulated market must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the MiFID

Regulation.

[Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in *MAR 7 Annex 1.*]

...

7.2.6A G The deferred publication of information, referred to in *MAR 7.2.6EU*, is authorised by the *FSA*, to the extent set out in that provision, and, in particular, is given effect in *MAR 7.2.1R(2)*.

Arrangements for making information public

7.2.12 EU ...

7.2.12A G (1) The *FSA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see *MAR 7.2.12EU(a)*), and in respect of arrangements facilitating the consolidation of data as required in *MAR 7.2.12EU(b)*, the guidance in *MAR 5.8.3G* and *MAR 5.8.4G* (subject to additional guidance in (2)) applies equally to *firms* falling within this chapter, and should be read as if references to provisions and types of *firm* in *MAR 5* were references to the corresponding provisions and types of *firm* in this chapter.

(2) In addition to *MAR 5.8.4G*, as applied to *firms* in this chapter under (1), for the purposes of facilitating the consolidation of transparency data with similar data from other sources, the *FSA* considers information as being made public in accordance with *MAR 7.2.12EU(b)*, if, in addition to *MAR 5.8.4G(1)(a)* to (c), each trade is published through only one primary publication channel.

Annex F

Amendments to the Supervision manual (SUP)

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

SUP 13A Annex 1G Application of the Handbook to Incoming EEA Firms

...	(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...	MAR	...	...
		MAR 5 (Alternative Trading Systems Multilateral Trading Facilities) Does not apply (<i>MAR 5.1.1G</i>).	MAR 5 (Alternative Trading Systems Multilateral Trading Facilities) Does not apply (<i>MAR 5.1.1G</i>).

SUP TP 1.2

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional Provisions	(5) Transitional provisions: dates in force	(6) Handbook provision: coming into force
...					
15	SUP 17	R	Transaction Reporting	From commencement	Commencement
			(1) A firm: to whom SUP 17 applies under SUP 17.1.1 (1)(c); and		
			(2) which was authorised under the Financial Services Act 1986 immediately before commencement otherwise than through membership of the SFA;		
			must comply with SUP 17 as if it were:		
			(1) an investment		

				management firm, if it was a member of IMRO immediately before commencement, or		
			(2)	a personal investment firm, otherwise. [deleted]		
...						

SUP Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 17	<p>Transaction reporting This applies to (a) securities and futures firm; or (b) a personal investment firm; or (c) an investment firm (including a credit institution which is an investment firm) not within (a) or (b) excluding a firm to whom the ISD does not apply under Article 2(2) of the ISD.</p> <p>This does not apply to</p> <p>(a) an incoming EEA firm in relation to its passported activities; or</p> <p>(b) an oil market participant in relation to its oil market activity.</p> <p>a <u>MiFID investment firm</u>; (b) a <u>third country investment firm</u>; (c) a <u>person who is the operator of an approved reporting mechanism or of a regulated market or MTF that is used by a firm to report transactions to the FSA</u>; or (d) a <u>firm acting in its capacity as a manager or</u></p>	<p>A <i>transaction report</i> as specified in SUP 17.6. <u>17.1.4R</u>, <u>SUP 17.4.1EU</u> and <u>SUP 17.4.2R</u>.</p>	<p>Entering into a reportable transaction (as defined in SUP 17.5), whether on its own account or on behalf of another, subject to exceptions in SUP 17.4</p> <p><u>Executing a transaction</u>, subject to the exceptions in <u>SUP 17.2.1R</u> and <u>SUP 17.2.3R</u>.</p>	<p>As soon as practicable and in any event before the end of the next <i>business day</i> after the day on which the firm entered into the transaction, subject to SUP 17.7.10 (Failure of reporting system) <u>As quickly as possible and by not later than the close of the working day following the day upon which that transaction took place.</u></p>

	operator of a collective investment undertaking, <u>pension scheme</u> , <u>occupational pension scheme</u> , a <u>personal pension scheme</u> or a <u>stakeholder pension scheme</u> .			
SUP 17	<p>Transaction reporting This applies to (a) a <i>securities and futures firm</i>; or (b) a <i>personal investment firm</i>; or (c) an <i>investment firm</i> (including a <i>credit institution</i> which is an <i>investment firm</i>) not within (a) or (b) excluding a <i>firm</i> to whom the <i>ISD</i> does not apply under Article 2(2) of the <i>ISD</i>. This does not apply to: (a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or (b) an <i>oil market participant</i> in relation to its <i>oil market activities</i></p>	The fact of intending to use one of the systems specified	Before using one of the reporting systems listed in SUP 17.7.8: (1) CEDCOM system operated by Clearstream Banking AG, Frankfurt; (2) CGO – Central Gils Office; (3) CRESTCo Limited; (4) EUCLID operated by Euroclear SA (input directly into EUCLID or through SWIFT); (5) the FSA's Direct Reporting System; (6) SEQUAL 2000 system of Thomson Financial Services; (7) Tradepoint Financial Networks Plc; (8) Trade Registration System of The London International Financial Futures and Options Exchange (LIFFE); (9) TRAX	Before using the system specified

			system of the International Securities Market Association; and (10) Jiway Limited	
<i>SUP 17</i>	Transaction reporting	Whether the <i>firm</i> will adopt:	Failure of a reporting system	Before the end of the <i>business day</i> after the <i>day</i> when the failure occurs.
	<p>This applies to (a) a <i>securities and futures firm</i>; or (b) a <i>personal investment firm</i>; or (c) an <i>investment firm</i> (including a <i>credit institution</i> which is an <i>investment firm</i>) not within (a) or (b) excluding a <i>firm</i> to whom the <i>ISD</i> does not apply under Article 2(2) of the <i>ISD</i>.</p> <p>This does not apply to: (a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or (b) an <i>oil market participant</i> in relation to its <i>oil market activities</i>.</p>	<p>(1) <i>SUP 17.7.10 (1)</i>: make the <i>transaction report</i> through another reporting system, if the <i>firm</i> considers it reasonably practicable to do so;</p> <p>(2) <i>SUP 17.7.10 (2)</i>: make the <i>transaction report</i> by the end of the <i>business day</i> after the <i>day</i> when the failure is remedied, if the <i>firm</i> does not consider it reasonably practicable to comply with (1)</p>		
<i>SUP 17</i>	Transaction reporting This applies to (a) a <i>securities and futures firm</i> ; or (b) a <i>personal investment firm</i> ; or (c) an <i>investment firm</i> (including a <i>credit institution</i> which is an <i>investment firm</i>) not	The fact of the failure of the reporting system	Any failure of the <i>firm's</i> system or that of a <i>person</i> reporting on its behalf which prevents a <i>person</i> making a <i>transaction report</i> within the specified period	Without delay

	<p>within (a) or (b) excluding a <i>firm</i> to whom the <i>ISD</i> does not apply under Article 2(2) of the <i>ISD</i>. This does not apply to: (a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or (b) an <i>oil market participant</i> in relation to its <i>oil market activities</i>.</p>		(SUP 17.6.1)	
...				

Annex G

Amendments to the Credit Unions sourcebook (CRED)

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

CRED App 1.1.1

	Sourcebook or manual	Reference Code
...		
Business standards		
...		
Market conduct, including: Code of Market, Conduct Price stabilising rules, Inter-professional conduct, Alternative Trading Systems <u>Multilateral Trading Facilities</u>	<i>MAR</i>	

Annex H

Amendments to the Electronic Money sourcebook (ELM)

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

Application of other parts of the Handbook to ELMIs

ELM 1.5.2 G

...

Block	Module	Application
...		
Business Standards	...	
...	Market Conduct (MAR)	<p><i>MAR 1</i> (The Code of Market Conduct) applies if an <i>ELMI</i> is seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i>. <i>MAR 2</i> (Price Stabilising Rules), <i>MAR 3</i> (Inter-Professional Conduct) and <i>MAR 4</i> (Endorsement of the Takeover Code) do not apply to an <i>ELMI</i> when <i>issuing e-money</i>. <i>MAR 5</i> (Alternative Trading Systems <u>Multilateral Trading Facilities</u>) will not apply to an <i>ELMI</i>, as there are restrictions on the type of business activities that an <i>ELMI</i> may carry on.</p>

Annex I

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

Arrangements for making information public

- 2.6.33 G The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see REC 2.6.24EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.
- 2.6.34 G (1) In respect of arrangements facilitating the consolidation of data as required in REC 2.6.24EU(b), the FSA considers information as being made public in accordance with REC 2.6.24EU(b), if it:
- (a) is accessible by automated electronic means in a machine-readable way;
 - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
 - (c) is accompanied by instructions outlining how users can access the information.
- (2) The FSA considers that an arrangement fulfils the 'machine-readable' criteria where the data:
- (a) is in a physical form that is designed to be read by a computer;
 - (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
 - (c) is in a format that is known in advance by the party wishing to access the data.
- (3) The FSA considers that publication on a non-machine-readable website would not meet the MiFID requirements.
- (4) The FSA considers that information that is made public in accordance with REC 2.6.24EU should conform to a consistent and structured format based on industry standards. Regulated markets or market operators operating an MTF can choose the structure that they use.

**TRAINING AND COMPETENCE SOURCEBOOK (AMENDMENT NO 7)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 150(2) (Actions for damages);
 - (d) section 156 (General supplementary powers); and
 - (e) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA’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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Prudential sourcebook for Mortgage, Home Finance Firms and Insurance Intermediaries (MIPRU)	Annex C
Insurance: Conduct of Business sourcebook (ICOB)	Annex D
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex E
Training and Competence sourcebook (TC)	Annex F
Supervision manual (SUP)	Annex G
Electronic Money sourcebook (ELM)	Annex H
Professional Firms sourcebook (PROF)	Annex I

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Amendment No 7) Instrument 2007.

By order of the Board
26 July 2007

Annex A

Amendments to the Glossary of definitions

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

competent employees (a) for a firm which is not a common platform firm, SYSC 3.1.6R.
rule

(b) for a common platform firm, SYSC 5.1.1R.

pension transfer
specialist an individual appointed by a firm to check the suitability of a pension transfer or pension opt-out who has passed the required examinations as specified in ~~the interim approved examination annexes to TC 2.~~

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

- 3.1.6 R A firm which is not a *common platform firm* must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- 3.1.7 R When complying with the *competent employees rule*, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.
- 3.1.8 G The Training and Competence sourcebook (*TC*) contains additional *rules* and *guidance* relating to specified retail activities undertaken by a *firm*.
- 3.1.9 G Firms which are carrying on activities that are not subject to *TC* may nevertheless wish to take *TC* into account in complying with the training and competence requirements in SYSC.
- 3.1.10 G If a firm requires *employees* who are not subject to an examination requirement to pass a relevant examination from the list of recommended examinations maintained by the Financial Services Skills Council, the *FSA* will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.
- 3.2.14 G ...
- (3) [deleted]
- (4) ...
- ...
- 5.1.4 G ~~The *FSA's* requirements on *firms* with respect to the competence of individuals are in the Training and Competence sourcebook (*TC*).~~ The Training and Competence sourcebook (*TC*) contains additional *rules* and *guidance* relating to specified retail activities undertaken by a *firm*.
- 5.1.4A G Firms which are carrying on activities that are not subject to *TC* may nevertheless wish to take *TC* into account in complying with the training and

competence requirements in SYSC.

- 5.1.5A G If a *firm* requires *employees* who are not subject to an examination requirement in *TC* to pass a relevant examination from the list of recommended examinations maintained by the Financial Services Skills Council, the *FSA* will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

Annex C

Amendments to the Prudential sourcebook for Mortgage, Home Finance Firms and Insurance Intermediaries (MIPRU)

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

- 2.3.2 R In determining a *person's* knowledge and ability, the *firm* should have regard to matters including, but not limited to, whether the *person*:
- (1) has demonstrated by experience and training ~~to be~~that he is able, or ~~that he~~ will be able, to perform his duties related to the *firm's* *insurance mediation activity*; and
 - (2) satisfies the relevant requirements ~~of~~ in the *FSA's* Training and Competence sourcebook and the Senior Management Arrangements, Systems and Controls sourcebook.

...

- 2.3.5 G *Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified by the *rule* which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (*SYSC 3.1.1R*). A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (*SYSC 3.2.13G*). This includes the assessment of an individual's honesty and competence. In addition, the *competent employees rule* (*SYSC 3.1.6R*) sets out a high-level competence requirement which every *firm* should follow ~~Training and Competence sourcebook lists some general, high level commitments to training and competence which every *firm* should make and fulfil.~~

Annex D

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

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

ICOB: 1 Application and Purpose

Annex 2 G

Summary of Handbook Provisions for Insurance Intermediaries

1	This table belongs to <i>ICOB 1.5.1 G. 1</i>	
2	This table sets out the provisions in the <i>Handbook</i> that apply to <i>firms</i> which are <i>insurance intermediaries</i> where they: (1) carry on <i>insurance mediation activities</i> in relation to a <i>non-investment insurance contract</i> ; or (2) <i>communicate or approve a non-investment financial promotion</i> .	
3	It also sets out the provisions in the <i>Handbook</i> that apply to <i>approved persons</i>	
4	For convenience, the former activity is referred to in the table as (1) and the latter as (2).	
	Module	Application
...
	Training and Competence sourcebook, <i>TC</i>	<i>TC 1 applies when a firm is doing (1) or (2).</i> <i>TC 2</i> applies only in circumstances where an <i>insurance intermediary</i> has employees advising on <i>non-investment insurance contracts</i> with or for a <i>retail customer</i> as listed in <i>TC Appendix 1 R</i> <i>TC 2.1.4 R.</i>
...

7.3.4 G An insurer should refer to the *guidance set out in on TC 1 (Commitments) the competent employees rule in SYSC 3* in respect of the competence of any person who carries out *claims handling* on its behalf.

Annex E

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

- 8.6.3 G Firms are reminded that the Training and Competence sourcebook sets out requirements for:
- (1) *employees* designing scripted questions for use with customers in non-advised sales ~~to customers~~ of *equity release transactions* ~~which do not involve personal recommendations~~; and
 - (2) *employees* overseeing on a day-to-day basis the non-advised sales to *customers of equity release transactions* ~~which do not involve personal recommendations~~.

Annex F

Amendments to the Training and Competence sourcebook (TC)

The Training and Competence sourcebook is deleted in its entirety and replaced with the following. The text is not underlined.

1. Application and Purpose

1.1 Who, what and where?

Who and what?

- 1.1.1 R This sourcebook applies to a *firm* where its *employee* carries on an activity in *TC* Appendix 1 for *retail clients, customers* or *consumers* (subject to the limitations set out in *TC* Appendix 3).

Where?

- 1.1.2 R The territorial scope of this sourcebook is set out in *TC* Appendix 2.

Purpose

- 1.1.3 G The *competent employees rule* is the main *Handbook* requirement relating to the competence of *employees*. The purpose of this sourcebook is to support the FSA's supervisory function by supplementing the *competent employees rule* for retail activities.

Meaning of competence

- 1.1.4 G In this sourcebook, competence means having the skills, knowledge and expertise needed to discharge the responsibilities of an *employee's* role. This includes achieving a good standard of ethical behaviour.

1.2 Actions for damages

- 1.2.1 R A contravention of the *rules* in *TC* does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

2 Competence

2.1 Assessing and maintaining competence

Assessment of competence and supervision

- 2.1.1 R A *firm* must not assess an *employee* as competent to carry on an activity in *TC Appendix 1* until the *employee* has demonstrated the necessary competence to do so and has (if required by *TC Appendix 1*) passed each module of an appropriate examination. This assessment need not take place before the *employee* starts to carry on the activity.
- 2.1.2 R A *firm* must not allow an *employee* to carry on an activity in *TC Appendix 1* without appropriate supervision.
- 2.1.3 G *Firms* should ensure that *employees* are appropriately supervised at all times. It is expected that the level and intensity of that supervision will be significantly greater in the period before the *firm* has assessed the *employee* as competent, than after. A *firm* should therefore have clear criteria and procedures relating to the specific point at which the *employee* is assessed as competent in order to be able to demonstrate when and why a reduced level of supervision may be considered appropriate. At all stages *firms* should consider the level of relevant experience of an *employee* when determining the level of supervision required.

Supervisors

- 2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in *TC Appendix 1* have the necessary coaching and assessment skills as well as technical knowledge to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to pass an appropriate examination as well except where the *employee* is giving advice on *packaged products*, see *TC 2.1.5R*.
- 2.1.5 R Where an *employee* is giving advice on packaged products to *retail clients* and has not been assessed as competent to do so, the *firm* must ensure that the individual supervising and assessing that *employee* has passed an appropriate examination.

Examination requirements before starting activities

- 2.1.6 R A *firm* must ensure that an *employee* does not carry on an activity in *TC Appendix 1* (other than an overseeing activity) for which there is an examination requirement without first passing the relevant regulatory module of an appropriate examination.
- 2.1.7 R A *firm* must ensure that an *employee* does not carry on any of the following activities without first passing each module of an appropriate examination :
- (1) “advising and dealing” activities in *TC Appendix 1*;
 - (2) the activity of a *broker fund adviser*;
 - (3) *advising on syndicate participation at Lloyd’s*; or
 - (4) the activity of a *pension transfer specialist*.

- 2.1.8 G Where there is an examination requirement, *firms* may wish to impose limits on the time they allow their *employees* to pass an appropriate examination or place limits on the number of times the examination can be taken.

Exemption from appropriate examination requirements

- 2.1.9 R (1) If a *firm* is satisfied that an *employee* meets the conditions in this *rule* then the requirements to have passed each module of an appropriate examination will only apply if that employee is carrying on one of the activities specified in this *rule*.
- (2) The conditions are that a *firm* should be satisfied that an *employee*:
- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
 - (b) has not previously been required to comply fully with the relevant examination requirements in *TC 2.1.1R*; and
 - (c) has passed the relevant regulatory module of an appropriate examination;
- but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in *SUP 10.10.7BR*, unless the *employee* benefits from that rule because he is advising *retail clients* on *packaged products* or is a *broker fund adviser*.
- (3) The relevant activities are:
- (a) *advising on investments* which are *packaged products*, if that advice is given to *retail clients*;
 - (b) the activity of a *broker fund adviser*;
 - (c) *advising on syndicate participation at Lloyd's*; or
 - (d) the activity of a *pension transfer specialist*.

Selecting an appropriate examination

- 2.1.10 E (1) This *rule* applies for the purposes of *TC 2.1.1R*, *TC 2.1.5R*, *TC 2.1.6R*, *TC 2.1.7R* and *TC 2.1.9R*.
- (2) In ensuring that an examination is appropriate, a *firm* should select an appropriate examination from the list of examinations maintained by The Financial Services Skills Council.
- (3) Compliance with (2) may be relied on as tending to establish compliance with the *rules* referred to in (1).

2.1.11 Training needs

- G *Firms* should ensure that their *employees'* training needs are assessed at the outset and at regular intervals (including if their role changes). Appropriate training and support should be provided to ensure that any relevant training needs are satisfied. *Firms* should also review at regular intervals the quality and effectiveness of such training.

Maintaining competence

- 2.1.12 R A *firm* must review on a regular and frequent basis *employees'* competence and take appropriate action to ensure that they remain competent for their role.

- 2.1.13 G A firm should ensure that maintaining competence for an employee takes into account such matters as:

- (1) technical knowledge and its application;
- (2) skills and expertise; and
- (3) changes in the market and to products, legislation and regulation.

3 Record Keeping

3.1 Record-keeping requirements

- 3.1.1 R A *firm* must make appropriate records to demonstrate compliance with the *rules* in this sourcebook and keep them for the following periods after an *employee* stops carrying on the activity:

- (1) at least 5 years for *MiFID business*;
- (2) 3 years for non-*MiFID business*; and
- (3) indefinitely for a *pension transfer specialist*.

Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3		
Activity	Products/Sectors	Is there an appropriate examination requirement?
<i>Designated investment business carried on for a retail client</i>		
Providing basic advice	1. <i>Stakeholder products excluding a deposit-based stakeholder product</i>	No
Advising	2. <i>Securities which are not stakeholder pension schemes or broker funds</i> 3. <i>Derivatives</i> 4. <i>Packaged products which are not broker funds</i> 5. <i>Friendly Society life policies where the employee is not reasonably expected to receive a remuneration of greater than £1000 a year in respect of such sales</i> 6. <i>Friendly Society tax-exempt policies</i> 7. <i>Long-term care insurance contracts</i> 8. <i>Investments in the course of corporate finance business</i> 9. <i>Advising on syndicate participation at Lloyd's</i>	Yes
Undertaking the activity in column 2	10. <i>Broker fund adviser</i> 11. <i>Pension transfer specialist</i>	Yes
Advising and dealing	12. <i>Securities which are not stakeholder pension schemes or broker funds</i> 13. <i>Derivatives</i>	Yes
Managing	14. <i>Investments</i>	Yes
Overseeing on a day-to-day basis	15. <i>Operating a collective investment scheme or undertaking the activities of a trustee or depositary of a collective investment scheme</i> 16. <i>Safeguarding and administering investments or holding client money</i> 17. <i>Administrative functions in relation to managing investments</i> 18. <i>Administrative functions in relation to effecting or carrying out contracts of insurance, which are life policies</i> 19. <i>Administrative functions in relation to the operation of stakeholder pension schemes</i>	Yes

<i>Regulated mortgage activity and reversion activity carried on for a customer</i>		
Advising	20. <i>Regulated mortgage contracts for a non-business purpose</i> 21. <i>Equity release transactions</i>	Yes
Designing scripted questions for non-advised sales	22. <i>Equity release transactions</i>	Yes
Overseeing non-advised sales on a day-to-day basis	23. <i>Equity release transactions</i>	Yes
<i>Non-investment insurance business carried on for a consumer</i>		
Advising	24. <i>Non-investment insurance contracts</i>	No

Notes:

1. In the Appendix the heading and types of business specified in the headings are to be read in conjunction with the paragraphs appearing beneath them.
2. Thus, for example, paragraph 24, under the final heading, refers only to advice on *non-investment insurance contracts* given to a *consumer*.

TC's Territorial Scope subject to the limitation in TC Appendix 3			
	<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
<i>MiFID business and equivalent third country business</i>	<p><i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i></p> <p>and</p> <p><i>TC also applies insofar as an activity is carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in, and within the territory of, another EEA State</i></p>	<i>TC does not apply</i>	<i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i>
<i>Insurance mediation activities</i>	<p><i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i></p> <p>and</p> <p><i>TC also applies in respect of employees who engage in or oversee activities from a branch established in another EEA state</i></p>	<i>TC does not apply</i>	<i>TC does not apply</i>
<i>Regulated mortgage activity and reversion activity</i>	<p><i>TC applies if the customer is resident in the United Kingdom at the time the regulated mortgage activity or reversion activity is carried on</i></p> <p>and</p> <p><i>TC also applies if the customer is resident in another EEA State (at the time that the activity is carried on) but only if the activity is carried on from an</i></p>	<i>Same as for UK domestic firm</i>	<i>Same as for UK domestic firm</i>

	establishment maintained by the <i>firm</i> or its <i>appointed representative</i> in the <i>United Kingdom</i>		
Any other activity in Appendix 1	<p><i>TC</i> applies in respect of <i>employees</i> who carry on these activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p> <p>and</p> <p><i>TC</i> also applies in respect of <i>employees</i> who carry on activities with or for a <i>client</i> in the <i>United Kingdom</i></p>	<p><i>TC</i> applies in respect of its <i>employees</i> who carry on activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p>	<p><i>TC</i> applies in respect of its <i>employees</i> who carry on activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p>

Circumstances in which TC does not apply	
<i>Type of firm / activity</i>	<i>Application</i>
<i>Incoming EEA firm</i>	This sourcebook does not apply where responsibility for any matter it covers is reserved by a European Community instrument to the <i>firm's Home State regulator</i>
<i>Incoming Treaty firm</i>	This sourcebook does not apply where responsibility for any matter it covers is reserved by a European Community instrument to the <i>firm's Home State regulator</i>
<i>UCITS qualifier</i>	This sourcebook only applies where it is relevant to the manner in which a <i>firm communicates</i> or <i>approves a financial promotion</i>
<i>Authorised professional firm</i>	<i>TC</i> does not apply with respect to its <i>non-mainstream regulated activities</i> (see <i>PROF 5.2</i>)
<i>Incoming ECA provider</i>	<i>TC</i> does not apply to an <i>incoming ECA provider</i> acting as such.

Transitional Provisions

- 1 Designated Investment Business: Assessments of competence before commencement
- 1.1 R (1) This *rule* applies in respect of an *employee* of a *firm* employed at *commencement* who had, before *commencement*, been assessed as competent by a *firm* in accordance with the applicable *rules* of its *previous regulator*.
- (2) An *employee* described in (1) is exempt from the requirements in this sourcebook to pass an appropriate examination if the activity (or role of a supervisor) carried on by that *employee* after *commencement* is the same or substantially the same as that for which the *employee* had been assessed as competent before *commencement*.
- 1.2 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 1.1R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (1) the activity which the *employee* carries on (or the role of the supervisor) continues to be the same, or substantially the same, as that in respect of which the *employee* had previously enjoyed the benefit of the exemption; and
- (2) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under *TC TP 1*.
- 2 Designated Investment Business: Assessments of competence in 12 month period after commencement
- 2.1 R (1) This *rule* applies in respect of an *employee* who had, on 31 October 2007, the benefit of an exemption under transitional rule 2 in *TC TP 1.1* in the form it was in on 31 October 2007.
- (2) An *employee* described in (1) is exempt from the requirements in this sourcebook to pass an appropriate examination but only in respect of the activities in respect of which the *employee* had the benefit of that exemption as at 31 October 2007.
- 2.2 R If an *employee* of a *firm* is exempted from an examination requirement under *TC TP 2.1R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (1) the activity which the *employee* carries on continues to be the same, or substantially the same, as that in respect of which the *employee* had previously enjoyed the benefit of the exemption; and

- (2) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under *TC TP 2*.
- 2.3 G At 31 October 2007 transitional rule 2 in *TC TP 1.1* applied to a *firm* whose *employees* at *commencement* had not been subject to any specific training and competence requirements of a *previous regulator*. This *rule* allowed the *firm* to assess such individuals as competent in the first twelve months after *commencement* without their having to pass an exam. The exemption applied only in respect of the activities which the individual was able to carry on before *commencement* where they were the same or substantially the same.
- 3 Regulated Mortgage Contracts: Assessments of competence under the Mortgage Code Compliance Board Rules
- 3.1 R (1) This *rule* applies:
 - (a) in relation to *regulated mortgage contracts*; and
 - (b) in respect of an individual employed by a *firm* at 31 October 2004.
- (2) If the individual described in (1) was assessed as competent by the *firm* before 31 October 2004 in accordance with the rules of the Mortgage Code Compliance Board applying immediately before 31 October 2004, the individual is exempt from the requirements in this sourcebook to pass an appropriate examination provided that:
 - (a) the activity which the individual carries on continues to be the same, or substantially the same, as that immediately before 31 October 2004; and
 - (b) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under this *rule*.
- 3.2 R If an *employee* of a *firm* is exempted from an examination requirement under *TC TP 3.1R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
 - (1) the conditions in *TC TP 3.1R(2)(a)* and (b) are met; and
 - (2) the firm assesses the individual to be competent in accordance with *TC 2.1.1R*.

- 4 Home Reversion Plans: Assessments of competence before 6 April 2007 in relation to lifetime mortgages
- 4.1 R (1) This *rule* applies in respect of an individual employed by a *firm* at 6 April 2007, if that individual had before that date been assessed as competent by the *firm* in relation to:
- (a) advising on *lifetime mortgages*;
 - (b) designing scripted questions for use in non-advised sales to *customers of lifetime mortgages*; or
 - (c) overseeing non-advised sales of *lifetime mortgages*.
- (2) An individual in (1) is exempt from the examination requirements in this sourcebook in relation to activities carried on concerning *home reversion plans* that correspond to those in (1) provided that:
- (a) the individual has been assessed as competent to apply the knowledge and skills necessary to carry on the relevant home reversion activity before 6 April 2007;
 - (b) the home reversion activity which the individual carries on continues to be the same, or substantially the same as that which the individual carried on immediately before 6 April 2007; and
 - (c) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under this *rule*.
- 4.2 R If an *employee* of a *firm* is exempted from an examination requirement under *TC TP 4.1R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (1) the conditions in *TC TP 4.1R(2)(b)* and (c) are met; and
 - (2) the firm assesses the individual to be competent in accordance with *TC 2.1.1R*.
- 4.3 R *TC TP 4* does not apply to an individual in *TC TP 4.1R(1)* after 6 April 2009 unless the individual passes an appropriate home reversions top-up examination before that date.

- 5 Home Reversion Plans: Assessments of competence before 6 April 2007 in relation to Home Reversion Plans only
- 5.1 R (1) This *rule* applies in respect of an individual employed by a *firm* at 6 April 2007 (other than an individual described in *TC TP 4.1R*).
- (2) The individual in (1) is exempt from the examination requirements in this sourcebook in relation to the following:
- (a) advising on *home reversion plans*;
 - (b) designing scripted questions for use in non-advised sales to customers of *home reversion plans*; or
 - (c) overseeing non-advised sales of *home reversion plans*.
- (3) The exemption in (2) only applies if:
- (a) the individual has been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the relevant home reversion activity before 6 April 2007;
 - (b) the home reversion activity which the individual carries on continues to be the same, or substantially the same as that immediately before 6 April 2007; and
 - (c) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under this *rule*.
- 5.2 R If the individual has not passed an appropriate examination before 6 April 2009, the individual in *TC TP 5.1R(1)* will cease to be exempt from the appropriate examination requirement.
- 5.3 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 5.1R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (1) the conditions in *TC TP 5.1R3(b)* and (c) are met; and
 - (2) the firm assesses the individual to be competent in accordance with *TC 2.1.1R*.

- 6 Transitional provisions relating to assessments of competence generally
- 6.1 G If appropriate, a *firm* may treat a competence assessment carried out under *TC* in the form it was in before 1 November 2007 as being sufficient to satisfy *TC* 2.1.1R.
- 7 Transitional provisions relating to waivers from existing examination requirements
- 7.1 R (1) This provision applies to a *firm* which benefited from a waiver from an examination requirement in *TC* prior to 1 November 2007 in respect of an *employee*. If such a *firm* would otherwise find itself in breach of an examination requirement in *TC* from that date as a result of the re-categorisation of *clients* in *COBS*, the *firm* may allow that *employee* to continue carrying on the activities in respect of which the waiver was granted until 31 October 2008 though he has yet to satisfy the relevant examination requirement in *TC*.
- (2) If an *employee* of a *firm* is exempted from an examination requirement under *TC* TP 7.1(1) and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (a) the activity which the *employee* carries on continues to be the same, or substantially the same, as that in respect of which the *employee* had previously enjoyed the benefit of the exemption; and
- (b) the *employee* had not experienced any significant break in employment since the last employment in respect of which the relevant exemption was granted.

Schedule 1: Record Keeping Requirements

Schedule 1 Record keeping requirements

TC Sch 1.1 G *TC* 3.1.1R provides:

A *firm* must make appropriate records to demonstrate compliance with the *rules* in this sourcebook and keep them for the following periods after an *employee* stops carrying on the activity:

- (1) at least 5 years for *MiFID business*;
- (2) 3 years for non-*MiFID business*; and
- (3) indefinitely for a *pension transfer specialist*.

Schedule 2: Notification Requirements

Schedule 2 Notification requirements

TC Sch G There are no notification or reporting requirements in *TC*.
2.1

Schedule 3: Fees and other required payments

Schedule 3 Fees and other required payments

TC Sch G There are no requirements for fees or other payments in *TC*.
3.1

Schedule 4: Powers exercised

Schedule 4 Powers exercised

TC Sch G The following powers and related provisions in the *Act* have been exercised
4.1 to make the *rules* in *TC*:

- (1) section 138 (General rule making power)
- (2) section 149 (Evidential provisions)
- (3) section 150(2) (Actions for damages)
- (4) section 156 (General supplementary powers)

TC Sch G The following power in the *Act* has been exercised by the *FSA* to give the
4.2 guidance in *TC*:

- (1) section 157(1) (Guidance)

Schedule 5: Rights of action for damages

Schedule 5 Rights of action for damages

TC Sch G The table below sets out the *rules* in *TC* contravention of which by an *authorised*
5.1 *person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

TC Sch G If a "Yes" appears in the column headed "For private person?", the *rule* may be
5.2 actionable by a "*private person*" under section 150 (or, in certain circumstances, his fiduciary or representative). A "Yes" in the column headed "Removed"

indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

TC Sch 5.3 G The column headed "For other person?" indicates whether the *rule* is actionable by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

TC Sch 5.4 G Table: Actions for damages: Training and Competence sourcebook

			Right of action under section 150		
Chapter/Appendix	Section/Annex	Paragraph	For private person	Removed	For other person
<i>Rules in TC</i>			No	Yes <i>TC 1.2.1R</i>	No

Schedule 6: Rules that can be waived

Schedule 6 Rules that can be waived

TC Sch 6.1 G The *rules* in *TC* can be *waived* by the *FSA* under section 148 of the *Act* (Modification or waiver of *rules*).

Annex G

Amendments to the Supervision manual (SUP)

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

10.10.7C G The FSA would expect an individual from overseas to be accompanied on a visit to a *customer*. ~~TC 2.1.95.5R(12)~~ provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of ~~TC 2.1.95.5R(2)~~ are disappplied in these circumstances (except for an individual who gives advice to *retail clients on packaged products* or is a *broker fund adviser*). The effect of this is that such individuals need not pass the relevant regulatory module of an appropriate examination (see ~~TC 2.1.9R(2)5.5 R(3) and TC 2.5.5 R(4)~~).

10.10.7E G An individual may *advise on investments* ~~if he or she has not yet been assessed as competent in accordance with the rules in the Training and Competence Sourcebook (TC). Once that individual has been assessed as competent, the firm should record when that person became competent and no longer required supervision.~~ prior to being assessed as competent in accordance with the rules in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and, where relevant, the Training and Competence sourcebook (TC). The firm shall record when that person subsequently becomes competent.

...

SUP 10 Annex 1 Frequently asked questions

G

	Question	Answer
	Requirements of the regime	
1	...	
11	What checks should a <i>firm</i> make on a <i>candidate</i> before submitting an application for approval from the FSA?	The FSA expects <i>firms</i> to perform due and diligent enquiries about their <i>candidates</i> before they submit an application to us for approval. Our approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. It is for the <i>firm</i> to determine what checks are appropriate but in making its decision, a <i>firm</i> should have regard to the <i>controlled function</i> to which the application relates. <u><i>Firms'</i> enquiries should include checks to verify relevant qualifications and previous employment.</u> Note also the <u>requirements provisions of ENF 8.12.2 G (Publication) and TC 2.2.1 R (Recruitment).</u>

11A	Should these checks include a check of criminal records?	It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of criminal records, the <i>firm</i> should consider that the <i>FSA</i> does not routinely carry out these checks during the approval process. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the <i>FSA</i> and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about <i>candidates</i> for <i>approved person</i> status (see Question 5.01a of Form A (Application to perform controlled functions under the <i>approved persons</i> regime)). Note also the provisions of <i>ENF 8.12.2 G</i> (Publication) and <i>TC 2.2.1 R</i> (Recruitment).
12	...	

2 Table How does the customer function relate to the training and competence requirements?

Activity	Paragraph 1 of the table in <i>TC 2.1.4 R</i> <u>Products/sectors in <i>TC Appendix 1 R</i></u>	Controlled Function	SUP
<u>Advising only,</u> <u>Undertaking an activity,</u> <u>Advising and dealing</u> <u>Managing investments</u> <u>Advising and dealing,</u> <u>Managing,</u> <u>Advising (without dealing)</u>	<u>2-9,</u> <u>10-11,</u> <u>12-13,</u> <u>14</u> (a)–(c), (d) and (e), (f)–(g)	<i>customer function</i> (CF30)	10.10.4 R

12.6.10 G The *rules and guidance relating to training and competence in SYSC 3 and 5 and in TC for a firm carrying on retail business* extend to any *employee of the firm* in respect of whom the relevant *rules* apply. For these purposes, an *employee of a firm* includes:

- (1) an individual who is an *appointed representative* of a *firm*; and
- (2) an individual who is employed or appointed by an *appointed representative* of a *firm* (whether under a contract of service or for services) in connection with the business of the *appointed representative* for which the *firm* has accepted responsibility.

12.6.11 G A *firm* should take reasonable care to ensure that:

- (1) it has satisfied *SYSC 3 or 5 and TC 2* in respect of the relevant staff of the *appointed representative*; and
- (2) its *appointed representative* has adequate arrangements in respect of training and competence, which meet the requirements in *SYSC and TC*.

SUP 13A Annex 1G Application of the handbook to Incoming EEA Firms

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
<i>PRIN</i>	...	
<i>TC</i>	<i>TC</i> applies, but only in so far as responsibility for any matter it covers is not reserved by a European Community instrument to the <i>firm's Home State regulator</i> .	<i>TC Appendix 1 R</i> sets out the <u>activities to which <i>TC</i> applies.</u> <i>TC Appendix 2 R</i> sets out the <u>sourcebook's territorial scope.</u> <i>TC Appendix 3 R</i> sets out the <u>limitations on <i>TC Appendix 2</i>.</u> <i>TC 1 (Commitments):</i> (1) contains <i>guidance</i> relevant to compliance with <i>Principle</i>

		<p>3, satisfaction of <i>threshold condition 5</i> and the fit and proper test for <i>approved persons</i>; it is therefore relevant only if they apply to the <i>firm</i> (see the <i>guidance</i> on application of <i>PRIN</i>, <i>COND</i> and <i>FIT</i> above);</p> <p>(2) in particular, does not therefore apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border</i> services and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>.</p> <p>TC 2 (Rules and guidance) does not apply (TC 2.1.2R (2)).</p>
SUP	...	

Annex H

Amendments to the Electronic Money sourcebook (ELM)

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

1.5.2 G Application of other parts of the *Handbook* to ELMIs

Block	Module	Application
High Level Standards	...	
...		
Training and Competence sourcebook (<i>TC</i>)	<i>TC 1 (Commitments)</i> applies to ELMIs. <i>TC 2 (Rules and Guidance)</i> applies to a <i>firm</i> whose <i>employees</i> carry on activities listed in <i>TC Appendix 1 R-2.1.4 R</i> . Those activities do not include <i>issuing e-money</i> .	
Regulatory processes	...	

Annex I

Amendments to the Professional Firms sourcebook (PROF)

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

Training and Competence sourcebook

- 5.3.3 G TC Appendix 3 R 2.1.1 R ~~(2)~~ provides that TC-2, which imposes the substantive training and competence requirements for retail clients or customers, does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

CONDUCT OF BUSINESS SOURCEBOOK (MiFID, ARTICLE 4 AND OTHER AMENDMENTS) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1)
 - (a) section 138 (General rule-making power)
 - (b) section 145 (Financial promotions rules);
 - (c) section 149 (Evidential provisions);
 - (d) section 156 (General supplementary powers);
 - (e) section 157(1) (Guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions sourcebook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA'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
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E

Notes

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

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (MiFID, Article 4 and Other Amendments) Instrument 2007.

By order of the Board
26 July 2007

Annex A

Amendments to the Glossary of definitions

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

combined initial disclosure document (~~CIDD~~) information ~~set out in COB 4 Annex 5R~~ about the ~~scope~~ scope of advice or scope of basic advice and the nature of the services offered by a *firm* in relation to:

(a) ~~a combination of~~ two or more of the following:

(i)(a) packaged products or, for basic advice, stakeholder products;

(ii)(b) non-investment insurance contracts;

(iii)(c) regulated mortgage contracts other than lifetime mortgages;

(iv)(d) home purchase plans;

(v)(e) equity release transactions;

which contains the keyfacts logo, headings and text in the order shown in, and in accordance with the notes in, COBS 6 Annex 2; or,

(b) ~~[deleted]~~

commission equivalent (~~equivalent~~)

the cash payments, benefits and services listed in ~~COB 5.7.16E~~ COBS 6 Annex 6E which satisfy the criteria in ~~COB 5.7.5R (2)~~ COBS 6.4.3R.

essential information

~~[deleted]~~

equivalent

see commission equivalent.

initial disclosure document (~~IDD~~)

information about the ~~scope~~ scope of advice or scope of basic advice and the nature of the services offered by a *firm* in relation to:

(a) packaged products as described in required by COB 4.3.7 R COBS 6.3.7G which contains the keyfacts logo, headings and text described in COBS 6 Annex 1G;

(b) stakeholder products as described in required by COB 5A.2.1(1)R COBS 9.6.9R (Disclosure at first contact) which contains the keyfacts logo, headings and text described in COBS 6 Annex 1G;

(c) ...

...

menu a statement maintained by a *firm* in accordance with *COBS* 6.3.

range of stakeholder products, range (in relation to a *firm*) the range of *stakeholder products* on which the *firm* gives *basic advice* (see ~~*COB* 5A.3.2R~~ *COBS* 9.6).

References to a *firm's* range (or ranges) of *stakeholder products* include, where the context requires, a reference to the range (or ranges) of the *firm's* appointed representatives.

rules on the disclosure of commission and commission equivalent [deleted]

rule on use of dealing commission *COBS* 11.6.3R.

scope of advice, scope the basis on which *personal recommendations on packaged products* is given by a *firm*, that is, one of the following:

(1) the whole market (or the whole of a named sector of the market); or

(2) a limited number of *product providers*; or

(3) a single *company* or single group of *companies*.

References to a *firm's* scope of *personal recommendations of packaged products* include, where the context requires, a reference to the scope of *personal recommendations* of the *firm's* appointed representatives or, where applicable, *tiered agent*.

scope of basic advice the basis on which a *firm* gives *basic advice on stakeholder products*, that is, with reference to the *stakeholder products* of one, or more than one, *stakeholder product provider*.

website conditions the following conditions (~~which must be satisfied if a *firm* provides information to a *client* by means of a website containing information that is not addressed personally to that *client*):~~

(1) the provision of that information in that medium by means of a

website must be appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on (that is, there is evidence that the *client* has regular access to the internet, such as the provision by the *client* of an e-mail address for the purposes of the carrying on of that business);

- (2) the *client* must specifically consent to the provision of that information in that form;
- (3) the *client* must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- (4) the information must be up to date; and
- (5) the information must be accessible continuously by means of that website for such period of time as the *client* may reasonably need to inspect it.

[**Note:** article 3 of the *MiFID implementing Directive*]

Annex B

Amendments to the General Provisions (GEN)

In this Annex, new text is underlined and struck through text is deleted.

4.2 Purpose

4.2.1 G ...

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

- (1) for *financial promotions*, in the financial promotion rules ~~COB 3 (Financial promotion)~~;
- (2) for *designated investment business*, in COBS 4.2 8 (Terms of business and eClient agreements with customers), COBS 5 (Distance Communications), COBS 6 4.3 (Disclosing information about services, fees and commission packaged products) Information about the firm, its services and remuneration, ~~COB 5.5 (Information about the firm)~~, COBS 13 and 146.1 to COB 6.5 (Product disclosure) (which relate to product information) and CASS (Client assets);
- (3) ...

4.3 Letter disclosure

Disclosure in letters to ~~private customers~~ retail clients

4.3.1 R A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a ~~private customer~~ retail client, with a view to or in connection with the *firm* carrying on a *regulated activity*, includes the disclosure in *GEN* 4 Annex 1R.

4.3.1A G Where a letter covers both activities to which this chapter applies and activities to which this chapter does not apply, the *firm* should comply with the rules in this chapter in relation to the business to which it applies. An example would be where a letter covers business for which the *FSA* is the competent authority under the *IMD* and under *MiFID*.

- 4.3.3 G
- (1) *GEN* 4.3.1R (Disclosure in letters to ~~private customers~~ retail clients) covers letters delivered by hand, sent by *post* and sent by fax and also electronic mail, but not text messages, account statements, business cards or compliment slips (used as such).
 - (2) *GEN* 4.3.1R (Disclosure in letters to ~~private customers~~ retail clients) applies in relation to letters sent by any of the *firm's employees*, which includes its *appointed representatives* and their *employees*.

(3) ...

Exception: insurers

4.3.4 R *GEN* 4.3.1R (Disclosure in letters to ~~private customers~~ retail clients) does not apply in relation to:

(1) ...

Exception: authorised professional firms

4.3.5 R For an *authorised professional firm*, *GEN* 4.3.1 R (Disclosure in letters to ~~private customers~~ retail clients) does not apply with respect to its *non-mainstream regulated activities*.

4.4 Business for retail clients ~~private customers~~ from non-UK offices

4.4.1 R (1) If, in any communication:

(a) made to:

(i) ...

(iii) (in all other cases) a retail client ~~private customer~~; and

...

5 The FSA logo and the keyfacts logo

5.1 Application and purpose

...

5.1.5 R A *firm* must not use the keyfacts logo other than as and when it is required or expressly permitted to be used by the *rules* ...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, except where otherwise indicated, underlining indicates new text and striking through indicates deleted text. Where new Sections are being inserted, this is stated and the text is not underlined.

2.3 Inducements

Rule on inducements

2.3.1 R ...

(1) ...

(2) [delete (2) and replace with the following]

a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:

(a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the *firm's* duty to act in the best interests of the *client*; and

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than *MiFID* or equivalent third country business if it includes giving a *personal recommendation* in relation to a *packaged product*;

(ii) where this requirement applies to business other than *MiFID* or equivalent third country business, a *firm* is not required to make a disclosure to the *client* in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in *COBS 2.3.15G* as though that table were part of this *rule* for this purpose only;

(iii) this requirement does not apply to a *firm* giving *basic advice*,

(c) in relation to *MiFID* or equivalent third country business, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the

service to the *client*.

(3) ...

[Note: The Committee of European Securities Regulators (CESR) has issued recommendations on inducements under MiFID]

Guidance on inducements

...

2.3.4 G ~~[intentionally blank]~~ COBS 11.6 (Use of dealing commission) deals with the acceptance of certain inducements by *investment managers* and builds upon the requirements in this section. *Investment managers* should ensure they comply with this section and COBS 11.6.

Packaged products evidential provisions and guidance on inducements

2.3.9 G ~~[intentionally blank]~~ The following *guidance* and *evidential provisions* provide examples of arrangements the *FSA* believes will breach the *client's best interests rule* if it sells, *personally recommends* or arranges the sale of a *packaged product* for a *retail client*.

2.3.10 E (1) ~~[intentionally blank]~~ If a *firm* is required to disclose *commission* (see COBS 6.4) to a *client* in relation to the sale of a *packaged product* (other than in relation to arrangements between *firms* that are in the same *immediate group*) the *firm* should not enter into any of the following:

(a) volume overrides, if *commission* paid in respect of several transactions is more than a simple multiple of the *commission* payable in respect of one transaction of the same kind; and

(b) an agreement to indemnify the payment of *commission* on terms that would or might confer an additional financial benefit on the recipient in the event of the *commission* becoming repayable.

(2) Contravention of (1) may be relied upon as tending to establish contravention of the *rule* on inducements (COBS 2.3.1R).

2.3.11 G (1) ~~[intentionally blank]~~ If a *firm* enters into an arrangement with another *firm* under which it makes or receives a payment of *commission* in relation to the sale of a *packaged product* that is increased in excess of the amount disclosed to the *client*, the *firm* is likely to have breached the *rules* on disclosure of charges, remuneration and *commission* (see COBS 6.4) and, where applicable, the *rule* on inducements in COBS 2.3.1R(2)(b), unless the increase is attributable to an increase in the *premiums* or contributions payable by that *client*.

2.3.12 E (1) ~~[intentionally blank]~~ This *evidential provision* applies in relation to a holding in, or the provision of *credit* to, a *firm* which holds itself out as

making personal recommendations to retail clients on packaged products, except where the relevant transaction is between persons who are in the same immediate group.

(2) A product provider should not take any step which would result in it:

- (a) having a direct or indirect holding of the capital or voting power of a firm in (1); or
- (b) providing credit to a firm in (1) (other than commission due from the firm to the product provider in accordance with an indemnity commission clawback arrangement);

unless all the conditions in (4) are satisfied. A product provider should also take reasonable steps to ensure that its associates do not take any step which would result in it having a holding as in (a) or providing credit as in (b).

(3) A firm in (1) should not take any step which would result in a product provider having a holding as in (2)(a) or providing credit as in paragraph (2)(b), unless all the conditions in (4) are satisfied.

(4) The conditions referred to in (2) and (3) are that:

- (a) the holding is acquired, or credit is provided, on commercial terms, that is terms objectively comparable to those on which an independent person unconnected to a product provider would, taking into account all relevant circumstances, be willing to acquire the holding or provide credit;
- (b) the firm (or, if applicable, each of the firms) taking the step has reliable written evidence that (a) is satisfied;
- (c) there are no arrangements, in connection with the holding or credit, relating to the channelling of business from the firm in (1) to the product provider; and
- (d) the product provider is not able, and none of its associates is able, because of the holding or credit, to exercise any influence over the personal recommendations made in relation to packaged products given by the firm.

(5) In this evidential provision, in applying (2) and (3) any holding of, or credit provided by, a product provider's associate is to be regarded as held by, or provided by, that product provider.

(6) In this evidential provision, in applying (3) references to a "product provider" are to be taken as including an unauthorised equivalent of a product provider; that is, an unauthorised insurance undertaking or an unauthorised operator of a regulated collective investment scheme or of an investment trust savings scheme;

(7) Contravention of (2) or (3) may be relied upon as tending to establish contravention of the rule on inducements (COBS 2.3.1R).

2.3.13 G ~~[intentionally blank]~~ In considering the compliance of arrangements between members of the same immediate group with the rule on inducements (COBS 2.3.1 R), firms may wish to consider the evidential provisions in COBS 2.3.10E and COBS 2.3.12E, to the extent that these are relevant.

~~[intentionally blank]~~ Reasonable non-monetary benefits

2.3.14 G (1) In relation to the sale of packaged products, the table on reasonable non-monetary benefits (COBS 2.3.15G) indicates the kind of benefits which are capable of enhancing the quality of the service provided to a client and, depending on the circumstances, are capable of being paid or received without breaching the client's best interests rule. However, in each case, it will be a question of fact whether these conditions are satisfied.

(2) The guidance in the table on reasonable non-monetary benefits is not relevant to non-monetary benefits which may be given by a product provider or its associate to its own representatives. The guidance in this provision does not apply directly to non-monetary benefits provided by a firm to another firm that is in the same immediate group. In this situation, the rules on commission equivalent (COBS 6.4.3 R) will apply.

2.3.15 G ~~[intentionally blank]~~ Reasonable non-monetary benefits

This table belongs to COBS 2.3.14G.

<u>Reasonable non-monetary benefits</u>	
	<u>Gifts, Hospitality and Promotional Competition Prizes</u>
<u>1</u>	<u>A product provider giving and a firm receiving gifts, hospitality and promotional competition prizes of a reasonable value.</u>
	<u>Promotion</u>
<u>2</u>	<u>A product provider assisting another firm to promote its packaged products so that the quality of its service to clients is enhanced. Such assistance should not be of a kind or value that is likely to impair the recipient firm's ability to pay due regard to the interests of its clients, and to give advice on, and recommend, packaged products available from the recipient firm's whole range or ranges.</u>
	<u>Joint marketing exercises</u>
<u>3</u>	<u>A product provider providing generic product literature (that is, letter</u>

<u>Reasonable non-monetary benefits</u>	
	<u>heading, leaflets, forms and envelopes) that is suitable for use and distribution by or on behalf of another firm if:</u>
(a)	<u>the literature enhances the quality of the service to the client and is not primarily of promotional benefit to the product provider; and</u>
(b)	<u>the total costs (for example, packaging, posting, mailing lists) of distributing such literature to its client are borne by the recipient firm.</u>
4	<u>A product provider supplying another firm with 'freepost' envelopes, for forwarding such items as completed applications, medical reports or copy client agreements.</u>
5	<u>A product provider supplying product specific literature (for example, key features documents, minimum information) to another firm if:</u>
(a)	<u>the literature does not contain the name of any other firm; or</u>
(b)	<u>if the name of the recipient firm is included, the literature enhances the quality of the service to the client and is not primarily of promotional benefit to the recipient firm.</u>
6	<u>A product provider supplying draft articles, news items and financial promotions for publication in another firm's magazine, only if in each case any costs paid by the product provider for placing the articles and financial promotions are not more than market rate, and exclude distribution costs.</u>
	<u>Seminars and conferences</u>
7	<u>A product provider taking part in a seminar organised by another firm or a third party and paying toward the cost of the seminar, if:</u>
(a)	<u>its participation is for a genuine business purpose; and</u>
(b)	<u>the contribution is reasonable and proportionate to its participation and by reference to the time and sessions at the seminar when its staff play an active role.</u>
	<u>Technical services and information technology</u>
8	<u>A product provider supplying a 'freephone' link to which it is connected.</u>
9	<u>A product provider supplying another firm with any of the following:</u>
(a)	<u>quotations and projections relating to its packaged products and, in relation to specific investment transactions (or for the purpose of any scheme for review of past business), advice on the completion of forms or other documents;</u>

<u>Reasonable non-monetary benefits</u>	
	(b) <u>access to data processing facilities, or access to data, that is related to the <i>product provider's</i> business;</u>
	(c) <u>access to third party electronic dealing or quotation systems that are related to the <i>product provider's</i> business; and</u>
	(d) <u>software that gives information about the <i>product provider's</i> packaged products or which is appropriate to its business (for example, for use in a scheme for review of past business or for producing projections or technical product information).</u>
10	<u>A <i>product provider</i> paying cash amounts or giving other assistance to a firm not in the same immediate group for the development of software or other computer facilities necessary to operate software supplied by the <i>product provider</i>, but only to the extent that by doing so it will generate equivalent cost savings to itself or clients.</u>
11	<u>A <i>product provider</i> supplying another firm with information about sources of mortgage finance.</u>
12	<u>A <i>product provider</i> supplying another firm with generic technical information in writing, not necessarily related to the <i>product provider's</i> business, when this information states clearly and prominently that it is produced by the <i>product provider</i> or (if different) supplying firm.</u>
	<u>Training</u>
13	<u>A <i>product provider</i> providing another firm with training facilities of any kind (for example, lectures, venue, written material and software).</u>
	<u>Travel and accommodation expenses</u>
14	<u>A <i>product provider</i> reimbursing another firm's reasonable travel and accommodation expenses when the other firm:</u>
	(a) <u>participates in market research conducted by or for the <i>product provider</i>;</u>
	(b) <u>attends an annual national event of a United Kingdom trade association, hosted or co-hosted by the <i>product provider</i>;</u>
	(c) <u>participates in the <i>product provider's</i> training facilities (see 13);</u>
	(d) <u>visits the <i>product provider's</i> United Kingdom office in order to:</u>
	(i) <u>receive information about the <i>product provider's</i> administrative systems; or</u>
	(ii) <u>attend a meeting with the <i>product provider</i> and an existing or prospective client of the receiving firm.</u>

- 2.3.16 G ~~[intentionally blank]~~ In interpreting the table of reasonable non-monetary benefits, *product providers* should be aware that where a benefit is made available to one *firm* and not another, this is more likely to impair compliance with the *client's best interests rule*.

Record keeping: inducements

- 2.3.17 R (1) ...
- (2) ~~[intentionally blank]~~ A *firm* must make a record of each benefit given to another *firm* in accordance with COBS 2.3.14G, and must keep that record for at least five years from the date on which it was given.

After COBS 6.1 insert the following new Sections; the text is not underlined:

6.2 Describing the breadth of a firm's personal recommendations

Application and introduction

- 6.2.1 R This section applies to a *firm* which makes a *personal recommendation* to a *retail client* to buy a *packaged product*.
- 6.2.2 R This section does not apply if a *firm* gives *basic advice* in accordance with the *basic advice rules*.
- 6.2.3 G Under the territorial application *rules* in COBS 1, the *rules* in this section apply to:
- (1) a *UK firm's* business carried on from an establishment in an *EEA State* other than the *United Kingdom* for a *retail client* in the *United Kingdom* unless, the office from which the activity is carried on were a separate *person*, the activity:
- (a) would fall within the overseas *persons* exclusion in article 72 of the *Regulated Activities Order*; or
- (b) would not be regarded as carried on in the *United Kingdom*;
- (2) a *firm's* business carried on from an establishment in the *United Kingdom* carried on for a *client* in another *EEA state*.
- 6.2.4 G A *firm's scope of advice* relates to the *product providers* whose products it sells. Its *range* relates to which products from those providers it sells.
- 6.2.5 G A *firm* may operate on the basis of recommending only a subset of the *packaged products* (its *range*) selected from the *product providers* within its *scope*.

- 6.2.6 G In order to comply with the *rule* on information disclosure before providing services (COBS 2.2.1R(1)(a)) and, if applicable, the *rule* on information to be provided by an *insurance intermediary* (COBS 7.2.1R(2)) a *firm's disclosures* to a *client* should include whether it expects its *scope* to be:
- (1) the whole of the market;
 - (2) limited to several product providers;
 - (3) limited to a single product provider.
- 6.2.7 G In order to comply with the *rule* on providing the details of *insurance undertakings* (COBS 7.2.1R(3)) a *firm* should make a record appropriate for distribution to a *client* of the names of the *insurance undertakings* with which the *firm* conducts, or may conduct, business.
- 6.2.8 G
- (1) If a *firm* holds itself out as independent or as otherwise giving *personal recommendations* to *retail clients* on *packaged products* from the whole market (or the whole of any sector of that market), the *firm's* selection for this purpose will need to be sufficiently large to satisfy the *client's best interests rule* and the *fair, clear and not misleading rule*.
 - (2) A *firm* that gives *personal recommendations* on *packaged products* from the whole of a sector of the market may hold itself out as giving *personal recommendations* from the whole of that sector.
- 6.2.9 G A *firm* may use "panels" of *product providers* which are sufficient for the purpose of giving recommendations from the whole market and which are reviewed on a regular basis. A *firm* which provides *personal recommendations* from the whole market should ensure that its analysis of the market and the available *packaged products* is kept adequately up to date.
- 6.2.10 R A *firm* must not hold itself out as providing *personal recommendations* from the whole market on any type of *personal pension scheme* unless its advice is based on all types of *personal pension schemes*, including *SIPPs*.

Selling products from the scope and range

- 6.2.11 G In accordance with the *client's best interests rule* and the *fair, clear and not misleading rule*, a *firm* should not describe its services to a *retail client* as being based on a particular *scope of advice* and *range* unless its business processes are designed to ensure that:
- (1) its *representatives* consider, based on adequate knowledge, products from across that *scope* and *range* before making a *personal recommendation*;
 - (2) it does not recommend products that are not in its *scope* or *range*;

- (3) each of its *representatives* who advise on *packaged products* is able to recommend and sell each product within the relevant *range*. However it may use a *representative* who is not competent to advise on and sell a product or category of product within the *range* if it:
 - (a) prevents that *representative* from recommending that product or category of product; and
 - (b) ensures that if a product ought to be recommended to a *client*, that *client* is referred to a *representative* that is competent to recommend it;
- (4) it does not narrow the *scope* it provides to a *client* compared with the *scope* it has disclosed to that *client*;
- (5) it does not alter the *scope* or *range* (where permitted under (4)) compared to the *scope* it has disclosed to a *retail client* without making a subsequent disclosure of its *scope* or *range* with appropriate content, presented with sufficient prominence, and in an appropriate format; and
- (6) it does not extend the *scope* or *range* in a way that materially alters its remuneration arrangements and unless it provides to the *client* a new and appropriate information on inducements, costs and charges (a *firm* may do this by providing a further *menu*).

Records of scope and range

- 6.2.12 R (1) A *firm* must make, and keep up to date, a record of the *scope* (or *scopes*) and the *range* (or *ranges*) it will use.
- (2) A *firm* must maintain a record of the particular *scope* and *range* on which its *personal recommendation* to each *retail client* is based.
- (3) (a) The record of the *firm's scope* and *range* (or *ranges*) must be retained for five years from the date on which it was superseded by a more up-to-date record.
- (b) The *client-specific* record required by (2) must be retained for five years from the date of the provision of the *personal recommendation*.
- 6.2.13 G In the case of a *firm* whose only *scope* is the selection of *packaged products* from the whole of the market (or from the whole of a sector of the market), it will be sufficient if the *firm's* record simply confirms that the *personal recommendations* it provides are given on this basis (and in the case of a *firm* which provides *personal recommendations* on the whole of a sector of the market, confirms the nature and parameters of that sector).

Remuneration structure and referrals

6.2.14 G In determining the remuneration structure of its *representatives*, a *firm* should manage any tensions between its obligations to its *clients* and the personal interests of its *representatives* (see SYSC 3A.6.2G and SYSC 10.1.3R).

Firms holding themselves out as independent

6.2.15 R (1) A firm must not hold itself out to a client as acting independently unless it intends to:

- (a) provide *personal recommendations* to that client on *packaged products* from the whole market (or the whole of a sector of the market); and
- (b) offers the *client* the opportunity of paying a *fee* for the provision of such advice.

(2) Paragraph (1) does not apply to *group personal pension schemes* if a *firm* discloses information to a *client* in accordance with the *rule* on *group personal pension schemes* (COBS 6.3.21R).

6.2.16 R (1) A *firm* which charges a *retail client* a *fee* under COBS 6.2.15R(1)(b) must do so on the basis that it will, in respect of any *commission* which it receives in respect of transactions in *packaged products* for that *client* (and to which the particular *fee* charging arrangement relates), ensure the value of that *commission* is transferred to the *client*.

(2) This *rule* does not prohibit such a *firm* from agreeing with the *client* (in writing) that it will retain an amount or rate of trail or renewal *commission* up to an amount each year specified in the agreement and so small, relative to the overall amount of *fees* paid by the *client*, that it would be manifestly disproportionate for the *firm* to be required to account to the *client* in one of the ways outlined in this *rule*.

6.2.17 G A *firm* that carries on business in relation to *packaged products*, *regulated mortgage contracts* and *home reversion plans* can do so in relation to the whole market and therefore be "independent" for one but offer only a limited service for the others. If this is the case, the *firm* should explain the different nature of the services in a way which complies with the *fair, clear and not misleading rule*. (See also MCOB and ICOB.)

6.2.18 G The *rule* on independence means that a *firm* wishing to hold itself out as independent will need to give *clients* a purely *fee* based option for paying for its services. Such a *fee* may be offered on a contingent basis so that it does not become payable if the *client* does not acquire a product. A *firm* offering a *fee*-based service may, in addition, provide the *client* with other payment options, such as by *commission*, or by a combination of *fee* and *commission*.

- 6.2.19 G A *firm* that holds itself out as independent should consider whether any ownership by it of shares in a *product provider* or by a *product provider* in it, or any loan agreements with a *product provider*, should be disclosed in order to meet the *fair, clear and not misleading rule*.

6.3 Disclosing information about services, fees and commission – packaged products

Application

- 6.3.1 R This section applies to a *firm* which makes a *personal recommendation* to, *deals in investments as agent* for, or *arranges for*, a *retail client* in relation to a *packaged product*.
- 6.3.2 R This section does not apply to a *firm* giving *basic advice* where the *firm* follows with the *basic advice rules* in COBS 9.6.

Disclosure to *retail clients* in good time

- 6.3.3 G (1) The *rules* referred to in (4) and (5) are derived from the *Single Market directives* and the *Distance Marketing Directive*. In the *FSA's* opinion, a *firm* will comply with them if it ensures that in good time before:
- (a) a *retail client* is bound by an agreement for the provision of a *personal recommendation on packaged products*; or
 - (b) the *firm* performs an act preparatory to the provision of a *personal recommendation*;
 - (c) in relation to the amendment of a *life policy* for that *retail client*, it gives a *personal recommendation* in relation to *packaged products*;
- its *representative* provides the *client* with an *initial disclosure document* or *combined initial disclosure document* and a *menu*.
- (2) A *firm* should consider the extent to which it is appropriate to provide an *initial disclosure document* or a *menu* if the appropriate information has been given to the *client* on a previous occasion and the information is still accurate and appropriate for the *client*.
- (3) A *firm* should provide the information required by this section in a *durable medium*.
- (4) For the purposes of (1), provision of the *menu* will comply with:
- (a) (other than in relation to a *personal pension deposit*, *SIPP* or a *personal pension product*) the elements of the *rule* on summary disclosure of fees, commissions and non-monetary

benefits (*COBS 2.3.1R(2)(b)*), as qualified by *COBS 2.3.2R*) that relate to disclosure of fees and commissions;

(b) the *rule* on information about costs and charges (*COBS 6.1.9R*) but only if the hourly rates indicated in the *menu* are actual hourly rates rather than indicative hourly rates.

(5) For the purposes of (1), provision of the *initial disclosure document* or, where applicable *combined initial disclosure document*, will comply with:

(a) the *rule* on information disclosure before providing services (*COBS 2.2.1R(1)(a)*);

(b) the items of distance marketing information, set out in paragraphs (1), (2), (4), (5), (19) and (20) of *COBS 5 Annex 1R*;

(c) paragraphs (1) (so far as it relates to the *firm's* name and address), (4) and (6) of the *rule* on disclosure of information about a firm and its services (*COBS 6.1.4R*);

(d) the investor compensation scheme *rule* in *COBS 6.1.16R(1)* and (2); and

(e) the *rule* on information to be provided by an *insurance intermediary* (*COBS 7.2.1R(1)* and (2)).

6.3.4 R For the purposes of *GEN 5*, a *firm* may not use the keyfacts logo in relation to any *document* that is designed to comply with *rules* in *COBS 5*, 6.1 or *COBS 7* unless it is an *initial disclosure document*, *combined initial disclosure document* or *menu* produced in accordance with the templates and Notes in the annexes to this chapter.

6.3.5 G Each of the *initial disclosure document*, *combined initial disclosure document* and *menu* that a *firm* provides to a *client* should be *documents* which the *firm* reasonably considers will be, or are likely to be, appropriate for the *client* having regard to the type of service which the *firm* may provide or business which the *firm* may conduct.

6.3.6 G A *firm* will satisfy the requirements as to timing in the *rules* referred to in *COBS 6.3.3R(4)* and (5) if its *representative* provides information to the *client* on first making contact with the *client*.

Initial disclosure document

6.3.7 G (1) An *initial disclosure document* is a document that contains the keyfacts logo, headings and text in the order shown in *COBS 6 Annex 1G* and in accordance with the Notes.

(2) A *combined initial disclosure document* is a document that contains the keyfacts logo, headings and text in the order shown in *COBS 6*

Annex 2G and in accordance with the Notes.

6.3.8 G A *firm* may include at the end of an *initial disclosure document* information the *firm* is required by *COBS* or by the *rule* on disclosing a *tiered agent's* capacity (*SUP* 12.6.13R) and which is not in the template for the *initial disclosure document* if the information would be sufficiently prominent. For example, a *firm* may wish to use the *initial disclosure document* to satisfy the parts of the *rule* on information about the *firm* and its services (*COBS* 6.1.4R) that would not otherwise be satisfied by providing the *initial disclosure document*.

6.3.9 G *Firms* can obtain from the *FSA* website <http://www.fsa.gov.uk> a specimen of the *initial disclosure document*. A *firm* may produce its *initial disclosure document* by using its own house style and brand. Electronic tools to help *firms* to construct their own *initial disclosure documents* and *menus* are available from the *FSA* website.

Menu

6.3.10 G (1) A *menu* is a document that contain the keyfacts logo, heading and text in the order shown in *COBS* 6 Annex 3G and in accordance with the Notes.

(2) In order to be able to provide an accurate menu, a *firm* should maintain as many versions of the *menu* as are appropriate to the different bases on which it may conduct business with *retail clients*.

6.3.11 R (1) A *firm* must keep its *menus* up to date and keep a record of each *menu* for a period of five years from the date on which it was updated or replaced.

(2) A *firm* must maintain a record of each particular *menu* which it provides to a *retail client* (other than when given merely in response to a request).

6.3.12 G A *firm* may add text at the end of the *menu* that is designed to comply with the disclosure duties in:

(1) the *rule* on disclosure of fees, commissions and non-monetary benefits (*COBS* 2.3.1R(2)) to the extent the *menu* does not include that information in relation to the relevant product;

(2) the *rule* on costs and associated charges (*COBS* 6.1.9R);

(3) the items of distance marketing information described in paragraphs (6), (8), (10) and (11) of *COBS* 5 Annex 1.

6.3.13 G If a *firm* is asked to provide a *menu* by a *person* with whom the *firm* has had no prior contact it may provide the *menu* which is appropriate for its typical or most prevalent *client* type and the business it conducts with them.

- 6.3.14 G A *firm* would be unlikely to comply with the *client's best interests rule* if the *menu* that it provided initially did not reflect relevant expected *commission* arrangements.
- 6.3.15 G Long-term care and whole of life *policies*, for which the example given in the *menu* refers to the age of the *policyholder*, are deemed to have a term equal to the difference between the age of the *policyholder* (at the time that the policy is taken out) and the age of 85.
- 6.3.16 G If a *firm* decides to provide a *retail client* with a *personal recommendation* on a type of *packaged product* which falls within a product group specified in Notes 14 or 19 to COBS 6 Annex 3G in relation to which the *menu* previously given to the *client* does not contain the information described in the *menu*, it should issue a new and appropriate *menu* to that *client*.

Provision of information on request

- 6.3.17 G A *firm* should take reasonable steps to ensure that its *representative* provide a copy of the appropriate *range of packaged products* to a *client* on the *client's* request.

Ongoing disclosure

- 6.3.18 G (1) In accordance with the *client's best interests rule* and the *fair, clear and not misleading rule*, a *firm* which has started to provide a *retail client* with services in relation to *packaged products* following the provision of information on inducements required under COBS 2.3.1R or a *menu* should not (at least until the completion of those services) arrange to retain any *commission* which exceeds the maximum amount or rate disclosed without first providing further appropriate inducements information or *menu* and obtaining the *client's* prior informed consent to the proposed alteration in a *durable medium*.
- (2) (a) Paragraph (1) does not apply if, in relation to a *life policy* or a *pension contract*:
- (i) the maximum amounts or rates already disclosed to the *client* only apply to products of the example term or age of *client* given in the *menu* or *payment information* or to products with shorter terms; and
- (ii) the *firm* arranges a product for a term longer than the example term (or longer than the term deemed for the example age given) and the increase in the *commission* which the *firm* arranges to retain over the maximum already disclosed is not more than an amount that is directly proportional to the increase in the duration of the term of the product (or to the term deemed from the age of *client*).

- (b) If requested by a *client*, a *firm* should explain the basis of the higher maximum *commission* or *fees* charged in accordance with (1).

Telephone sales

- 6.3.19 G In cases where *firms* make initial contact with a *client* on the telephone a *firm* may, in addition, have to take into account and comply with the requirements in this sourcebook applicable to the conclusion of distance contracts (see *COBS* 5).
- 6.3.20 G (1) In accordance with the *rule* on information disclosure before providing services (*COBS* 2.2.1R), if a *firm's* initial contact with a *retail client* with a view to providing a *personal recommendation* on *packaged products* is by telephone then the following information should be provided before proceeding further:
 - (a) the name of the *firm* and, if the call is initiated by or on behalf of a *firm*, the commercial purpose of the call;
 - (b) whether the *firm* offers *packaged product* from the whole market or from a limited number of *companies* or from a single *company* or single group of *companies*;
 - (c) whether the *firm* will provide the *client* with a *personal recommendation* on *packaged products*;
 - (d) that the *client* can request a copy of the appropriate *range of packaged products*;
 - (e) whether the *firm* offers a *fee*-based service, a *commission*-based service, a service based on a combination of *fee* and *commission*, or a combination of these services, and the consequences for the *client* of proceeding with each type of service; and
 - (f) that the information given under (a) to (e) will subsequently be confirmed in writing.
- (2) If a *firm's* initial contact with a *retail client* is by telephone in circumstances in which the *firm* would otherwise provide an *initial disclosure document*, a *menu* or both, it should consider sending the *client* the *document* as soon as is reasonably practicable following the conclusion of the call.

Group Personal Pensions

- 6.3.21 R A *firm* must take reasonable steps to ensure that its *representatives* when making contact with an employee with a view to giving a *personal recommendation* on his employer's *group personal pension scheme* or *stakeholder pension scheme*, inform the employee:

- (1) that the *firm* will be providing a *personal recommendation* on *group personal pension schemes* and/or *stakeholder pension schemes* provided by the employer;
- (2) whether the employee will be provided with a *personal recommendation* that is restricted to the *group personal pension scheme* or *stakeholder pension scheme* provided by the employer or the recommendation will also cover other products;
- (3) the amount and nature of any payments that the employee will have to pay, directly or indirectly, for the *personal recommendation*.

6.3.22 G The payments that the employee would have to pay could be:

- (1) *fees*;
- (2) *commission*;
- (3) *commission equivalent*;
- (4) a combination of the above.

6.4 Disclosure of charges, remuneration and commission

Application

6.4.1 R This section applies to a *firm* carrying on *designated investment business* with a *retail client*.

6.4.2 G Under the territorial application *rules* in *COBS 1*, the *rules* in this section apply to:

- (1) a *UK firm's* business carried on from an establishment in an *EEA State* other than the *United Kingdom* for a *retail client* in the *United Kingdom* unless, if the office from which the activity is carried on were a separate *person*, the activity:
 - (a) would fall within the overseas *persons* exclusion in article 72 of the *Regulated Activities Order*; or
 - (b) would not be regarded as carried on in the *United Kingdom*.
- (2) a *firm's* business carried on from an establishment in the *United Kingdom* carried on for a *client* in an other *EEA state*.

Disclosure of commission (or equivalent) for packaged products

- 6.4.3 R (1) If a *firm* sells, *personally recommends* or *arranges* the sale of a *packaged product* to a *retail client*, and subsequently if the *retail client* requests it, the *firm* must disclose to the *client* in cash terms:
- (a) any *commission* receivable by it or any of its *associates* in connection with the transaction;
 - (b) if the *firm* is also the *product provider*, any *commission* or *commission equivalent* payable in connection with the transaction; and
 - (c) if the *firm* or any of its *associates* is in the same *immediate group* as the *product provider*, any *commission equivalent* in connection with the transaction.
- (2) Disclosure "in cash terms" in relation to *commission* does not include the value of any indirect benefits listed in the table at COBS 2.3.15G.
- (3) In determining the amount to be disclosed as *commission equivalent*, a *firm* must put a proper value on the cash payments, benefits and services provided to its *representatives* in connection with the transaction.
- (4) This *rule* does not apply if:
- (a) the *firm* is acting as an *investment manager*; or
 - (b) the *retail client* is not present in the *EEA* at the time of the transaction; or
 - (c) the *firm* provides the *client* with a *key features document* or a *simplified prospectus*, in accordance with COBS 14, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.
- (5) If the terms of a *packaged product* are varied in a way that results in a material increase in *commission* or *commission equivalent*, a *firm* must disclose to a *retail client* in writing any consequent increase in *commission* or *equivalent* receivable by it in relation to that transaction.
- 6.4.4 G Where a *firm* is required to disclose the value of *commission equivalent*, the value will be at least as high as the amount of any *commission*.
- 6.4.5 R (1) A *firm* must make the disclosure required by the *rule* on disclosure of *commission* or *equivalent* (COBS 6.4.3R) as close as practicable to the time that it sells, *personally recommends* or *arranges* the sale of a *packaged product*.

- (2) The *firm* must make the disclosure:
 - (a) in a *durable medium*; or
 - (b) when a *retail client* does not make a written application to enter into a transaction, orally. In these circumstances, the *firm* must give written confirmation as soon as possible after the date of the transaction, and in any event within five *business days*.

- 6.4.6 E (1) When determining the value of cash payments, benefits and services under the *rule* on disclosure of *commission equivalent* (COBS 6.4.3R), a *firm* should follow the provisions of COBS 6 Annex 6E.
- (2) Compliance with this *evidential provision* may be relied on as tending to establish compliance with COBS 6.4.3R; and
- (3) Contravention of this *evidential provision* may be relied on as tending to establish contravention of COBS 6.4.3R.

Guidance on disclosure requirements for packaged products.

- 6.4.7 R A *firm* must not enter into an arrangement to pay *commission* other than to the *firm* responsible for a sale, unless:
 - (1) the *firm* responsible for the sale has passed on its right to receive the *commission* to the recipient; or
 - (2) another *firm* has given a *personal recommendation* to the same *retail client* after the sale; or
 - (3) the *commission* is paid following the sale of a *packaged product* by the *firm* in response to a *financial promotion* communicated by that *firm* to a *client* of the recipient *firm*; or
 - (4) the arrangement is with a *firm* in the same *immediate group*.
- 6.4.8 G A disclosure made under this section should indicate the timing of any payment. For example, if a *firm* exchanges its right to future *commission* payments for a lump sum, whether by way of a loan or other commercial arrangement, it should disclose the amount of *commission* receivable by it that has been exchanged for the lump sum.
- 6.4.9 G The *rules* in this section build on the disclosure of fees, commissions and non-monetary benefits made under the *rule* on inducements (COBS 2.3.1R). However the *rules* in this section do not require disclosures before the *firm* makes a *personal recommendation*.
- 6.4.10 G If the precise rate or value of *commission* or *equivalent* is not known in advance, the *firm* should estimate the rate likely to apply to the

representative in respect of the transaction.

6.4.11 G

Commission or equivalent disclosure statements: content and wording	
A <i>firm</i> should consider including the following in its written statement of <i>commission</i> :	
(1)	Amounts or values of <i>commission</i> rounded as appropriate to help the <i>client</i> understand the document (for example, large amounts might be rounded to three significant figures).
(2)	The names of the <i>firms</i> involved in paying and receiving <i>commission</i> or <i>commission equivalent</i> .
(3)	A plain language description of whether remuneration takes the form of <i>commission</i> or <i>commission equivalent</i> . <i>Commission equivalent</i> could, for example, be described as "remuneration and services received from XYZ Ltd".
(4)	The timing of payments and period over which they are paid.
(5)	For payments relating to the <i>client's</i> fund, examples of how much money might be taken, such as:
(a)	where the <i>commission</i> or <i>equivalent</i> is on an increasing basis, the amount to be taken in the first and tenth year in which it is paid; or
(b)	where the <i>commission</i> or <i>equivalent</i> is a percentage of the fund, the amount that would be taken if the fund was worth a certain value and the amount that would be taken if the fund was worth twice that value.

COBS 6 Annex 1G: Initial disclosure document described in COBS 6.3.13G (1)

1. Firms should omit the notes and square brackets which appear in the following specimen.



about our services [Note 1]



[Note 2]]

[Note 3]
[123 Any Street
Some Town
ST21 7QB]

1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering taking advice on certain financial products. Use this information to decide if our services are right for you.

2. Whose products do we offer? [Note 4] [Note 7]

- We offer products from the whole market. [Note 5] [We offer our own product(s); you can ask us for a list but our recommendation will be made following an analysis of the whole market.] [Note 6]

- We [can] [Note 8] only offer products from a limited number of companies. Ask us for a list of the companies and products we offer. [Note 11] [These include our own product(s) but our recommendation will be made following an analysis of our entire range of products.] [Note 9]
Ask us for a list of the companies and products we offer. [Note 11]

- We [can] [Note 8] only offer [a] product[s] from [a single group of companies] [name of single company]. [Note 10(1)] [Note 12]
[or] [Note 10(2)]
 We only offer our own products.
Ask us for a list of the companies whose products we offer. [Note 11]

3. Which service will we provide you with? [Note 4]

- We will advise and make a recommendation for you after we have assessed your needs.
- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.
- We will provide basic advice on a limited range of stakeholder products and in order to do this we will ask some questions about your income, savings and other circumstances but we will not:
- conduct a full assessment of your needs;
 - offer advice on whether a non-stakeholder product may be more suitable.
- [Note 5]

4. What will you have to pay us for our services?

- Before we provide you with advice, we will give you our keyfacts guide 'about the cost of our services'. [Note 13]
- We will tell you how we get paid, and the amount, before we carry out any business for you.

5. Who regulates us? [Note 12]

[XYZ Financial Services] [123 Any Street, Some Town, ST21 7QB] [Note 15] [Note 16] is authorised and regulated by the Financial Services Authority. Our FSA Register number is []. [Note 17]

Our permitted business is []. [Note 18]

[or] [Note 19]

[Name of *appointed representative*] [Notes 2][Note 3] is an appointed representative of [name of *firm*] [address of *firm*] [Note 15] [Note 16] which is authorised and regulated by the Financial Services Authority. [Name of *firm's*] FSA Register number is [].

[Name of *firm's*] permitted business is [] [Note 18]

You can check this on the FSA's Register by visiting the FSA's website www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234.

6. Loans and ownership [Note 20]

[B&C Investments plc owns 20% of our share capital.]

[London Union plc provides us with loan finance of £250,000 per year.]

[XYZ Financial Services (or we) have 20% of the voting rights in Royal Edinburgh.]
[Note 20][Note 21]Note 22][Note 23]

7. What to do if you have a complaint [Note 14]

If you wish to register a complaint, please contact us:

...in writing Write to [XYZ Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234]. [Note 24]

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [Note 25]

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 12] [Note 26] [Note 27]

<p>We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.</p>
--

1.	<i>Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.</i>
2.	
3.	<i>Further information about compensation scheme arrangements is available from the FSCS.</i>
4.	

The following notes do not form part of the *initial disclosure document*.

Note 1 – permission to use the keyfacts logo: the *Financial Services Authority* has developed a common keyfacts logo to be used on significant pieces of information directed to *clients*. The keyfacts logo and the text 'about our services' may only be used and positioned as shown in the *initial disclosure document* (see *COBS 6.3.4R*). The logo may be re-sized and re-coloured. It may only be used if it is reasonably prominent and its proportions are not distorted. A specimen of the keyfacts logo can be obtained from the *FSA* website http://www.fsa.gov.uk/pubs/other/keyfacts_logo.

Note 2 – insert the *firm's* or *appointed representative's* name (either the name under which it is *authorised* or the name under which it trades). A corporate logo or logos may be included. If an individual who is employed or engaged by an *appointed representative* provides the information, the individual should not put his or her own name on the *initial disclosure document*.

Note 3 – insert the head office or if more appropriate the principal place of business from which the *firm* or *appointed representative* expects to conduct business (this can include a *branch*) with *clients*. (An *appointed representative* should include its own name and address rather than those of the *authorised firm*)

Section 2: Whose products do we offer?

Note 4 – The *firm* should select, for example by ticking, one box which is appropriate for the service which it expects to provide to the *clients*. This needs to be done only in relation to the service it is offering to a particular *client*.

Note 5 – if a *firm* indicates that it will be providing *basic advice* on *stakeholder products* then the first box in section 2 should not be ticked as the *firm* will not be doing so on the basis of *personal recommendations* from the whole market.

Note 6 – a *firm* should only include these words if it offers whole of market advice and it owns or operates products that fall within the relevant market (e.g. a *SIPP*).

Note 7 - if the *initial disclosure document* is provided by an *appointed representative*, the service described should be that offered by the *appointed representative*.

Note 8 – insert “can” if the *firm's* range of products is determined by any contractual obligation. This does not apply where a *product provider, insurer, lender* or company is selling its own products.

Note 9 –a *firm* should only include these words if it offers limited range advice and it

owns or operates products that fall within the relevant range (e.g. a *SIPP*).

Note 10 – if the *firm* selects this box, it will be offering the products of one provider to the *client*. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. If the *firm* does not select this box, then the text should follow that set out in Note 12 below.

- (1) Insert the name of the provider. For example: "We can only offer products from [name of *product provider*]". If the provider has only one product, the *firm* should amend the text to the singular – for example: "We can only offer a pension from [name of lender]".
- (2) If the *firm* is a *product provider* offering only its own products, or is part of a *product provider* offering only the products sold under that part's trading name, it should use this alternative text.

Note 11 – this sentence is required only where a *firm* selects this service option. The list of products will be the range of *packaged products* that is appropriate having regard to the services that the *firm* is providing, or may provide, to the *client*. For services provided in relation to *non-investment insurance contracts*, this is the list required by *ICOB 4.2.14R*.

Note 12 – if the *firm* does not select this box, it should alter the wording to say "a single group of companies". For example: "We only offer the products from a single group of companies" should replace the text in the specimen *initial disclosure document*.

Section 4: What will you have to pay us for our services?

Note 13 – *firms* need not provide a *retail client* with an appropriate *menu* if they do not propose to give that *client* a *personal recommendation* on *packaged products*. Where a *firm* does not provide that *client* with a *menu* then it should tick the second box in section 4.

Section 5: Who regulates us?

Note 14 – the *firm* may omit this section for services relating to *packaged products* if the *firm* has, on first contact with the *client*, provided the *client* with its *client* agreement which contains that information including the *firm's permitted business*. If this section is omitted, the other sections of the *initial disclosure document* should be renumbered accordingly.

Note 15 – if the *firm's* address on the *FSA Register* differs from that given on the *initial disclosure document* under note 5, the address on the *FSA Register* should be given in this section. If the address is the same as that given under note 5 it should be repeated in this section.

Note 16 – where the *authorised firm* trades under a different name from that under which it is *authorised*, it should include the name under which it is *authorised* and listed in the *FSA Register*. It may also include its trading name(s) if it wishes.

Note 17 - an *incoming EEA firm* will need to modify this section if it chooses to use this *initial disclosure document* (see *GEN 4 Ann 1R(2)*).

Note 18 – insert a short, plain language description of the business for which the *firm* has a

permission which relates to the service it is providing.

Note 19 – where the information is provided by an *appointed representative*, the *appointed representative* should use this text instead. The *appointed representative* should give details of the *authorised firm(s)* that is its *principal(s)* for each type of service that it is providing to a particular *client*.

Section 6: Loans and ownership

Note 20 – omit this section where there are no relevant loan or ownership arrangements under the following notes. If this section is omitted the other sections of the *initial disclosure document* should be renumbered accordingly. Where the information is provided by an *appointed representative*, it should cover loans made to or by that *appointed representative*, or holdings in or held by that *appointed representative*, as appropriate.

Note 21 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of the *firm* which is held by a provider or *operator* of a *packaged product* or by the parent of the provider or *operator*.

Note 22 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of a provider or *operator* of a *packaged product* which is held by the *firm*.

Note 23 – insert, in the *firm's* own words, a short description of any *credit* provided to the *firm* by a *product provider* (other than *commission* due to the *firm* in accordance with an indemnity claw-back arrangement) or by any *undertaking* in the *immediate group* of the *product provider* where the amount of the *credit* exceeds 10 per cent of the share and loan capital of the *firm*.

Section 7: What to do if you have a complaint

Note 24 - if different to the address in note 5, give the address and telephone number which is to be used by *client* wishing to complain.

Note 25 – if the *firm* is carrying on an activity from an establishment which is outside the *United Kingdom* it should make clear that the *Financial Ombudsman Service* will not be available. The *firm* may refer to any similar complaints scheme that may be applicable.

Section 8: Are we covered by the Financial Services Compensation Scheme (FSCS)?

Note 26 – when an *incoming EEA firm* provides the *combined initial disclosure document*, it should modify this section as appropriate.

Note 27 - when a *firm* which is not a *participant firm* provides the *combined initial disclosure document*, it should answer this question 'No' and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained.

COBS 6 Annex 2: Combined initial disclosure document described in COBS 6.3, ICOB 4.2.7R, MCOB 4.4.1R(1) and MCOB 4.10.2R(1)

This specimen covers services in relation to *packaged products, non-investment insurance contracts and home finance transactions (including equity release transactions)*.
If the *firm* is not providing services in relation to all products, the parts of the *combined initial disclosure document* that are not relevant should be omitted.

Firms should omit the notes and square brackets that appear in the following *combined initial disclosure document*. The completed *combined initial disclosure document* should contain the keyfacts logo, headings and text in the order shown and in accordance with the notes. Subject to this, a *firm* may use its own house style and brand.

  Financial Services [Note 2]	about our services [Note 1]	[Note 3] [123 Any Street Some Town ST21 7QB]
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The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering taking advice on certain financial products. Use this information to decide if our services are right for you.

2 Whose products do we offer? [Note 4][Note 6]

Investment

- [We offer products from the whole market.] [Note 5] [We offer our own product(s); you can ask us for a list, but our recommendation will be made following an analysis of the whole market.] [Note 8]
- We [can] [Note 7] only offer products from a limited number of companies. [These include our own product(s) but our recommendation will be made following an analysis of our entire range of products.] [Note 9]

Ask us for a list of the companies whose products we offer. [Note 15]

- We [can] **[Note 7]** only offer [a] product[s] from [a single group of companies] [name of single company]. **[Note 11(1)] [Note 16]**

[or] **[Note 11(2)]**

We only offer our own products.

Ask us for a list of the companies and products we offer. **[Note 15]**

Insurance

- We offer products from a range of insurers [for] [list the types of *non-investment insurance contracts*].

- We [can] **[Note 7]** only offer products from a limited number of insurers [for] [list the types of *non-investment insurance contracts*].

Ask us for a list of the insurers we offer insurance from. **[Note 15]**

- We [can] **[Note 7]** only offer [a] product[s] from [a single insurer] [name of single *insurance undertaking*] [for] [list the types of *non-investment insurance contracts*]. **[Note 10] [Note 11(1)] [Note 16]**

[or] **[Note 11(2)]**

We only offer our own products for [list the types of *non-investment insurance contracts*].

Home Finance Products [Note 13]

[Compliance with Islamic law [Note 17]

Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).]

[1] [Lifetime] [Mortgages] [Equity Release Products] [and home reversion schemes] [Note 13]

- We offer [lifetime] [mortgages] [home reversion plans] [equity release products] from the whole market.

- We [can] **[Note 7]** only offer [lifetime] [mortgages] [home reversion plans] [equity release products] from a limited number of [lenders / companies].

Ask us for a list of the [lenders / companies] we offer [lifetime] [mortgages] [home reversion plans] [equity release products] from. **[Note 14]**

We [can] **[Note 7]** only offer [a limited range of the] [a] [lifetime] [mortgage] [s] [home reversion plan] [s] [equity release products] from [a single lender / company] [name of single lender / company]. **[Note 11(1) and (3)][Note 16]**

[or]

We only offer our own [lifetime] [mortgages] [home reversions plan] [equity release products]. **[Note 11(2)]**

We do not offer [lifetime mortgages] [home reversion plans]. **[Note 12]**

[2] [Islamic Home Purchase Plans] [Note 18] [Note 13]

We offer Islamic home purchase plans from the whole market.

We [can] **[Note 7]** only offer Islamic home purchase plans from a limited number of providers.

Ask us for a list of the providers we offer Islamic home purchase plans from. **[Note 14]**

We [can] **[Note 7]** only offer [a limited range of the] [a] Islamic home purchase plan [s] from [a single provider] [name of single provider]. **[Note 11(1) and (3)][Note 16]**
[or]

We only offer our own Islamic home purchase plans. **[Note 11(2)]**

3 Which service will we provide you with? [Note 4]

Investment

We will advise and make a recommendation for you after we have assessed your needs.

You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

We will provide basic advice on a limited range of stakeholder products and in order to do this we will ask some questions about your income, savings and other circumstances but we will not:

- conduct a full assessment of your needs;
 - offer advice on whether a non-stakeholder product may be more suitable
- [Note 5]**

Insurance

We will advise and make a recommendation for you after we have assessed your needs [for] [list the types of *non-investment insurance contracts*].

- You will not receive advice or a recommendation from us [for] [list the types of *non-investment insurance contracts*]. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

[Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Note 13]

- We will advise and make a recommendation for you on [lifetime mortgages] [home reversions] [equity release products] after we have assessed your needs.
- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of [lifetime mortgages] [home reversions] [equity release products] that we will provide details on. You will then need to make your own choice about how to proceed.

[2] [Islamic Home Purchase Plans] [Note 13]

- We will advise and make a recommendation for you after we have assessed your needs.
- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

4 What will you have to pay us for our services?

Investment

- Before we provide you with advice, we will give you our keyfacts guide 'about the cost of our services'. **[Note 19]**
- We will tell you how we get paid, and the amount, before we carry out any business for you.

Insurance [Note 20]

- A fee [of £ []] [for] [list the types of services provided for *non-investment insurance contracts*].
- No fee [for] [list the types of services provided for *non-investment insurance contracts*].

You will receive a quotation which will tell you about any other fees relating to any particular insurance policy.

[Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Note 13]

- No fee. [We will be paid by commission from the [lender/company that buys your home].] **[Note 21]**
- A fee of £[] payable at the outset and £[] payable when you apply for a [lifetime] [mortgage] [home reversion plan] [equity release product]. [We will also be paid commission from the [lender/company that buys your home.]]. **[Note 21] [Note 22]**

You will receive a key features illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13]

Refund of fees [Note 20] [Note 13]

If we charge you a fee, and your [lifetime] [mortgage] [home reversion plan] does not go ahead, you will receive: [Note 23]

- A full refund [if the [lender/company] rejects your application]. [Note 24]
- A refund of £ [] [if your application falls through]. [Note 24] [Note 25]
- No refund [if you decide not to proceed]. [Note 24]
- [2] [Islamic Home Purchase Plans] [Note 13]
- No fee. [We will be paid by commission from the provider. [Note 21]
- A fee of £[] payable at the outset and £[] payable when you apply for an Islamic home purchase plan. [We will also be paid commission from the provider]. [Note 17] [Note 19]

Refund of fees [Note 20]

If we charge you a fee, and your Islamic home purchase plan does not go ahead, you will receive: [Note 20]

- A full refund [if the provider] rejects your application]. [Note 24]
- A refund of £ [] [if your application falls through]. [Note 24] [Note 25]
- No refund [if you decide not to proceed]. [Note 24]

5 Who regulates us? [Note 27]

[XYZ Financial Services] [123 Any Street, Some Town, ST21 7QB] [Note 28] [Note 29] is authorised and regulated by the Financial Services Authority. Our FSA Register number is []. [Note 30]

Our permitted business is []. [Note 31]

[or] [Note 32]

[Name of *appointed representative*] [Note 2] is an appointed representative of [name of *firm*] [address of *firm*] [Note 28] [Note 29] which is authorised and regulated by the Financial Services Authority. [Name of *firm's*] FSA Register number is [].

[Name of *firm's*] permitted business is [] [Note 31]

You can check this on the FSA's Register by visiting the FSA's website www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234.

6 Loans and ownership [Note 33]

[B&C Investments plc owns 20% of our share capital.]

[London Union plc provides us with loan finance of £250,000 per year.]

[XYZ Financial Services (or we) have 20% of the voting rights in Royal Edinburgh.]
[Note 33][Note 34][Note 35][Note 36][Note 37][Note 38]

7 What to do if you have a complaint [Note 27]

If you wish to register a complaint, please contact us:

...in writing Write to [XYZ Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234]. [Note 39]

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [Note 40] [Note 42]

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 27] [Note 43] [Note 44]

We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Investment

Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.

[question: why are these sections blank?]

Insurance

Insurance advising and arranging is covered for 100% of the first £2,000 and 90% of the remainder of the claim, without any upper limit.

[or] [Note 45] [Note 46]

For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit.

[Mortgages] [and] [and Home Purchase Plans] [Equity Release Products] [Note 13]
[Mortgage], [and] [Home purchase] [and] [Equity release] advising and arranging is covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.

Further information about compensation scheme arrangements is available from the FSCS.

[Note 47] Message from the Financial Services Authority

Think carefully about this information before deciding whether you want to go ahead.

If you are at all unsure about which equity release product is right for you, you should ask

your adviser to make a recommendation.

[Note 48] Think carefully about the product and services you need. [We can only offer services in relation to Islamic home purchase plans and cannot provide advice on standard mortgages.] [If you want [information][or][advice] on standard mortgages, please ask.]

The following notes do not form part of the *combined initial disclosure document*.

Note 1 – permission to use the keyfacts logo: the *Financial Services Authority* has developed a common keyfacts logo to be used on significant pieces of information directed to *clients*. The keyfacts logo and the text 'about our services' may only be used and positioned as shown in the *combined initial disclosure document* (see *COBS 6.3.4R*). The logo may be re-sized and re-coloured. It may only be used if it is reasonably prominent and its proportions are not distorted. A specimen of the keyfacts logo can be obtained from the *FSA* website http://www.fsa.gov.uk/pubs/other/keyfacts_logo.

Note 2 – insert the *firm's* or *appointed representative's* name (either the name under which it is *authorised* or the name under which it trades). A corporate logo or logos may be included. If an individual who is employed or engaged by an *appointed representative* provides the information, the individual should not put his or her own name on the *combined initial disclosure document*.

Note 3 – insert the head office or if more appropriate the principal place of business from which the *firm* or *appointed representative* expects to conduct business (this can include a *branch*) with *clients*. (An *appointed representative* should not include the name and address of the *authorised firm* instead of its own.)

Section 2: Whose products do we offer? And Section 3: Which services will we provide you with?

Note 4 – A *firm* should describe the services that it expects to provide to, the particular *client*. For services in relation to:

- *packaged products* – the *firm* should select, for example by ticking, one box.
- *non-investment insurance contracts* – the *firm* should select more than one box if the scope of the service or the type of service it provides varies by type of contract (e.g. if it deals with a single *insurance undertaking* for motor insurance and a range of *insurance undertakings* for household insurance). If more than one box is selected, the *firm* should specify which box relates to which type of *non-investment insurance contract*, by adding text to the *combined initial disclosure document*.
- *equity release transactions* – the *firm* should select a maximum of two boxes within this section. *Firms* should not omit the boxes not selected (but see Note 17).

Note 5 – if a *firm* indicates that it will give *basic advice* then the first box in section 2 should not be ticked as the *firm* will not be doing so on the basis of *personal recommendations* from the whole market.

Note 6 – if the *combined initial disclosure document* is provided by an *appointed representative*, the service described should be that offered by the *appointed representative*, in accordance with *ICOB 4.2.8R* Note 1(e) and *MCOB 4.3.10R*.

Note 7 – insert “can” if the *firm’s* range of products is determined by any contractual obligation. This does not apply where a *product provider, insurer, lender, home purchase provider* or *home reversion provider* is selling its own products.

Note 8 – a *firm* should only include these words if it offers whole of market *personal recommendations* and it owns or operates products that fall within the relevant market (e.g. a *SIPP*).

Note 9 – a *firm* should only include these words if it offers limited range *personal recommendations* and it owns or operates products that fall within the relevant range (e.g. a *SIPP*).

Note 10 – if the *insurance intermediary* deals with a different *insurance undertaking* for different types of *non-investment insurance contracts*, it should identify all the *insurance undertakings* and specify the type of contract to which they relate on the *combined initial disclosure document*. This only needs to be done in relation to the service it is offering a particular *client*. For example, “we can only offer products from ABC Insurance for motor insurance and XYZ Insurance for household insurance”.

Note 11 – if the *firm* selects this box, it will be offering the products of one provider for a particular product type. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. In the case of *non-investment insurance contracts*, where the *firm* is providing a service in relation to different types of insurance, this box covers the situation where it is offering a particular type of insurance from a single *insurance undertaking*.

- (1) Insert the name of the provider, namely the *product provider* for *packaged products*, the *insurance undertaking(s)* for *non-investment insurance contracts*, the *lender* for *regulated mortgage contracts* and *regulated lifetime mortgage contracts* and the *home reversion provider* for *home reversion plans*. For example: "We can only offer products from [name of *product provider*]". For *non-investment insurance contracts* the type of insurance offered should also be included. For example: "We only offer XYZ's household insurance and ABC's motor insurance." If the provider has only one product, the *firm* should amend the text to the singular – for example: "We can only offer a mortgage from [name of *lender*]". If the *firm* does not offer all of the *home finance transactions* generally available from that provider, it should insert the words "a limited range of" as shown in the specimen.
- (2) If the *firm* is a *product provider* offering only its own products, or is part of a *product provider* offering only the products sold under that part’s trading name, it should use this alternative text.
- (3) If the *firm* offers *home reversion plans* from only one *reversion provider*, and *lifetime mortgages* from only one *lender*, which is different from the *reversion provider*, then the *firm* should identify the *lender* and the *reversion provider* and specify the type of *equity release transaction* to which they relate. For example, "We can only offer lifetime mortgages from ABC Mortgages Ltd and home reversion plans from XYZ Reversions Ltd."

Note 12 – if the *firm* does not give *personal recommendations* advise or give personalised information on both types of *equity release transactions*, then it should indicate to the *client* the sector that the *firm* does not cover. However, if the *firm's* scope of service does not include *equity*

release transactions, the last box ('We do not offer [lifetime mortgages] [home reversion plans]'), should be omitted.

Note 13 – in describing the services and products provided, *firms* should omit the text in brackets that do not apply and ensure that they describe accurately their activities with respect of the services and products that they offer, as follows:

(1) Headings and sub-headings:

- a. If the *firm* offers both *regulated mortgage contracts* and *home purchase plans*, it should include the heading "Home Finance Products" in the *combined initial disclosure document* and describe the *regulated mortgage contracts* and *home purchase plans* that it offers under two separate sub-headings. The sub-headings ("Mortgages" and "Home Purchase Plans") should be numbered accordingly. If the *firm* only offers one of these two products, then the heading "Home Finance Products" should be omitted and the heading will read "Mortgages" or "Home Purchase Plans", as appropriate.
- b. If the *firm* offers *equity release transactions*, then the heading "Home Finance Products" should be omitted and the heading will read "Equity Release Products" (even if the *firm* offers *equity release transactions* from only one sector).

(2) Describing the products:

- a. If a *firm* gives *personal recommendations* or gives personalised information on lifetime mortgages, it should change "mortgage" to "lifetime mortgage"
- b. If a *firm* gives *personal recommendations* or gives personalised information on home reversion plans, it should use the text in brackets relating to home reversion plans.
- c. If the *firm* gives *personal recommendations* or gives personalised information on products from both equity release market sectors, then it should use the term 'equity release products' when referring to them collectively.

(3) Describing the provider: If a *firm* gives *personal recommendations* or gives personalised information on *home purchase plans* or *home reversion plans*, it should change "mortgage" to "product" and "lender" to "company" or "provider", as appropriate.

Note 14 – for services provided in relation to *home finance transactions*, this sentence is required only where a *firm* selects this service option. It may also be omitted if a *firm* chooses to list all of the *lenders*, *home purchase providers* and *home reversion providers* it offers *home finance transactions* from in the previous line, so long as the *firm* offers all of the products generally available from each.

Note 15 – this sentence is required only where a *firm* selects this service option. For services provided in relation to *packaged products*, the list of products will be the range of *packaged products* that is appropriate having regard to the services that the *firm* is providing, or may provide, to the *client*. For services provided in relation to *non-investment insurance contracts*, this is the list required by *ICOB* 4.2.14R.

Note 16 – if the *firm* does not select this box, it should alter the wording to say "a single group of companies" for *packaged products*, "a single insurer" for *non-investment insurance contracts*, "a single lender" for *regulated mortgage contracts* or *lifetime mortgages* and "a

single company" (or "a single provider") for *home purchase plans* and *home reversion plans*. For example: "We only offer the products from a single group of companies" should replace the text in the specimen *combined initial disclosure document*.

Section 2: Subsection on 'Compliance with Islamic law' or other beliefs

Note 17 – This subsection is optional unless the *firm* holds itself, its *regulated mortgage contract* or *home purchase plan* products or services out as compliant with Islamic law in the *combined initial disclosure document*. If a *firm* includes this section it should describe it as Section 2 and renumber subsequent sections accordingly.

A *firm* that wishes to hold itself, its *regulated mortgage contract* or *home purchase plan* products or services out as compliant with religious or philosophical beliefs other than Islamic law in the *combined initial disclosure document* may also use the subsection in accordance with this note and modify the wording in the section to the extent appropriate.

Note 18 – A *firm* that carries on *home purchase activities* may omit the word "Islamic" from "Islamic home purchase plan(s)" if one or more *home purchase plans* within its scope of service is not held out as compliant with Islamic law. If "Islamic" is omitted, it should be omitted consistently throughout the document. However, a *firm* may omit the word "Islamic" in sections 5 and 8 without having to omit it throughout the document. A *firm* that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law in the *Initial Disclosure Document* may make appropriate amendments to references to "Islamic" and "Islamic law".

Section 4: What will you have to pay us for our services?

Note 19 – *firms* may provide a *retail client* with a *menu* if they propose to give that *client* *personal recommendations* on *packaged products*. Where a *firm* does not provide that *client* with a *menu* because the *firm* does not intend to give him a *personal recommendation* on *packaged products*, then it should tick the second box in section 4.

Note 20 – if the *client* will be charged a *fee* for *insurance mediation activities* in connection with *non-investment insurance contracts*, insert a plain language description of what each *fee* is for and when each *fee* is payable. This should include any *fees* for *advising on* or *arranging a non-investment insurance contract* and any *fees* over the life of the contract, for example, for mid-term adjustments. If a *firm* does not charge a *fee* the text in the first box should be abbreviated to 'A fee'. If the *firm* is offering more than one type of service in connection with *non-investment insurance contracts*, the *firm* may aggregate the *fees* over all the services provided, and (if that is the case) identify the services for which there is no *fee*.

Note 21 – if the *firm* receives commission instead of, or in addition to, *fees* from the *client* for services relating to *home finance transactions*, it should insert a plain language explanation of this (see specimen for a plain language example). If the *firm* will pay over to the *client* any commission the *firm* receives, it may refer to that fact here.

Note 22 – insert a plain language description of when any *fees* are payable for services relating to *home finance transactions*. This description could include, for example, a cash amount, a percentage of the loan or reversion amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount should be included. If a *firm* offers more than one pricing option in relation to *equity release transactions*, it should specify the pricing policy for each of them. For example, "A fee of £100 payable at the outset and £120 when you apply for a lifetime mortgage and £80 when you apply for a home reversion plan". If a *firm* does not charge a *fee*, the text for the second box should

be abbreviated to 'A fee'.

Note 23 – omit this part of the *combined initial disclosure document* on 'Refund of fees' if the *firm* has indicated that there will be "No fee" for services in relation to *home finance transactions* or that any *fee* will be payable only if the product completes.

Note 24 – *firms* may select as many boxes as appropriate.

Note 25 – insert a short, plain language description of the circumstances in which the *fee* for services in relation to *home finance transactions* is refundable or not refundable as described. If the refund policy is different depending on the *equity release transaction* in question, the *firm* should specify the refund policy for each of them. For example, "A refund of £100 if your lifetime mortgage application falls through and a refund of £120 if your home reversion plan application falls through."

Note 26 – a *firm* may delete this line if it does not offer a partial refund for services in relation to *home finance transactions* in any circumstances.

Section 5: Who regulates us?

Note 27 – the *firm* may omit this section for services relating to *packaged products* if the *firm* has, on first contact with the *client*, provided the *client* with its *client agreement* which contains that information including the *firm's permitted business*. This section may be omitted for services relating to *non-investment insurance contracts* if the *firm* provides the information covered by this section where it is required by *ICOB 4.2.8R* to the *client* by some other means. This section may be omitted for services relating to *home finance transactions* in accordance with *MCOB 4.4.1R(3)*. If this section is omitted, the other sections of the *combined initial disclosure document* should be renumbered accordingly.

Note 28 – if the *firm's* address on the *FSA Register* differs from that given on the *combined initial disclosure document* under Note 5, the address on the *FSA Register* should be given in this section. If the address is the same as that given under Note 5 it should be repeated in this section.

Note 29 – where the *authorised firm* trades under a different name from that under which it is *authorised*, it should include the name under which it is *authorised* and listed in the *FSA Register*. It may also include its trading name(s) if it wishes.

Note 30 – an *incoming EEA firm* will need to modify this section if it chooses to use this *combined initial disclosure document* (see *GEN 4 Ann 1R(2)*).

Note 31 – insert a short, plain language description of the business for which the *firm* has a *permission* which relates to the service it is providing.

Note 32 – where the information is provided by an *appointed representative*, the *appointed representative* should use this text instead. The *appointed representative* should give details of the *authorised firm(s)* that is its *principal(s)* for each type of service that it is providing to a particular *client*.

Section 6: Loans and ownership

Note 33 – omit this section where there are no relevant loan or ownership arrangements under the following notes or if the *firm* is an *insurer* selling its own *non-investment insurance*

contracts. If this section is omitted the other sections of the *combined initial disclosure document* should be renumbered accordingly. If the *firm* is not providing services in relation to *packaged products*, the heading of this section should be changed to 'Ownership'. Where the information is provided by an appointed representative, it should cover loans made to or by that appointed representative or holdings in, or held by, that appointed representative as appropriate.

Notes 34, 35 and 36 apply only to a *firm* making a *personal recommendation, dealing in, or arranging* in relation to *packaged products*.

Note 34 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of the *firm* which is held by a provider or *operator* of a *packaged products* or by the parent of the provider or *operator*.

Note 35 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of a provider or *operator* of a *packaged products* which is held by the *firm*.

Note 36 – insert, in the *firm's* own words, a short description of any *credit* provided to the *firm* by a *product provider* (other than *commission* due to the *firm* in accordance with an indemnity claw-back arrangement) or by any *undertaking* in the *immediate group* of the *product provider* where the amount of the *credit* exceeds 10 per cent of the share and loan capital of the *firm*.

Notes 37 and 38 apply to an *insurance intermediary* that is not an *insurer* providing services in relation to *non-investment insurance contracts*.

Note 37 – insert, in the *insurance intermediary's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of the *insurance intermediary* which is held by an *insurance undertaking* or by the parent of an *insurance undertaking*.

Note 38 – insert, in the *insurance intermediary's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of an *insurance undertaking* which is held by the *insurance intermediary*.

Section 7: What to do if you have a complaint

Note 39 – if different to the address in Note 5, give the address and telephone number which is to be used by *clients* wishing to complain.

Note 40 – this text may be omitted for *non-investment insurance contracts* if the *insurance intermediary* is aware that a *commercial customer* would not be an *eligible complainant*.

Note 41 – if the *combined initial disclosure document* is provided by an *authorised professional firm* which is exclusively carrying on *non-mainstream regulated activities*, the *authorised professional firm* should delete this sentence and refer to the alternative complaints handling arrangements. It should also omit the information required under Note 14.

Note 42 – if the *firm* is carrying on an activity from an establishment which is outside the *United Kingdom* it should make clear that the *Financial Ombudsman Service* will not be available. The *firm* may refer to any similar complaints scheme that may be applicable.

Section 8: Are we covered by the Financial Services Compensation Scheme (FSCS)?

Note 43 – when an *incoming EEA firm* provides the *combined initial disclosure document*, it should modify this section as appropriate.

Note 44 – when a *firm* which is not a *participant firm* provides the *combined initial disclosure document*, it should answer this question 'No' and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained. It should also omit the information required under Note 14.

Note 45 – where the *insurance intermediary* provides a service in relation to a compulsory class of insurance, such as *employers' liability insurance*, it should use this alternative text.

Note 46 – where the *insurance intermediary* provides a service in relation to a contract which covers both a compulsory class of insurance and a class of insurance which is not compulsory, it should indicate the level of compensation that applies to each class.

Home finance products warning

Note 47 – This warning box should be added when the *firm* sells *lifetime mortgages contracts* or home reversion plans or both.

Note 48 – A *firm* should only include this paragraph if the services to which the *combined initial disclosure document* relates include *home purchase activities*. If the *firm* does not carry on *regulated mortgage activities*, it should include the second sentence and delete the third. If the *firm* carries on *regulated mortgage activities* as well as *home purchase activities* it should omit the second sentence and include the third.

COBS 6 Annex 3G (Menu described in COBS 6.3)

1. (1) This Annex contains a template for the *menu* for the purposes of COBS 6.3:
- (2) *Firms* should omit the notes and square brackets that appear in the following template. Except to the extent indicated in the notes set out at the end of this Annex, *firms* should use the text, format and type size shown in the templates. In particular, the templates should contain the 'keyfacts' logo, headings and prescribed text in the position and order shown and in accordance with the notes. Subject to this, a *firm* may use its own house style and brand.

about the cost of our services
[Note 2]



[Note 3] Last updated []

[ABC Financial Services plc, 123 Any Street, Some Town, ST21 7QB] [Note 4]

1. The Financial Services Authority (FSA)

The FSA is the independent regulator of financial services. This document is designed by the FSA to be given to consumers considering taking advice on certain financial products. You may use this information to compare value for money, to shop around and to decide which firm to use.

2. Our services [Note 5]

We offer an initial discussion (without charge) when we will describe our services more fully and explain the payment options. If you decide to go ahead, we will:

- gather and analyse personal information about you, your finances, your needs and objectives;
- recommend and discuss any action we think you should take and, with your agreement, arrange relevant investments for you.

3. What are your payment options? [Note 6a]

Not all firms charge for advice in the same way. We will discuss your payment options with you and answer any questions you have. We will not charge you anything until you have agreed how we are to be paid. **We have ticked the payment options we offer.**



Paying by fee. Whether you buy a product or not, you will pay us a fee for our advice and services. If we also receive commission from the product provider when you buy a product, we will pass on the full value of that commission to you in one or more ways. For example, we could reduce our fee; or reduce your product charges; or increase your investment amount; or refund the commission to you. [Note 6(b),(c),(d)]



Paying by commission (or product charges). If you buy a financial product, we will normally receive commission on the sale from the product provider. Although you pay nothing up front, that does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider's own costs and any commission. These charges reduce the amount left for investment. If you buy direct, the product charges could be the same as when buying through an adviser, or they could be higher or lower. We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier. [Note 6(e)]



Paying by a combination of commission and fee. In some circumstances, we also charge a fee on top of any commission we might receive. [Note 6(f)(g)]

4. How much might our services cost? [Note 7] [Note 8]

If you choose the fee option

We will agree the rate we will charge before beginning work. We will tell you if you have to pay VAT. [Note 9]
Our typical charges are: [Note 10]

Principal/Director/Partner	£150-200 per hour
Financial adviser	£100-150 per hour
Administration	£25 per hour

You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first. [Note 9]

If you choose the combination of commission and fee option [Note 11]

We will charge you a combination of fees and commission. The actual amounts will depend on the service provided to you, but will not exceed the total of the maximum fees set out above and the maximum commission set out in the tables below.

If you choose the commission option

Tables 1 and 2 show examples of the amounts of commission we could receive (or the equivalent we earn through product charges) and compare those amounts with the market average (see notes 1 & 2 at the end of this section 4).

The amounts vary according to: the type of product, the amount you invest, and (sometimes) how long you invest for, or your age when you start the product. We will confirm the actual amount to you before you buy a product.

Table 1 - Commission if you invest monthly [Notes 12-17]

Products	Example term or age	Comparison of costs		Example based on £100 per month
		Our maximum	Market average	
<i>This shows the maximum costs of our sales and advice for a monthly investment or premium of £100, ignoring any changes in fund value</i>				
Savings and investments				
Collective investments (eg unit trusts)	Any	[Note 18]	[Note 20]	[Note 21]
Endowments	10 year term	[Note 18]	[Note 20]	[Note 21]
Protection				
Whole of life assurance	Age 40	[Note 18]	[Note 20]	[Note 21]
Saving for retirement				
Personal and Stakeholder pensions	25 year term	[Note 18]	[Note 20]	[Note 21]
	10 year term	[Note 18]	[Note 20]	[Note 21]
Personal Pension Schemes				
Not all types of personal pension scheme are included in the information above about commissions. Instead only the more common types are included, and schemes such as SIPP are not. Before we start advising you, we will inform you of how much we could be paid if we do recommend one of these products to you. You can also ask us about commission we might receive on underlying investments we recommend you hold within a SIPP if not contained in the information above. [Note 19]				

Table 2 - Commission if you invest a lump sum [Notes 12-17]

Products	Example term or age	Comparison of costs		Example based on £10,000 lump sum
		Our maximum	Market average	<i>This shows the maximum costs of our sales and advice for a lump sum investment of £10,000 ignoring any changes in fund value</i>
Savings and investments				
Collective investments (eg unit trusts)	Any	[Note 18]	[Note 20]	[Note 21]
Investment bond	Any	[Note 18]	[Note 20]	[Note 21]
Saving for retirement				
Personal and Stakeholder pensions	Any	[Note 18]	[Note 20]	[Note 21]
At retirement				
Annuities	Any	[Note 18]	[Note 20]	[Note 21]
Income drawdown	Any	[Note 18]	[Note 20]	[Note 21]
Personal Pension Schemes				
Not all types of personal pension scheme are included in the information above about commissions. Instead only the more common types are included, and schemes such as SIPP are not. Before we start advising you, we will inform you of how much we could be paid if we do recommend one of these products to you. You can also ask us about commission we might receive on underlying investments we recommend you hold within a SIPP if not contained in the information above.				
[Note 19]				
At retirement				
Annuities	Any	[Note 18]	[Note 20]	[Note 21]
Income drawdown	Any	[Note 18]	[Note 20]	[Note 21]

Notes:

1. The market average figures are calculated by the FSA using actual data from a representative sample of regulated firms and are shown in a way that you may compare with our own maximum rates. The market average figures will be updated by the FSA from time to time based on new data.
2. Where a firm sells its own products it calculates its figures according to FSA guidelines. [Note 22]

5. Further information [Note 23]

If you need any more help or information

- ask your adviser; or
- visit www.fsa.gov.uk/consumer.

[Note 23]

[Note 3] Last updated []

The following Notes do not form part of the template.

Note 1 **Permission to use the keyfacts logo:** the *Financial Services Authority* has developed a common keyfacts logo to be used on significant pieces of information directed to *clients*. The keyfacts logo and the text 'about our services' may only be used and positioned as shown in the *initial disclosure document* (see COBS 6.3.4R). The logo may be re-sized and re-coloured. It may only be used if it is reasonably prominent

and its proportions are not distorted. A specimen of the keyfacts logo can be obtained from the FSA website http://www.fsa.gov.uk/pubs/other/keyfacts_logo.

Note 2 Insert the name of the *firm* or its *appointed representative* (which in either case may be its *authorised* name or its trading name). A corporate logo or logos may also be included, where illustrated, but should be of equal prominence to 'keyfacts' logo. Where an *appointed representative* is providing the *menu*, then the *appointed representative's* name should be inserted. An appointed representative may include its logo, but this should be in place of, and not in addition to, its principal's logo.

Note 3 Insert the date on which the *menu* was prepared or last amended. This date may be shown either at the top of the front page of the *menu* or at the end of the *menu* after Section 5.

Note 4 Insert the name and address of the head office or, if more appropriate, the principal place of business from where the *firm* or *appointed representative* expects to provide *personal recommendations* to *retail clients* on *packaged products*. The name and address of the *authorised firm* should not be included if the *menu* is to be given by an *appointed representative*, which should insert its own address

Section 2

Note 5 The text in Section 2 is not prescribed, but *firms* may adopt a form of the wording shown. *Firms* should describe the services they offer relating to *packaged products* in their own words, concisely, in plain language and within the space indicated in the template. This description should make clear that the initial discussion (not necessarily the initial meeting) about whether the *client* wishes to use any of the *firm's* services will be without charge. A *firm* may choose to start charging (if appropriate) for the remainder of any or meeting, but only after any discussion on the content of the *menu* has been concluded.

Section 3

Note 6

- a) A *firm* should select, by inserting a tick, the appropriate boxes which show the service that the *firm* expects to provide to the *client*. If the *menu* is provided by an *appointed representative*, the service selected should be that offered by the *appointed representative*.
- b) The "Paying by fee" option should be included in each *menu* even if the *firm* is not offering a purely *fee* based option - in which case, the box and prescribed text should be included, but without a tick.
- c) A *firm* which holds itself out as acting independently in the provision of *personal recommendations* on *packaged products* should, in accordance with COBS 6.2, offer a *retail client* the "Paying by fee" option.
- d) A *firm* which offers a "contingent" *fee* based option should modify the wording by the "Paying by fee" option to explain (clearly and in plain language) how the contingent *fee* arrangement will operate. A *firm* could use the following example description: "If you buy a financial product, you will pay us a fee for our advice and services. But if no sale is made, you will not have to pay us anything."
- e) The "Paying by commission (or product charges)" option should be included in each *menu* even if the *firm* is not offering this option - in which case, the box and the prescribed text should be included, but without a tick. In this option, reference to "commission" means *commission* and *commission equivalent*.

- f) A *firm* should only include the "Paying by a combination of commission and fee" option in the *menu* where this option is actually offered to the *client* to whom the *menu* is given.
- g) The text that accompanies the "Paying by a combination of commission and fee" option is not prescribed. However, a *firm* should insert a clear plain language description of how its maximum remuneration is calculated using both the *fee* and the *commission* information provided in Section 4 of the *menu*.

Section 4 – Information on headings and text to include

Note 7 In Section 4, if a *firm* offers more than one payment option to the *client* to whom the *menu* is given, then it should include the:

1. headings "If you choose the fee option", "If you choose the commission option" and "If you choose the combination of commission and fee option"; and
 2. accompanying text
- relating to each option offered.

Note 8 If a *firm* offers only one payment option to the *client* to whom the *menu* is given, then all three prescribed headings ("If you choose the fee option", "If you choose the commission option" and "If you choose the combination of commission and fee option") can be omitted, but the relevant text for the option offered should be included.

Section 4 – Information for firms offering payment by fees

Note 9 If a *menu* contains information relating to *fees*, then a *firm* should ensure that the following statements are included:

1. "We will agree the rate we will charge before beginning work. We will tell you if you have to pay VAT."
2. "You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first."

Note 10 The text for describing a *firm's fee* charging arrangements is not prescribed, but should be clear and in plain language. A *firm* should provide numerical statements of the amount or rate of its *fees* and these should be expressed in pounds sterling or another appropriate currency, where relevant. A *firm* may describe actual hourly rates where possible or typical hourly rates.

Examples of statements which *firms* may use are:

Hourly Rate

We will agree the rate we will charge before beginning work. Our typical charges are:
 Principal/Director/Partner £00-000 per hour
 Financial adviser £00-000 per hour
 Administration £00 per hour
 Your adviser will tell you if you have to pay VAT.

Lump Sum

We will agree what we will charge you before beginning work. Our typical charges are:

Individual financial review £00
 Your adviser will tell you if you have to pay VAT.

Percentage of funds under management

We will agree what we will charge you before beginning work. Our typical charges are:

Investment management agreement

0% per year of the value of the investments you ask us to manage

Your adviser will tell you if you have to pay VAT.

Section 4 – Information for firms offering payment by a combination of commission (or equivalent) and fees

Note 11 If a *menu* contains information relating to the combination of *commission* (or *equivalent*) and *fee* option, a *firm* should:

1. set out its maximum *fee* amount in the fee section of Section 4;
2. set out its maximum *commission* (or *equivalent*) amount in the commission section of Section 4; and
3. ensure that the maximum amount of *fee* and *commission* (or *equivalent*) does not exceed the total of both options.

The text for describing a *firm's* charging arrangements where a *firm* offers the combination of *commission* (or *equivalent*) and *fees* option is not prescribed, but a *firm* should describe correctly (clearly and in plain language) its usual way of charging a combination of *fee* and *commission*. *Firms* may use a form of the wording set out in the following examples:

1. Where we charge a combination of fees and commission, our maximum rates are set out in the fee information section above and the commission section below.
2. We charge a consultation fee of up to £x, and, if you buy a financial product, we will also retain commission within the amounts set out in the commission tables below.
3. We will charge you a combination of fees and commission. The actual amounts will depend on the service provided to you, but will not exceed the total of the maximum fees set out above and the maximum commission set out in the tables below.
4. We charge an annual fee as described in the fee information set out above. If we arrange for you to purchase a financial product, then we will also retain commission which will be within the maximum commission amounts set out in the tables below.

Section 4 – Information for firms offering payment by commission (or equivalent)

Note 12 If a *menu* contains information relating to *commission*, then a *firm* should set out information concerning *commission* (or *equivalent*) in the tabular format prescribed. The headings for Tables 1 and Table 2; the headings and sub-headings for each column; the product headings in each row of the first column; and the example term and age set out in the second column of each table are all prescribed and should not be amended. If the boxes entitled 'Personal and Stakeholder pensions' are included, the positioning and wording of those boxes is prescribed and should not be amended.

Note 13 Each *menu* should refer to the range of packaged products which the *firm* expects to be relevant for the particular *client* or group of *clients* to whom the *menu* is likely to be given. Where this stated range does not contain a product that is included in the templates, then a *firm* may delete the appropriate product row from the tables in its *menu*.

Note 14 The text and information contained in the commission section of Section 4 should be included if a *firm* reasonably expects to provide those services to a *retail client* receiving the *menu* in respect of any of the following product groups.

Regular contribution business

The following product groups relate to regular contribution investments (including annual and quarterly premium contracts) and include any non-contractual top-ups or increments (to existing regular contribution investments) which generate *commission* (or *equivalent*).

- a) Collective investments
Any *regulated collective investment scheme* or *investment trust savings scheme*.
- b) Endowments
A *life policy* that pays a sum of *money* on the survival of the life assured to a specific date or, if earlier, on death.
- c) Whole of life assurance
A *life policy* which, disregarding any benefit payable on surrender, secures a capital sum only on death or either on death or on disability, but does not include term assurance.
- d) Personal and stakeholder pensions
Any *personal pension scheme*, *FSAVC scheme* or *stakeholder pension scheme* (other than a *SIPP*, *personal pension product*, *personal pension deposit*, *group personal pension scheme* or *stakeholder pension scheme* arranged on a group basis for the employees of a particular employer). (See Note 18)

Lump sum business

The following product groups relate to single contribution business, including commission (or equivalent) generating, non-contractual, top-ups or increments to existing lump sum investments.

- a) Collective investments
Any *regulated collective investment scheme*.
- b) Investment bond
A single premium *whole of life assurance* policy or endowment policy.
- c) Personal and stakeholder pensions
Any *personal pension scheme*, *FSAVC scheme* or *stakeholder pension scheme* (other than a *SIPP*, *personal pension product*, *personal pension deposit*, *group personal pension scheme* or *stakeholder pension scheme* arranged on a group basis for the employees of a particular employer). (See Note 18)
- d) Annuities
A *pension annuity* or purchased life annuity.
- e) Income drawdown
A *pension contract* effected for the purpose of *income withdrawal* from a pension fund.

Note 15 A *firm* which conducts business with *retail clients* in relation to any *packaged products* not falling within any of the product groups for which maximum commission is disclosed on the *menu*, may provide a *client* with information about *commission* (or *equivalent*) relating to that business by way of a separate annex. For the purpose of the *rules*, any such information does not form part of a *firm's menu*.

Note 16 Having regard to the nature of the business which a *firm* reasonably expects to conduct with the *clients* to whom the *menu* will be provided, a *firm* should (i) present

information about *commission* receivable on regular monthly payments in accordance with Table 1; and (ii) present information about *commission* receivable on lump sums in accordance with Table 2. The information should be presented in the two separate but sequential Tables 1 and 2.

- Note 17** Where a *firm* reasonably expects not to conduct either regular contribution or lump sum business with the *clients* to whom the *menu* will be provided, it may exclude the relevant table so that its *menu* contains only the table relevant to the type of business it expects to conduct.
- Note 18** For each product group shown a *firm* should disclose the maximum amount or rate of *commission (or equivalent)* where applicable under *COBS 6.4* which it reasonably expects it would retain in respect of the sale of a *packaged product* falling within the product group. The maximum rate or amount should be ascertained in accordance with the procedure set out in *COBS 6 Annex 4G*.
- Note 19** Where a firm expects to advise on *SIPPs, personal pension products* or *personal pension deposits*, in addition to a product listed in Note 14, this box and prescribed wording should be included.
- Note 20** For each product group shown a *firm* should disclose the corresponding market average calculated and published by the FSA and in accordance with the procedure set out in *COBS 6 Annex 4G*.
- Note 21** For each product group illustrated a *firm* should include an example in accordance with *COBS 6 Annex 4G*.
- Note 22** The two notes shown at the end of Section 4 of the *menu* should be included as shown if the *menu* contains information relating to *commission*.

Section 5

- Note 23** A *firm* should not alter the text in Section 5.

COBS 6 Annex 4G

Identifying and describing the maximum rate of commission (or equivalent), the market average and the Example

1. A *firm* should state in each *menu* it issues:
 - (a) its maximum rate of *commission* (or *equivalent*) for each product group in the statement;
 - (b) the market average rate for each product group;
 - (c) an illustration in the example column of an amount of *commission* (or *equivalent*) calculated by reference to its maximum rate for each product group in the statement and the example contribution levels stated in the tables (ie eg £100 per month or £10,000 lump sum).

Maximum rate of commission (or equivalent)

2. The maximum rate of *commission* (or *equivalent*) specified by a *firm* should be the maximum amount that the firm decides to retain.
3. If the maximum *commission* (or *equivalent*) is not apparent from the rates supplied by a *product provider* then a *firm* should adopt the net present value comparison method set out below.
4. For any product group, the maximum rate of *commission* (or *equivalent*) should not be more than a *firm* could reasonably expect to receive from any *product provider*.

Identifying a maximum rate of commission – comparison of net present value

5. A *firm* should use the assumptions set out in paragraphs 8-12 below when calculating the maximum commission figures to be inserted into its *menu*. Where a *firm* uses a tool provided by the *FSA* for this express purpose (for example a calculator provided by the *FSA* on a cd-rom for the purpose of calculating the maximum commission figures), the calculations can be presumed to have used these assumptions.
6. The net present value for each *commission* (or *equivalent*) rate should be calculated as the sum of the discounted values of each *commission* (or *equivalent*) payment that the *firm* may retain for that *commission* (or *equivalent*) rate, using the assumptions set out in paragraphs 8-12 below.
7. For any product group, the *firm's* maximum rate of *commission* (or *equivalent*) is the *commission* (or *equivalent*) rate in that product group with the highest net present value.
8. A *firm* should use the assumptions outlined in Table 1 when calculating net present values.

COBS 6 Annex 4 G Table 1 Table of assumptions to be used in calculating net present values.

Product	a) Discount Rate	b) Net growth rate	c) Lapse rate (per annum)	d) Assumed Term	e) Withdrawal rate (per annum)
Regular premiums/contributions					
Collective investment scheme	Net growth rate + 3%	6%	6%	10 years	
Endowment	Net growth rate + 3%	6%	6%	Maturity	
Personal Pensions / SHP	Net growth rate + 3%	6%	12% for 5 years then 5%	Maturity	
Whole of Life	Net growth rate + 3%	6%	6%	37 years	
Single premiums/contributions					
Annuities	Net growth rate + 3%	6%	0%	16 years	
Bonds	Net growth rate + 3%	6%	2.5%	7 years	5%
Collective investment scheme	Net growth rate + 3%	6%	6%	7 years	
Personal Pensions / SHP	Net growth rate + 3%	6%	2.5%	10 years	
Income withdrawals	Net growth rate + 3%	6%	0%	10 years	6%

9. *Commission* (or *equivalent*) payments should be assumed to be payable as outlined in COBS 6 Annex 4G Table 2

COBS 6 Annex 4 G Table 2 – The timing of *commission* (or *equivalent*) payments

Type of commission (or equivalent payment)	When payable
Initial / indemnified commission	immediately at outset of the contract
Commission as a % of premiums	at the time of payment of the relevant monthly premium
Commission as a % of fund value	at the end of each policy month, immediately after any withdrawals and lapses, at a monthly rate of 1/12 th of the annual % of the fund value

10. Withdrawals should be assumed to occur monthly at a rate that is 1/12th of the assumed annual withdrawal rate.
11. Lapses should be assumed to occur monthly, at a rate that is 1/12th of the assumed annual lapse rate. In calculating the net present value, no commission should be assumed to be

payable on the proportion of policies that are assumed to have lapsed.

12. Mortality rates should be ignored.

Describing the maximum rate of commission (or equivalent)

13. Subject to paragraph 14, a *firm* should use each appropriate description in COB 6 Annex 4G Table 3 (ie one or more) to describe the maximum rates of *commission (or equivalent)* in its *menu*.

COBS 6 Annex 4 G Table 3

Type of commission (or equivalent)	Descriptions
Regular premium or contributions	<p>i. "X% of the first 12 month's payments"</p> <p>ii. "X % of each of the first n month's payments"</p> <p>iii. "Y% of all payments"</p> <p>iv. "Y% of all payments from month p"</p> <p>v. "Z% of your fund value each year from year q".</p>
Lump sums	<p>i. "X% of the amount you invest"</p> <p>ii. "Z% of your fund value each year from year q"</p>

14. A *firm* should adapt any of the descriptions prescribed by Table 3 so that its *menus* adequately describe the particular characteristics of a *firm's commission (or equivalent)* arrangements. For example, a *firm* can and should re-express the percentage figure, in the description taken from Table 3, in a "shape" (that is a description of the pattern of payments) that it considers to be typical of the way in which it retains *commission (or equivalent)*. This may differ from the shape in which the particular maximum rate of *commission (or equivalent)* is actually payable. Another example of the way in which a *firm* should adapt the descriptions in Table 3 is if the *commission* received by a *firm* is payable as a fixed cash amount per policy then alternative wording should be used by the *firm* to adequately describe the fixed nature of the payment in its description of the rate of commission.
15. A *firm* that uses more than one of the descriptions in COBS 6 Annex 4G Table 3 should make it clear that it has used more than one description (eg by inserting the word "plus" in between each description).
16. The maximum rate of *commission (or equivalent)* should be rounded to the nearest 0.1% unless the *commission (or equivalent)* is a multiple of 0.25% of a fund value in which case it should be shown rounded to the nearest 0.25%.

Identifying and describing the market average

17. The *FSA* will publish the net present value of market average rates on its website from time to time.
18. A *firm* should express the market average rate in the shape or pattern of payments which most closely corresponds to the number, frequency and nature of payments in the shape or

pattern of payments used to describe the firm's maximum *commission* (or *equivalent*).

19. A *firm* can use any suitable tool or method to re-express the market average in its *menus*, as long as that method uses the assumptions set out in 8 -12 above (for example a calculator contained on a cd-rom of the type referred to in paragraph 5).
20. The market average rate shown in the *menu* a re-expression of the published net present value of the market average using the assumptions set out in 8 – 12 above. Subject to any rounding in the final description, this re-expression should have the same net present value as the published market average.
21. A *firm* should describe the market average rate using the most appropriate description in the Descriptions column in Table 3.

The market average may be equivalently expressed by adopting the method set out in the worked example in *COBS 6 Annex 5G* below, used in conjunction with tables of net present value factors that will be made available by the *FSA*. These factors will be calculated using the assumptions set out above. Alternatively, the market average expression may be expressed using such other tools, systems or methods as the *FSA* may make available from time to time.

Changes in the market average

22. A *firm* should ensure that its *menus* are revised to take account of changes in the market average rates published by the *FSA* by not later than:
 - (a) 2 months from the date on which the *FSA* prescribes amended market average rates if the effect of the amendment is to reduce any of the averages for a relevant product group by 4% or more of the previous average; and
 - (b) in all other cases at such time as the *firm* has occasion to revise its *statements*.

The example

23. Subject to paragraph 25, a *firm* should use, in the example in its *menu*, the description in Table 4 that corresponds to description(s) of the maximum rate of the *commission* (or *equivalent*) that appears in its *menu*.

COBS 6 Annex 4 G Table 4

Type of <i>commission</i> (or <i>equivalent</i>)	Description of the maximum rate of <i>commission</i> (or <i>equivalent</i>)	Corresponding description to be used in the example
Regular premium or contributions	i. "X% of the first 12 month's payments"	i. "£X initially"
	ii. "X % of each of the first n month's payments"	ii. "£X spread evenly over the first n months"
	iii. "Y% of all payments"	iii. "£Y each year"

	iv. "Y% of all payments from month p"	iv. "£Y each year from month p"
	v. "Z% of your fund value each year from year q".	v. "£Z in year p, £Z + A in year p + 1, and so on (the actual amounts will vary in line with your fund value)"
Lump sums	i. "X% of the amount you invest"	"£X initially"
	ii. "Z% of your fund value each year from year q"	"£Z each year from year p (The actual amounts will vary in line with your fund value)"

24. A *firm* that uses more than one of the descriptions in Table 4 should make it clear that it has used more than one description (eg by inserting the word "plus" in between each description).
25. A *firm* should adapt any of the descriptions prescribed by Tables 3 and 4 as are necessary to ensure that a *menu* adequately describes the particular characteristics of a *firm's commission (or equivalent)* arrangement. Examples of the way in which the descriptions could be adapted are provided in paragraph 14 above.

Calculation of a maximum rate of commission

- The net present value of each *commission* (or *equivalent*) rate may be calculated by adopting the method set out in the worked example below, used in conjunction with tables of sample net present value factors issued by the *FSA*. These factors will be calculated using the assumptions set out in paragraphs 8 to 12 of *COBS 6 Annex 4G*.

Worked Example of Commission Disclosure in a menu

- For the purposes of the following worked example four variations of *commission* (or *equivalent*) are shown for an investment bond. The market averages and NPV factors are purely illustrative.

A *firm* has commission arrangements for the sale of investment bonds with five *product providers* involving all four variations. The *firm* retains all commissions from each provider. The arrangements are:

Provider	Provider Commission		
	Initial	% of fund value	Fund based start month
1	5.25%	-	-
2	4.5%	-	-
3	-	0.75%	13
4	3.0%	0.5%	1
5	3.5%	0.25%	1

Stage 1 - Comparison of net present value

The *firm* has to decide which provider pays "our maximum". The test is to calculate the net present value of the different commissions using the assumptions prescribed by the *FSA*.

To do this, the method in form 1b below is used. The *firm* needs to look up the table of NPV factors which shall be made available by the *FSA*. Looking these up, and completing the form as follows gives:

Product group	Investment Bonds						
	Initial Commission			Fund Based Renewal / Trail Commission			Total NPV
	Commission Rate	NPV Factor	Value = Rate x Factor	Commission Rate (& Start Month)	NPV Factor	Value= Rate x Factor	
	A	B	C = A x B	J	K	L = J x K	
1	5.25%	1.00	5.25%	-	-	-	5.25%
2	4.5%	1.00	4.5%	-	-	-	4.5%
3	-	1.00	-	0.75% from month 13	3.997	2.98%	2.98%
4	3.0%	1.00	3.0%	0.5% from month 1	4.943	2.47%	5.47%

5	3.5%	1.00	3.5%	0.25% from month 1	4.943	1.24%	4.74%
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So commission shape 4 has the highest net present value and is thus "our maximum".

Stage 2 – Worked example

An example is calculated by applying "our maximum" rates to the prescribed lump sum or monthly amounts. £10000 in this case gives "£300 immediately plus £50 each year from year 1".

Stage 3 – Market Average

"The market average" is the market average rate published by the *FSA* expressed in the shape that most corresponds to the shape of "our maximum". To do this, the method used in form 2 below is used. The *firm* needs to look up the table of NPV factors and the table of market average NPVs prescribed by the *FSA*. Looking these up, and completing the form as follows gives:

Form 1 (Worked Example)

Product group		Investment Bond						
Market Average NPV		5.0%						
		Fund Based Renewal / Trail Commission		Premium Based Renewal Commission		Spread initial / Non-Indemnified Commission		Initial / Indemnified Commission
		Commission rate	Start month	Commission rate	Start month	Commission rate	Spread period	Commission rate
Commission Shape of your maximum	A	0.5%	Month 1	-	-	-	-	3.0%
NPV Factor	B	4.943		-		-		1.000
Value of Commission Shape	C = A x B	2.47%		-		-		3.0%
Value of market average - Fund Based Commission	D1 – see notes	2.47%						
Value of market average – Premium Based Commission	D2 – see notes			-				
Value of market average - Spread Initial Commission	D3 – see notes					-		
Value of market average - Initial Commission	D4 – see notes							5.0% - 2.47% = 2.53%
Market Average Commission Shape	E = D ÷ B	2.47% / 4.943 = 0.5% from month 1		-		-		2.53% / 1.000 = 2.5%

Therefore the market average, expressed in the shape that most closely resembles "our maximum" is 2.5% of the lump sum plus 0.5% of the fund from month 1

Stage 4

Enter the appropriate figures in the *menu* as shown below.

		<i>Our maximum</i>	<i>Market average</i>	<i>This shows the maximum costs of our sales and advice for a lump sum investment of £10,000 ignoring any changes to fund value</i>
Savings and investments				
Investment bond	Any	3.0% of the amount you invest plus 0.5% of your fund value each year from year 1	2.5% of the amount you invest plus 0.5% of your fund value each year from year 1	£300 in year 1 plus £50 each year from year 1 (The actual amount will vary in line with your fund)

Form 1a – Calculation of Maximum Commission Amounts (Monthly Premium Products)

This form should be used to help decide which of the commission options received for a product group in the "monthly products" table should appear as "our maximum" on the *menu*.

Product group													
	Initial / Indemnified Commission			Spread Initial Commission			Premium Based Renewal Commission			Fund Based Renewal / Trail Commission			Total NPV
	Commission Rate	NPV Factor	Value = Rate x Factor	Commission Rate (& Spread Period)	NPV Factor	Value = Rate x Factor	Commission Rate (& Start Month)	NPV Factor	Value = Rate x Factor	Commission Rate (& Start Month)	NPV Factor	Value = Rate x Factor	
	A	B	C = A x B	D	E	F = D x E	G	H	I = G x H	J	K	L = J x K		M = C + F + I + L
1		1.00											
2		1.00											
3		1.00											
4		1.00											
5		1.00											
6		1.00											
7		1.00											
8		1.00											

The maximum rate of commission for this product group is the shape with the highest Total NPV (column M). This maximum rate of commission should be included in the menu for this product group

Notes for completion of Form 1a

1. A separate form should be completed for all monthly product groupings appearing on the *menu*.
2. Complete a separate row for each potential maximum commission shape that you receive in the chosen product group.
3. Commission shapes that are clearly lower in value than others of the same shape should be omitted – for example, 15% initial + 0.5% fund based paid from month 12 is clearly lower than 20% initial + 0.5% fund based paid from month 12, and so only the latter needs to be included in the calculations.
4. Commission rates used should be the highest rates of the total commission payable that you may retain;
5. Commission rates should be entered for each commission type as follows:
 - Column A (Initial/Indemnified) - a percentage of the first 12 months' premiums;
 - Column D (Spread Initial/Non-Indemnified Initial) – a percentage of each premium paid in the initial commission period;
 - Column I (Premium based renewal) – a percentage of each premium paid in the renewal period;
 - Column L (Fund Based renewal/trail) – a percentage of the fund value each year.
6. Level commissions, payable as a percentage of all monthly premiums, should be treated as premium-based renewal commissions.
7. The relevant NPV Factors in columns B, E, H & K should be inserted for the relevant Product Group, Commission Type, Spread Period and Start Month. They can be obtained from the document "Published NPV Factors".
8. Columns C, F, I, L & M should be calculated based on the figures inserted in the previous columns.
9. The commission shape which has the highest total NPV in column M should be used in the "Our Maximum" section of the *menu*.

Form 1b – Calculation of Maximum Commission Amounts (Lump Sum Products)

This form should be used to help decide which of the commission options received for a product group in the "lump sum products" table should appear as "our maximum" on the *menu*.

Product group							
	Initial Commission			Fund Based Renewal / Trail Commission			Total NPV
	Commission Rate	NPV Factor	Value = Rate x Factor	Commission Rate (& Start Month)	NPV Factor	Value= Rate x Factor	
	A	B	C = A x B	J	K	L = J x K		M = C + L
		1.00					
2		1.00					
3		1.00					
4		1.00					
5		1.00					
6		1.00					
7		1.00					
8		1.00					

The maximum rate of commission for this product group is the shape with the highest Total NPV (column M). This maximum rate of commission should be included in the menu for this product group

Notes for completion of Form 1b

1. A separate form should be completed for all lump sum products appearing on the *menu*.
2. Complete a separate row for each potential maximum commission shape that you receive in the chosen product group.
3. Commission shapes that are clearly lower in value than others of the same shape should be omitted – for example, 15% initial + 0.5% fund based paid from month 12 is clearly lower than 20% initial + 0.5% fund based paid from month 12, and so only the latter needs to be included in the calculations.
4. Commission rates used should be the highest rates of the total commission payable that you may retain.
5. Commission rates should be entered for each commission type as follows:
 - Column A (Initial) - a percentage of the lump sum payment;
 - Column J (Fund Based renewal/trail) – a percentage of the fund value each year.
6. The relevant NPV Factors in columns B & K should be inserted for the relevant Product Group, Commission Type and Start Month. They can be viewed in the document "Published NPV Factors".
7. Columns C, L & M should be calculated based on the figures inserted in the previous columns.
8. The commission shape which has the highest total NPV in column M should be used in the "Our Maximum" section of the *menu*.

Form 2 – Re-expression of market average commission

This form should be used to re-express the market average NPV into the relevant shape, for use in the *menu*.

Product group								
Market Average NPV								
		Fund Based Renewal / Trail Commission		Premium Based Renewal Commission		Spread initial / Non-Indemnified Commission		Initial / Indemnified Commission
		Commission rate	Start month	Commission rate	Start month	Commission rate	Spread period	Commission rate
Commission Shape of your maximum	A							
NPV Factor	B							
Value of Commission Shape	$C = A \times B$							
Value of market average - Fund Based Commission	D1 – see notes							
Value of market average – Premium Based Commission	D2 – see notes							
Value of market average - Spread Initial Commission	D3 – see notes							
Value of market average - Initial Commission	D4 – see notes							
Market Average Commission Shape	$E = D \div B$							

Notes for completion of Form 2

1. A separate form should be completed for each product group appearing on your *menu*;
2. The Market Average NPV should be obtained from the FSA's most recent published list of market averages, choosing the appropriate rate for the relevant product group.
3. In row A, enter the details of the commission shape that the market average is to be expressed in. This should be the commission shape shown as "your maximum" for the relevant product group in your *menu*.
4. Commission rates should be entered for each commission type as follows:
 - Fund Based renewal/trail – a percentage of the fund value each year;
 - Premium based renewal – a percentage of each premium paid in the renewal period;
 - Spread Initial/Non-Indemnified Initial – a percentage of each premium paid in the initial commission period;
 - Initial/Indemnified - a percentage of the first 12 months' premiums, or a percentage of the lump sum, as appropriate.
5. Level commissions, payable as a percentage of all monthly premiums, should be treated as premium-based renewal commissions.
6. Where "your maximum" commission does not contain a commission type (e.g. your maximum has no spread initial commission), the column relating to that commission type should be left blank.
7. The relevant NPV Factors in row B should be inserted for the relevant Product Group, Commission Type, Spread Period and Start Month. They can be obtained from the document "Published NPV Factors".
8. Row C should be calculated as the product of the relevant commission rate in row A and the NPV factor in row B.
9. Row D1 should be calculated as the lower of:
 - the Market Average NPV, and
 - Row C - The Value of Commission Shape for the **fund based commission** type (but see the note below)

Note: If the commission shape in row A contains no premium-based, spread initial or initial/indemnified commission (i.e. if fund based commission is the final commission type being considered) then the calculation in row C should be ignored when calculating D1. In this instance, the value in D1 should be equal to:

- the Market Average NPV

10. Row D2 should be calculated as the lower of:

- The Market Average NPV minus the value calculated for row D1; and
- Row C – The Value of Commission Shape for the **premium based commission** type (but see note below).

If this calculation gives a negative value, D2 should be set to zero.

Note: If the commission shape in row A contains no spread initial or initial/indemnified commission (i.e. if premium-based commission is the final commission type being considered) then the calculation in row C should be ignored when calculating D2. In this instance, the value in D2 should be equal to:

- The Market Average NPV minus the value calculated for row D1.

11. Row D3 should be calculated as the lower of:

- The Market Average NPV minus the value calculated for row D1,
minus the value calculated for row D2, and
- Row C – The Value of Commission Shape for the **spread initial / non-indemnified commission** type (but see note below).

If this calculation gives a negative value, D2 should be set to zero.

Note: If the commission shape in row A contains no initial/indemnified commission (i.e. if premium-based commission is the final commission type being considered) then the calculation in row C should be ignored when calculating D3. In this instance, the value in D3 should be equal to:

- The Market Average NPV minus the value calculated for row D1,
minus the value calculated for row D2.

12. Row D4 should be calculated as:

- The Market Average NPV minus the value calculated for row D1, minus the value calculated for row D2, minus the value calculated for row D3.

If this calculation gives a negative value, D4 should be set to zero.

13. Row E should be calculated as the value in the relevant row D (for that commission type, e.g. row D2 for premium based renewal commission) divided by the relevant NPV factor in row B. For presentation in the *menu*, this result should be rounded to the nearest 0.1% (or the nearest 0.25%, if fund-based commission is paid as an exact multiple of this).

Calculating commission equivalent

This table forms part of COBS 6.4.6E.

Calculating commission equivalent	
<p>This table sets out the basis on which the <i>firm</i> should determine the value of cash payments, benefits and services to be disclosed as <i>commission equivalent</i>. Benefits and services, as set out in parts B and C below, need be included only if their value is such that they could not be provided to a <i>firm</i> as a non-monetary benefit listed in the table in COBS 2.3.15G. The result of the calculation should be that the amounts disclosed as <i>commission equivalent</i> are, as far as possible, the same as the amounts and value of <i>commission</i> which would be paid in a corresponding sale.</p>	
Part A: Cash payments	
1.	These cover all payments by a <i>firm</i> to a <i>representative</i> , <i>appointed representative</i> or, where applicable, a <i>tied agent</i> , or a <i>firm</i> in the same <i>immediate group</i> in relation to a transaction in a <i>packaged product</i> . This includes bonus payments, manager's overrides, extra earnings from other transactions and other payments conditional on amounts of new business.
2.	In determining the amounts to be included in the calculation, a <i>firm</i> should have regard to the following:
(a)	when the precise rate of <i>commission equivalent</i> is not known in advance (for example, if retrospective volume overrides apply), the <i>firm</i> should estimate the rate likely to apply to the <i>representative</i> in question. When an identical <i>commission equivalent</i> scale applies to all <i>representatives</i> (although they might earn differing percentages of it), the same average amount of <i>commission equivalent</i> (and the value of other benefits and services) in respect of identical transactions may be disclosed, regardless of the percentage of the scale paid to each individual <i>representative</i> . Averaging should not be used for <i>appointed representatives</i> , or, where applicable, <i>tied agents</i> .
(b)	all credits to an account from which periodic withdrawals may be made should be included.
(c)	when a payment is made before the <i>firm</i> receives the <i>premium</i> or the investment monies to which it relates (for example, indemnity <i>commission equivalent</i>), it should be included as being received at the time of payment. <i>Firms</i> that wish to explain this arrangement to the <i>clients</i> are free to do so, provided this does not detract from the required disclosure.
(d)	when the <i>firm</i> arranges for a third party to make a payment to a <i>representative</i> in exchange for the income stream to which the <i>representative</i> is entitled, or to make a loan to the <i>representative</i> on the security or expectation of future

		payments from the <i>firm</i> , this should be treated as if it were a payment from the <i>firm</i> at the time of the transaction.
	(e)	when a <i>firm</i> provides, or arranges for a third party to provide, a loan to a <i>representative</i> , on the security of, or in the expectation of, future payments from the <i>firm</i> , the amounts to be included are the payments to the <i>representative</i> on which the provision of the loan is based, as if they were received at the time the transaction was effected, irrespective of their actual timing.
	(f)	when an agent is employed and remunerated by the <i>firm's appointed representative</i> , or, where applicable, <i>tied agent</i> , the payments to be included should be those made by the <i>firm</i> to the <i>appointed representative</i> or <i>tied agent</i> , not those made by the <i>appointed representative</i> or <i>tied agent</i> to its own agent.
	Part B: Benefits	
3.	Benefits include the cost to the <i>firm</i> of all non-monetary benefits provided by it to a <i>representative</i> . A benefit should be included whether or not the <i>representative</i> is liable to income tax on it and whether it is chargeable to tax. Examples of benefits include the use of a car, attendance at conferences, subsidised loans, contributions to <i>pension schemes</i> , national insurance contributions, and the value of <i>share option</i> (taking into account any discount on issue and assuming that the <i>shares</i> in question grow at a reasonable rate in line with other <i>investments</i>).	
	Part C: Services	
4.	Services include benefits which are not indirect benefits within the table in <i>COBS</i> 2.3.15G.	
5.	The following services should be included:	
	(a)	office accommodation and equipment, including telephone, photocopying and fax;
	(b)	loans where a commercial rate of interest is not charged, including <i>commission equivalent</i> advances overdue for repayment;
	(c)	general stationery and mailing or distribution costs;
	(d)	computer hardware and software (except software which specifically relates to the <i>firm's packaged product</i> , such as software used for producing illustrations, <i>projection</i> and product information);
	(e)	clerical and administrative support;
	(f)	business insurance cover, including professional indemnity and fidelity guarantee;
	(g)	recruitment;

	(h)	compliance monitoring;
	(i)	<i>client</i> services;
	(j)	business planning services;
	(k)	line management.
6.	To put a value on these services, the following costs should be included:	
	(a)	all overheads attributable to a particular cost item (for example, the cost of a compliance official);
	(b)	salary costs pro rata if individuals are only engaged part-time on relevant business;
	(c)	rent and associated premises costs at an appropriately reduced rate if the premises are also used for other business activities;
	(d)	only that proportion of the cost of lead generation promotions attributable to the generation of relevant business (but including the placing of any <i>financial promotion</i> , and its mailing or provision of access to third party <i>clients</i>);
	(e)	only the marginal additional compliance costs of ensuring that <i>representatives</i> and their support and training material comply with relevant <i>rules</i> ;
	(f)	the commercial value of a service which is the use of an asset owned by the <i>firm</i> (for example in the case of a property, its full market rent);
	(g)	in respect of <i>appointed representative</i> , or, where applicable <i>tied agent</i> , the costs of any promotion in a newspaper or elsewhere and the provision of <i>representative</i> -specific literature in connection with a <i>financial promotion</i> ;
	(h)	in respect of a <i>firm</i> in the same <i>immediate group</i> and connected <i>appointed representatives</i> or, where applicable, <i>tied agents</i> , where the name of the company is included in the <i>financial promotion</i> , the costs of any promotion in a newspaper or elsewhere and the provision of literature specific to the <i>representative</i> in connection with a <i>financial promotion</i> .
7.	The following costs should be excluded:	
	(a)	the cost of corporate awareness advertising;
	(b)	training costs;
	(c)	costs of developing and maintaining computer systems for the provision of <i>projections</i> of benefits, <i>client</i> -specific <i>key features documents</i> , <i>simplified prospectuses</i> or other product information;
	(d)	costs of compensating <i>clients</i> ;

	(e)	the costs of head office and branch level management and support, other than payments to <i>managers</i> falling under Part 1, for <i>representatives</i> , if these services could also be provided to a <i>firm</i> not in the same <i>immediate group</i> , for example, broker consultants and 'inspectors'.
	Part D: Calculation methodology	
8.	Estimating commission equivalent	
	The cost of benefits and services should normally be based on the most recent relevant experience of the <i>firm</i> , except if the <i>firm</i> has grounds to believe that the <i>commission equivalent</i> for the period concerned will be higher or lower than that implied by the experience or no such experience is available. In such a case, the estimate should be based on and evidenced by business plans which the <i>firm</i> is satisfied are achievable.	
9.	<i>Firms</i> that receive or expect to receive:	
	(a)	<i>commission</i> in respect of <i>packaged products</i> which are not its own products or the products of a <i>product provider</i> who is in the same <i>immediate group</i> ; and
	(b)	<i>commission equivalent</i> in respect of its own products;
	must ensure that the costs and benefits attributed to these products do not exceed the amounts that can be financed from that <i>commission</i> .	
	Construction of commission equivalent scales	
10.	The total costs of cash payments, benefits and services should be assessed and the normal approach is to split them into new business costs and after sale servicing costs. The costs of each of these functions should be assessed directly in relation to the work carried out by the <i>representatives</i> .	
11.	(a)	The total <i>commission equivalent</i> costs identified in 10 should be spread across the business using a new business <i>commission equivalent</i> scale and a servicing <i>commission equivalent</i> scale respectively.
	(b)	The <i>commission equivalent</i> scales should distinguish between products for which the <i>commission equivalent</i> of <i>representatives</i> is likely to be different.
12.	If the <i>representative's commission equivalent</i> includes a cash payment related to volume and/or value of the transactions sold (which payment must be in accordance with the <i>clients' best interest rule</i>), the following method would be appropriate:	
	(a)	The payment scales should be grossed up by new business uplift factors or servicing uplift factors as appropriate to reflect the cost of benefits and services. The grossed up scales represent the new business and servicing <i>commission equivalent</i> scales, and are applied to each contract to derive the <i>commission equivalent</i> to be disclosed.

	(b)	If servicing costs are expected to be incurred in any year in which no servicing payments are to be made on a contract, disclosure should still be made, for example by using a technique similar to that described in 14.
13.	(a)	When a <i>representative</i> receives a salary, or other payment unrelated to volume or sales:
	(i)	this should be amalgamated with the cost of benefits and services; and
	(ii)	the total costs should be apportioned over individual transactions in a way that reflects the value of a contract to a <i>firm</i> or the <i>firm's immediate group</i> .
	(b)	If a <i>firm</i> is a distributor for a <i>product provider</i> within the same <i>immediate group</i> , the <i>firm</i> must apportion total costs over individual transactions in a way that reflects the value of the contract to the <i>firm's immediate group</i> .
14.		If a <i>representative</i> agrees to forgo part of his or her normal payment to improve the terms of the contract, the disclosure may be reduced in such a way that fairly reflects the overall effect of the amount foregone.
15.		The <i>firm</i> should review the <i>commission equivalent</i> scales if at any time it becomes aware that the <i>commission equivalent</i> figures have become misleading. A review should take place at least annually.
		Payments to associates
16.		If a <i>firm</i> pays <i>commission equivalent</i> to another <i>firm</i> in the same <i>immediate group</i> , or an <i>appointed representative</i> or, where applicable <i>tied agent</i> , which is an <i>associate</i> of the <i>firm</i> , it should ensure that the calculation of the sum to be disclosed is the higher of:
	(a)	all payments, benefits and services provided to the <i>firm</i> or <i>appointed representative</i> or <i>tied agent</i> , from whatever source, plus an additional allowance for profit of 15% - unless the <i>firm</i> can demonstrate that another figure (higher or lower) is more appropriate; and
	(b)	the cash payments actually paid by the <i>firm</i> , plus the value of services provided.

...

Interface with the initial disclosure document

7.2.2 G ~~[intentionally blank]~~ A firm will satisfy elements of the requirement immediately above if it provides an initial disclosure document to a client (see COBS 6.3).

7.2.2A R A firm may provide an initial disclosure document to a client who buys a

non-advised life policy.

...

After COBS 9.3, insert the following new Section; the text is not underlined:

9.4 Suitability reports

Providing a suitability report

9.4.1 R A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

- (1) acquires a holding in, or *sells* all or part of a holding in:
 - (a) a *regulated collective investment scheme*;
 - (b) an *investment trust* where the relevant *shares* have been or are to be acquired through an *investment trust savings scheme*;
 - (c) an *investment trust* where the relevant *shares* are to be held within an *ISA* or *PEP* which has been promoted as the means for investing in one or more specific *investment trusts*; or
- (2) *buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme*; or
- (3) elects to make *income withdrawals* or purchase a *short-term annuity*; or
- (4) enters into a *pension transfer* or *pension opt-out*.

[**Note:** article 19(8) of *MiFID*]

9.4.2 R If a *firm* makes a *personal recommendation* in relation to a *life policy*, it must provide the *client* with a *suitability report*.

[**Note:** article 12(3) of the *Insurance Mediation Directive*]

9.4.3 R The obligation to provide a *suitability report* does not apply:

- (1) if the *firm*, acting as an *investment manager* for a *retail client*, makes a *personal recommendation* relating to a *regulated collective investment scheme*;
- (2) if the *client* is habitually resident outside the *EEA* and the *client* is not present in the *United Kingdom* at the time of acknowledging consent to the proposal form to which the *personal recommendation*

relates;

- (3) to any *personal recommendation* by a *friendly society* for a small *life policy* sold by it with a *premium* not exceeding £50 a year or, if payable weekly, £1 a week;
- (4) if the *personal recommendation* is to increase a regular *premium* to an existing contract;
- (5) if the *personal recommendation* is to invest additional single *premiums* or single contributions to an existing *packaged product* to which a single *premium* or single contribution has previously been paid.

Timing

- 9.4.4 R A *firm* must provide the *suitability report* to the *client*:
- (1) in the case of a *life policy*, before the contract is concluded unless the necessary information is provided orally or immediate cover is necessary; or
 - (2) in the case of a *personal pension scheme* or *stakeholder pension scheme*, where the *rules* on cancellation (*COBS 15*) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded; or
 - (3) in any other case, when or as soon as possible after the transaction is effected or executed.

[**Note:** article 12(3) of the *Insurance Mediation Directive*]

- 9.4.5 R If, in respect of a *life policy*, the *firm* gives necessary information orally or gives immediate cover, it must provide a *suitability report* to the *client* in a *durable medium* immediately after the contract is concluded.

[**Note:** article 13(2) of the *Insurance Mediation Directive*]

- 9.4.6 R In the case of telephone selling of a *life policy*, when the only contact between a *firm* and its *client* before conclusion of a contract is by telephone, the *suitability report* must:
- (1) comply with the distance marketing disclosure *rules* (*COBS 5.1*);
 - (2) be provided immediately after the conclusion of the contract; and
 - (3) be in a *durable medium*.

[**Note:** article 13(3) of the *Insurance Mediation Directive*]

Contents

- 9.4.7 R The *suitability report* must, at least:
- (1) specify the *client's* demands and needs;
 - (2) explain why the *firm* has concluded that the recommended transaction is suitable for the *client* having regard to the information provided by the *client*; and
 - (3) explain any possible disadvantages of the transaction for the *client*.
- [**Note:** article 12(3) of the *Insurance Mediation Directive*]
- 9.4.8 G A *firm* should give the *client* such details as are appropriate according to the complexity of the transaction.
- [**Note:** article 12(3) of the *Insurance Mediation Directive*]
- 9.4.9 R If a *firm* is providing a *suitability report* in the course of *insurance mediation activity*, the information must be provided:
- (1) in a *durable medium* which is available and accessible to the *client*;
 - (2) in a clear and accurate manner, comprehensible to the *client*; and
 - (3) in an official language of the *State of the commitment* in which the *contract of insurance* is made or in any other language agreed by the parties.
- [**Note:** article 13 of the *Insurance Mediation Directive*]

Additional content for income withdrawals

- 9.4.10 G When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*, explanation of possible disadvantages in the *suitability report* should include the risk factors involved in entering into an *income withdrawal* or purchase of a *short-term annuity*. These may include:
- (1) the capital value of the fund may be eroded;
 - (2) the *investment* returns may be less than those shown in the illustrations;
 - (3) annuity or *scheme pension* rates may be at a worse level in the future;
 - (4) when maximum withdrawals are taken or the maximum *short-term annuity* is purchased, high levels of income may not be sustainable;
 - (5) the maximum income that can be withdrawn under an *alternatively secured pension* after age 75 is significantly less than the maximum that applies before age 75.

...

Delete COBS 9.6 and replace with the following; the text is not underlined:

9.6 Special rules for giving basic advice on a stakeholder product

9.6.1 G This section applies to a *firm* giving *basic advice*, which has chosen to comply with the *rules* in this section instead of the other *rules* in this chapter (see *COBS 9.1.2R*).

Range

9.6.2 R A *firm* is permitted to maintain more than one *range of stakeholder products*.

9.6.3 R A *range of stakeholder products*:

- (1) may include more than one *deposit-based stakeholder product*;
- (2) may include the *stakeholder products* of more than one *stakeholder product* provider;
- (3) must not include any more than one:
 - (a) *CIS stakeholder product* or *linked life stakeholder product*; or
 - (b) *stakeholder CTF*; or
 - (c) *stakeholder pension scheme*.

9.6.4 R When a *firm* provides *basic advice* it must:

- (1) explain why it chose the *stakeholder products* and *stakeholder product* providers that appear in the relevant *range*; and
- (2) give the *client* a list of the *stakeholder products* and *stakeholder product* providers that appear in that *range*;

if the *client* asks it do so.

Requirements on first contact

9.6.5 R When a *firm* first has contact with a *retail client* with a view to giving *basic advice* on a *stakeholder product*, it must give the *retail client*:

- (1) the *basic advice* initial disclosure information (*COBS 9 Annex 1R*), in a *durable medium*, together with an explanation of that information, unless:
 - (a) it has already done so and the *basic advice* initial disclosure information is likely still to be accurate and appropriate; or

- (b) the contact is not face to face and is using a means of communication which makes it not practicable to provide the *basic advice* initial disclosure information in a *durable medium*; and
 - (2) an explanation of how the advice will be paid for and the fact that any commission will be disclosed.
- 9.6.6 G (1) A *firm* may give a *retail client* the *basic advice* initial disclosure information (COBS 9 Annex 1R) as part of an:
- (a) *initial disclosure document*; or
 - (b) a *combined initial disclosure document* if it has reasonable grounds to believe that it will provide services relating to a *stakeholder product* and a *non-investment insurance contract*, a *regulated mortgage contract*, an *equity release transaction* or a *home purchase plan*.
- (2) If a *firm* provides an *initial disclosure document* or *combined initial disclosure document* to a *retail client* it will comply with the requirements under:
- (a) COBS 2.2.1R(1)(a);
 - (b) COBS 9.6.5R(1) and COBS 9 Annex 1R;
 - (c) the items of distance marketing information set out in paragraphs (1), (2), (4), (5) (19) and (20) of COBS 5 Annex 1R; and
 - (d) any duties that apply to it under the *rule* on information to be provided by the insurance intermediary (COBS 7.2.1R (1) and (2)).
- 9.6.7 R For the purposes of GEN 5, a *firm* may not use the keyfacts logo in relation to any *document* that is designed to comply with *rules* in COBS 9.6 or COBS 7 unless it is an *initial disclosure document*, *combined initial disclosure document* or *menu* produced in accordance with the templates and notes in the annexes to COBS 6.
- 9.6.8 R If a *firm's* first contact with a *retail client* is not face to face, it must:
- (1) inform the *client* at the outset:
 - (a) (if the communication is initiated by or on behalf of a *firm*), of the name of the *firm* and the commercial purpose of the communication;

- (b) whether the *firm* will select from, or deal with, *stakeholder products* from a single provider, or from more than one provider;
 - (c) that the *firm* will provide the *retail client* with *basic advice* without carrying out a full assessment of the *retail client's* needs and circumstances; and
 - (d) that such information will be confirmed in writing; and
- (2) (if not provided at first contact) send the *client* the *basic advice* initial disclosure information (*COBS 9 Annex 1R*) in a *durable medium* as soon as reasonably practicable following the conclusion of the first contact.

Sales process

- 9.6.9 R When a *firm* gives *basic advice*, it must do so using:
- (1) a single range of *stakeholder products*; and
 - (2) a sales process that includes putting pre-scripted questions to the *client*.
- 9.6.10 R When a *firm* gives *basic advice* it must not:
- (1) describe or recommend a *stakeholder product* outside the *firm's range*; or
 - (2) describe or recommend a *smoothed linked long term stakeholder product*; or
 - (3) describe fund choice, or recommend a particular fund, if a *stakeholder product* offers a choice of funds; or
 - (4) recommend the level of contributions required to be made to a *stakeholder pension scheme* to achieve a specific income in retirement; or
 - (5) recommend or agree that a *client* makes a contribution to an *ISA* which exceeds the HM Revenue & Customs *ISA* limits.
- 9.6.11 R
- (1) If a *firm* starts the sales process for a *stakeholder product* that is not a *deposit-based stakeholder product*, it must not depart from that process unless it has advised the *retail client* that it will not provide *basic advice* on *stakeholder products* during the period of departure. A *firm* that does that must not provide *basic advice* during the departure period.
 - (2) Before a *firm* returns to the sales process for *stakeholder products*, it must tell the *retail client* that that process is about to recommence.

Suitability of recommendations

- 9.6.12 R A *firm* must only recommend a *stakeholder product* to a *retail client* if:
- (1) it has taken reasonable steps to assess the *client's* answers to the scripted questions and any other facts, circumstances or information disclosed by the *client* during the sales process;
 - (2) (unless the relevant product is a *deposit-based stakeholder product*) having done so, it has reasonable grounds for believing that the *stakeholder product* is suitable for the *client*; and
 - (3) the *firm* reasonably believes that the *client* understands the *firm's* advice and the basis on which it was provided.
- 9.6.13 G *COBS 9 Annex 2G* gives *guidance* on the steps a *firm* could take to help it meet these suitability obligations.
- 9.6.14 R If a *firm* giving *basic advice* recommends to a *retail client* to acquire a *stakeholder product*, it must ensure that, before the conclusion of the contract, its *representative*:
- (1) (unless the relevant product is a *deposit-based stakeholder product*) explains to the *client*, if necessary in summary form, but always in a way that will allow the *client* to make an informed decision about the *firm's* recommendation:
 - (a) the nature of the *stakeholder product*; and
 - (b) the "aims", "commitment" and "risks" sections of the appropriate *key features document*;
 - (2) provides the *client* with a summary sheet, which is in a *durable medium* and sets out, for each product it recommends:
 - (a) the specific amount the *client* wishes to pay into the product; and
 - (b) the reasons for the recommendation, including the *client's* attitude to risk and any information provided by the *client* on which the recommendation is based; and
 - (3) informs the *client* that in determining any subsequent complaint, the *Ombudsman* may take into account the limited information on which the recommendation was based and the fact that it was not tailored to take account of those aspects of the *client's* financial needs and circumstances not covered by the *firm's* sales process.
- 9.6.15 R Notwithstanding *COBS 9.6.14R(2)* a *firm* may provide the summary sheet (*COBS 9.6.14R(2)*) as soon as reasonably practicable after the conclusion of the contract if the *client* asks it to do so, or the contract will be concluded

using a means of distance communication that does not enable the provision of the summary sheet in a *durable medium* before the conclusion of the contract, but only if the *firm*:

- (1) reads the summary sheet to the *client* before it concludes the contract; and
- (2) sends the summary sheet to the *client* as soon as practicable after the conclusion of the contract.

Concluding the contract

- 9.6.16 R If a *firm* concludes a contract for a *stakeholder product* with or for a *retail client* it must provide a copy of the completed questions and answers to the *client* in a *durable medium* as soon as reasonably practicable afterwards.

Basic advice on stakeholder products: other issues

- 9.6.17 R (1) When a *firm* provides *basic advice* on a *stakeholder product*, it must not hold itself out as giving independent advice.
- (2) Nevertheless, a *firm* may still use the facilities and stationery it uses for other business in respect of which it does hold itself out as acting or advising independently.
- 9.6.18 R A *firm* must ensure that none of its *representatives*:
- (1) is likely to be influenced by the structure of his or her *remuneration* to give unsuitable *basic advice* on *stakeholder products* to a *retail client*; or
 - (2) refers a *retail client* to another *firm* in circumstances which would amount to the provision of any fee, commission or non-monetary benefit.

Records

- 9.6.19 R A *firm* must record that it has chosen to give *basic advice* to a *retail client* and make a record of the *range* used and the summary sheet (COBS 9.6.14R(2)) prepared for each *retail client*. That record must be retained for at least five years from the date of the relevant *basic advice*.
- 9.6.20 R (1) A *firm* must make an up-to-date record of:
- (a) its *scope of basic advice*, and the *scope of basic advice* used by its *appointed representatives* (if any); and
 - (b) its *range* (or *ranges*) of *stakeholder products*, and the *range* (or *ranges*) used by its *appointed representatives* (if any).
- (2) Those records must be retained for five years from the date on which they are replaced by a more up-to-date record.

Renumber the existing COBS 9 Annex 1G as COBS 9 Annex 2G, and insert the following new annex as COBS 9 Annex 1R; the text is not underlined:

COBS 9 R Basic advice initial disclosure information
Annex 1

This Annex belongs to COBS 9.6.5R(1)

Information that comprises the following:	
1.	the name and address (head office or principal place of business if more appropriate) of the <i>firm</i> ;
2.	a statement as to whether the <i>range of stakeholder products</i> on which advice will be given comprises products from a single <i>stakeholder product provider</i> , or a limited number of <i>stakeholder product providers</i> ;
3.	a statement that the service being offered is <i>basic advice</i> on a limited <i>range of stakeholder products</i> by asking questions about income, savings and other circumstances but without carrying out a full assessment of the <i>retail client's</i> needs and without offering advice on whether a non-stakeholder product may be more suitable;
4	a statement that the <i>firm</i> is authorised and regulated by the <i>FSA</i> (or if an <i>appointed representative</i> , a statement of whom it is an <i>appointed representative</i> and that that <i>firm</i> is authorised and regulated by the <i>FSA</i>) to give basic advice, together with the registration number of the <i>firm</i> and the fact that the <i>firm's</i> status can be checked with the <i>FSA</i> on 0845 730 0104 or on the <i>FSA</i> website at www.fsa.gov.uk ;
5.	a statement disclosing any product provider loans (where such credit exceeds 10% of share and loan capital) and direct or indirect ownership (where that ownership exceeds 10% of share capital or voting power) either by, or of, a single <i>product provider</i> or <i>operator</i> ; (See also notes 20-23 in COBS 6 Annex 1G and notes 33-38 of COBS 6 Annex 2 G).
6.	A description of the arrangements concerning complaints and the circumstances in which the <i>retail client</i> can refer the matter to the <i>Financial Ombudsman Service</i> ; (See also notes 24-25 in COBS 6 Annex 1G and notes 39-42 of COBS 6 Annex 2 G).
7.	a description of the circumstances and the extent to which <i>firm</i> is covered by the <i>compensation scheme</i> and the <i>retail client</i> will be entitled to compensation from the <i>compensation scheme</i> . (See also notes 26-27 of COBS 6 Annex 1G and notes 43-46 of COBS 6 Annex 2G).

[Note: in respect of 1, 2, 4, 5, and 6, Articles 12 and 13 of the *Insurance mediation directive* and in respect of 7, Article 10 of the *Investors compensation directive*]

Amend existing COBS 9 Ann 1G as shown:

COBS 9 G Sales processes for stakeholder products
Annex 1
2

...	
Preliminary - all sales	
5.	<p>The <i>retail client</i> should be given the following preliminary information:</p> <ul style="list-style-type: none"> (a) the <i>retail client</i> will only be given <i>basic advice</i> about <i>stakeholder products</i>; (b) <i>stakeholder products</i> are intended to provide a relatively simple and low-cost way of investing and saving; (c) intentionally blank <u>the range of stakeholder products on which the representative will give advice to that retail client;</u> (d) the <i>retail client</i> will be asked a series of questions about his or her needs and circumstances and, at the end of the procedure, he or she may be recommended to acquire a <i>stakeholder product</i>; (e) the assessment of whether a <i>stakeholder product</i> is suitable will be made without a detailed assessment of the <i>retail client's</i> needs but will be based only on the information disclosed during the questioning process; and (f) the <i>retail client's</i> answers will be noted and, at the end of the process, if a recommendation to acquire a <i>stakeholder product</i> is made, the <i>retail client</i> will be provided with a copy of the completed questionnaire.
...	
Saving and investment objectives - all sales (except establishing a stakeholder CTF)	
12.	A <i>retail client's</i> savings and investment objectives, including the period over which the <i>retail client</i> wishes to save or invest, should be ascertained including whether the <i>retail client</i> :

	<p>(a) may need early access to some or all of the amount saved or invested; <u>or</u></p> <p>(b) wishes to save or invest for retirement; or</p> <p>(c) wants to accumulate a specific sum by a specific date.</p>
13.	<p>If that information indicates that the <i>retail client's</i> objective is:</p> <p>(a) to accumulate a specific sum by a specific date; <u>or</u></p> <p>(b) to save or invest only for the short term; or</p> <p>(c) early access may be required to the whole of the sum saved or invested;</p> <p>the <i>firm</i> should not normally recommend a <i>CIS stakeholder product</i>, a <i>linked life stakeholder product</i>, a <i>stakeholder pension scheme</i> or topping up of a <i>stakeholder CTF</i>.</p>
...	

Application to section on the use of dealing commission

11.1.3 R The section on the use of dealing commission applies to a *firm* that acts as an *investment manager*.

...

11.2.1 R ...

[**Note:** article 21(1) of *MiFID*]

[**Note:** The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under *MiFID*. This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under *MiFID*. The paper can be found at: http://www.cesr-eu.org/index.php?page=document_details&from_title=Documents&id=4606]

After COBS 11.5 insert the following new Section; the text is not underlined:

11.6 ~~[intentionally blank]~~ **Use of dealing commission**

11.6.1 G This section deals with the acceptance of certain inducements by *investment managers* and builds upon the *rule* on inducements (*COBS 2.3.1R*). *Investment managers* should ensure they comply with both this section and the *rule* on inducements.

Application

- 11.6.2 R This section applies to a *firm* that acts as an *investment manager* when it *executes customer orders* that relate to:
- (1) *shares*; and
 - (2)
 - (a) *warrants*;
 - (b) *certificates representing certain securities*;
 - (c) *options*; and
 - (d) *rights to or interests in investments* of the nature referred to in (a) to (c);
- to the extent that they relate to *shares*.

Use of dealing commission to purchase goods or services

- 11.6.3 R (1) An *investment manager* must not accept goods or services in addition to the *execution* of its *customer orders* if it:
- (a) *executes its customer orders* through a broker or another *person*;
 - (b) passes on the broker's or other *person's charges* to its *customers*; and
 - (c) is offered goods or services in return for the *charges* referred to in (b).
- (2) This prohibition does not apply if the *investment manager* has reasonable grounds to be satisfied that the goods or services received in return for the *charges*:
- (a)
 - (i) are related to the *execution* of trades on behalf of the *investment manager's customers*; or
 - (ii) comprise the provision of research; and
 - (b) will reasonably assist the *investment manager* in the provision of its services to its *customers* on whose behalf the orders are being *executed* and do not, and are not likely to, impair compliance with the duty of the *investment manager* to act in the best interests of its *customers*.
- 11.6.4 E (1) Where the goods or services relate to the *execution* of trades, an *investment manager* should have reasonable grounds to be satisfied that the requirements of the *rule* on use of dealing commission (COBS 11.6.3R) are met if the goods or services are:

- (a) linked to the arranging and conclusion of a specific investment transaction (or series of related transactions); and
 - (b) provided between the point at which the *investment manager* makes an investment or trading decision and the point at which the investment transaction (or series of related transactions) is concluded.
 - (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on use of dealing commission (*COBS* 11.6.3R).
- 11.6.5 E (1) Where the goods or services relate to the provision of research, an *investment manager* will have reasonable grounds to be satisfied that the requirements of the *rule* on use of dealing commission (*COBS* 11.6.3R) are met if the research:
- (a) is capable of adding value to the investment or trading decisions by providing new insights that inform the *investment manager* when making such decisions about its *customers'* portfolios;
 - (b) whatever form its output takes, represents original thought, in the critical and careful consideration and assessment of new and existing facts, and does not merely repeat or repackage what has been presented before;
 - (c) has intellectual rigour and does not merely state what is commonplace or self-evident; and
 - (d) involves analysis or manipulation of data to reach meaningful conclusions.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on use of dealing commission (*COBS* 11.6.3R).
- 11.6.6 G An example of goods or services relating to the *execution* of trades that the *FSA* does not regard as meeting the requirements of the *rule* on use of dealing commission (*COBS* 11.6.3R) is post-trade analytics.
- 11.6.7 G Examples of goods or services that relate to the provision of research that the *FSA* does not regard as meeting the requirements of the *rule* on use of dealing commission (*COBS* 11.6.3R) include price feeds or historical price data that have not been analysed or manipulated to reach meaningful conclusions.
- 11.6.8 G Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FSA* does not regard as meeting the requirements of either evidential provisions *COBS* 11.6.4E or *COBS* 11.6.5E include:

- (1) services relating to the valuation or performance measurement of portfolios;
- (2) computer hardware;
- (3) connectivity services such as electronic networks and dedicated telephone lines;
- (4) seminar fees;
- (5) subscriptions for publications;
- (6) travel, accommodation or entertainment costs;
- (7) order and execution management systems;
- (8) office administrative computer software, such as word processing or accounting programmes;
- (9) membership fees to professional associations;
- (10) purchase or rental of standard office equipment or ancillary facilities;
- (11) employees' salaries;
- (12) direct money payments;
- (13) publicly available information; and
- (14) *custody* services relating to *designated investments* belonging to, or managed for, *customers* other than those services that are incidental to the *execution* of trades.

- 11.6.9 G The reference to research in the *rule* on use of dealing commission (*COBS* 11.6.3R) is not confined to *investment research* as defined in the *Glossary*. The *FSA's* view is that research can include, for example, the goods or services encompassed by *investment research*, provided that they are directly relevant to and are used to assist in the management of *investments* on behalf of *customers*. In addition, any goods or services that relate to the provision of research that the *FSA* regards as not acceptable under *COBS* 11.6.6G or *COBS* 11.6.7G should be viewed as not meeting the requirements of *COBS* 11.6.3R(2), notwithstanding that their content might qualify as *investment research*.
- 11.6.10 G This section applies only to arrangements under which an *investment manager* receives from brokers or other *persons* goods or services that relate to the *execution* of trades or the provision of research. It has no application in relation to *execution* and research generated internally by an *investment manager* itself.
- 11.6.11 G An *investment manager* should not enter into any arrangements that could compromise its ability to comply with its best execution obligations (*COBS*

11.2).

Rule on prior disclosure

- 11.6.12 R An *investment manager* that enters into arrangements under this section must make adequate prior disclosure to *customers* concerning the receipt of goods or services that relate to the *execution* of trades or the provision of research. This prior disclosure should form part of the summary form disclosure under the *rule* on inducements (*COBS 2.3.1R*).

Guidance on prior disclosure

- 11.6.13 G The *rule* on prior disclosure of goods and services under this section complements the requirements on the disclosure of inducements (*COBS 2.3.1(2)(b)*). *Investment managers* should ensure they comply with both requirements where relevant.
- 11.6.14 G (1) The prior disclosure required by this section should include an adequate disclosure of the *firm's* policy relating to the receipt of goods or services that relate to the *execution* of trades or the provision of research in accordance with the *rule* on use of dealing commission (*COBS 11.6.3R*).
- (2) The prior disclosure should explain generally why the *firm* might find it necessary or desirable to use dealing commission to purchase goods or services, bearing in mind the practices in the markets in which it does business on behalf of its *customers*. While the appropriate method of making such a disclosure is for the *firm* to decide, this could, for example, be achieved in a client agreement.

Rule on periodic disclosure

- 11.6.15 R If an *investment manager* enters into arrangements in accordance with the *rule* on use of dealing commission (*COBS 11.6.3R*), it must in a timely manner make adequate periodic disclosure to its *customers* of the arrangements entered into.

Adequate prior and periodic disclosure

- 11.6.16 R Adequate prior and periodic disclosure under this section must include details of the goods or services that relate to the *execution* of trades and, wherever appropriate, separately identify the details of the goods or services that are attributable to the provision of research.
- 11.6.17 G In assessing the adequacy of prior and periodic disclosures made by an *investment manager* under this section, the *FSA* will have regard to the extent to which the *investment manager* adopts disclosure standards developed by industry associations such as the Investment Management Association, the National Association of Pension Funds and the London Investment Banking Association.

Making periodic disclosures in a timely manner

- 11.6.18 E (1) A *firm* will make periodic disclosure to its *customers* under this section in a timely manner if it is made at least once a year.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on periodic disclosure (COBS 11.6.16R).

Record keeping

- 11.6.19 R An *investment manager* must make a record of each prior and periodic disclosure it makes to its *customers* in accordance with this section and must maintain each such record for at least five years from the date on which it is provided.

13 Preparing product information

...

- 13.2.1 ~~RG~~ [delete and replace with the following]
- When a *firm* prepares documents or information in accordance with this chapter, the *firm* should consider the rules on providing product information (COBS 14). Those rules require a *firm* to provide the product information in a durable medium or via a website that meets the website conditions (if the website is not a durable medium).

14 Providing product information to clients

After COBS 14.1 insert the following new Section; the text is not underlined:

14.2 Providing product information to clients

The provision rules

- 14.2.1 R A *firm* that sells:
- (1) a *packaged product* to a *retail client*, must provide a *key features document* to that *client* (unless the *packaged product* is a *unit* in a *simplified prospectus scheme* or an *EEA simplified prospectus scheme*);
 - (2) a *life policy* that is not a *reinsurance contract* to a *client*, must provide the *Consolidated Life Directive information* to that *client*;
 - (3) the variation of a *life policy* or *personal pension scheme* to a *retail client*, must provide that *client* with sufficient information about the variation for the *client* to be able to understand the consequences of the variation (unless the policy or scheme is a *SIPP*);

- (4) a *cash-deposit ISA* or *cash-deposit CTF* to a *retail client*, must provide a *key features document* to that *client*;
- (5) a *unit* in a *simplified prospectus scheme* to a *client*, must offer the *scheme's current simplified prospectus* to that *client*. In addition, if the *client* is a *retail client* present in the *EEA*, the *firm* must provide the *simplified prospectus* to the *client* together with:
 - (a) enough information for the *client* to be able to make an informed decision about whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way); and
 - (b) information about the three types of *CTF* that are generally available (*stakeholder CTFs*, *cash-deposit CTFs* and *share CTFs*), and the type of *CTF* the *firm* is offering (if the *units* will, or may, be held in a *CTF*);
- (6) a *unit* in an *EEA simplified prospectus scheme* to a *client*, must offer an up-to-date copy of the *scheme's EEA simplified prospectus* to that *client*.

[**Note:** in respect of (2) article 36(1) of, and Annex III to, the *Consolidated Life Directive*]

[**Note:** in respect of (5) and (6) articles 1, 33(1) and 44 of the *UCITS Directive*]

- 14.2.2 R The *documents* or information required to be provided or offered by the first provision rule (*COBS 14.2.1R*) must be in a *durable medium* or made available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.
- 14.2.3 R
 - (1) A *firm* that *personally recommends* that a *retail client* holds a particular asset in a *SIPP* must provide that *client* with sufficient information for the *client* to be able to make an informed decision about whether to buy or invest.
 - (2) This *rule* does not apply if the asset is described in *COBS 14.2.1R*.

Firm not to cause confusion about the identity of the producer of a product

- 14.2.4 R When a *firm* provides a *document* or information in accordance with the *rules* in this section, it must not do anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that has produced, or will produce, the product.

Exception to the provision rules: key features documents and simplified prospectuses

- 14.2.5 R A *firm* is not required to provide:
- (1) a *document*, if the *firm* produces the product and the *rules* in this section require another *firm* to provide the document;
 - (2) a *key features document*, if another *person* is required to provide the *distance marketing information* by the *rules* of another *EEA State*;
 - (3) the *Consolidated Life Directive information*, if another *person* is required to provide that information by the *rules* of another *EEA State*;
 - (4) a *simplified prospectus* if:
 - (a) another *person* is required to offer the *simplified prospectus* to the *client* by the *rules* of another *EEA State*; or
 - (b)
 - (i) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and
 - (ii) the *firm* offers an up-to-date copy of the *simplified prospectus* to the *client* and provides materially the same information to the *client* in some other way.

[**Note:** in respect of (3), article 36(4) of, and Annex III to, the *Consolidated Life Directive*]

[**Note:** in respect of (4), articles 1, 33(1) and 44 of the *UCITS directive*]

14.2.6 R [intentionally blank]

Exception to the provision rules: key features documents

14.2.7 R A *firm* is not required to provide a *key features document* for:

- (1) a *key features scheme* if it provides a *simplified prospectus* instead;
- (2) a *life policy* that is not a *reinsurance contract* if:
 - (a) the *firm* is operating from an establishment in another *EEA State* and the sale is by *distance contract*; or
 - (b) the *client* is habitually resident outside the *United Kingdom* and the sale is not by *distance contract*.
- (3) a *traded life policy*.

[**Note:** in respect of (2), articles 4(1) and 16 of the *Distance Marketing Directive* and article 36 of the *Consolidated Life Directive*]

Exception to the provision rules: key features documents

- 14.2.8 R A *firm* is not required to provide a *key features document*, if:
- (1) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and
 - (2) the *firm* provides materially the same information in some other way.

Exception to the provision rules: key features documents and simplified prospectuses

- 14.2.9 R A *firm* is not required to provide a *key features document* or a *simplified prospectus* for a *key features scheme* or *simplified prospectus scheme* if:
- (1) the *client* is habitually resident outside the *EEA* and not present in the *EEA* when the relevant application is signed; or
 - (2) the purchase is by a *discretionary investment manager* on behalf of a *retail client*; or
 - (3) the sale is *arranged* or *personally recommended* by an *investment manager* and the *client* has agreed that a *key features document* or *simplified prospectus* is not required; or
 - (4) a *retail client* is purchasing a holding in a *scheme* in which the *client* already has a holding, or the *client* is switching from one class of *shares* or *units* to another in the same *scheme*, and the relevant *document* has already been provided to that *client*.

[**Note:** articles 1, 33(1), and 44 of the *UCITS directive*]

- 14.2.10 G Although a *firm* is not always required to provide a *simplified prospectus* to a *client* (*COBS* 14.2.9R), the obligation to offer the prospectus to the *client* (*COBS* 14.2.1R (5)) remains.

Exception to the provision rules: aggregated scheme documents

- 14.2.11 R A *firm* may provide a single *document*, which describes more than one *key features scheme*, *simplified prospectus scheme* or *EEA simplified prospectus scheme*, or any combination of those *schemes*, if:
- (1) the *schemes* are offered through a *funds supermarket service*;
 - (2) the *document* clearly describes the difference between the relevant *schemes*; and
 - (3) (in the case of a *simplified prospectus scheme* or an *EEA simplified prospectus scheme*) the *firm* also offers copies of the relevant prospectuses to the *client*.

[**Note:** article 33(1) of the *UCITS directive*]

Exception: successive operations

- 14.2.12 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.
- 14.2.13 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the *rules* in this section only apply:
- (1) when the first operation is performed; and
 - (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

The timing rules

- 14.2.14 R When the *rules* in this section require a *firm* to:
- (1) offer a *simplified prospectus* or an *EEA simplified prospectus* to a *client*, that prospectus must be offered free of charge before the conclusion of the contract; or
 - (2) provide a *key features document*, a *simplified prospectus*, an *EEA simplified prospectus* or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business.

[**Note:** article 33(1) of the *UCITS directive*]

Exception to the timing rules: child trust funds

- 14.2.15 R A *key features document* for an *HMRC allocated CTF* must be provided as soon as reasonably possible after the *CTF* has been opened.

Exception to the timing rules: distance contracts and voice telephony communications

- 14.2.16 R A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or information to be provided in that form in good time before the *client* is bound by the contract.
- 14.2.17 R Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:

- (1) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information (*COBS* 6 Annex 2R) orally to the *client*;
- (2) if the *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information (*COBS* 6 Annex 1R) orally to the *client*;
- (3) in the case of (1) or (2), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

...

14.3.8 R The *documents* and information provided in accordance with the *rules* in this section must be in a *durable medium* or available on a website (where that does not constitute a *durable medium*) that ~~is capable of meeting~~ meets the *website conditions*.

[**Note:** article 29(4) of the *MiFID implementing Directive*]

...

16.2.3A G In determining what is essential information, a *firm* should consider including:

- (1) for transactions in a *derivative*:
 - (a) the maturity, delivery or expiry date of the derivative;
 - (b) in the case of an *option*, a reference to the last exercise date, whether it can be exercised before maturity and the strike price;
 - (c) if the transaction *closes out* an open *futures* position, all essential details required in respect of each contract comprised in the open position and each contract by which it was *closed out* and the profit or loss to the *client* arising out of *closing out* that position (a difference account);
- (2) for the exercise of an *option*:
 - (a) the date of exercise, and either the time of exercise or that the *client* will be notified of that time on request;
 - (b) whether the exercise creates a sale or purchase in the underlying asset; and
 - (c) the strike price of the *option* (for a currency *option*, the rate of exchange will be the same as the strike price) and, if applicable, the total consideration from or to the *client*; and

- (3) the fact that the transaction involves any dividend or capitalisation or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the investment, and under the terms of the transaction the benefit of which will not pass to the purchaser.

16.4.5 G In reporting to a client in accordance with this section, a firm should consider whether to provide details of any assets loaned or charged including:

- (1) which investments (if any) were at the end of the relevant period loaned to any third party and which investments (if any) were at that date charged to secure borrowings made on behalf of the portfolio; and
- (2) the aggregate of any interest payments made and income received during the period in respect of loans or borrowings made during that period

COBS 16 Annex 1 R			
	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with SUP 17 Annex 1R	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis.)
1.	...		
13.	a total sum of the commissions and expenses charged and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant the amount of any <i>mark-up or mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	Y
14.	the rate of exchange obtained where the transaction involves a conversion of currency;	Y	Y
19.	[intentionally blank]		

After COBS 17, insert the following new Chapter; the text is not underlined:

18 Specialist Regimes

[intentionally blank]

18.1 Trustee Firms

Application

- 18.1.1 R (1) This section applies to the *MiFID or equivalent third country business* carried on by a *trustee firm*.
- (2) It does not apply to a *trustee firm* when acting as:
- (a) a *depository*; or
- (b) the trustee of a *personal pension scheme* or *stakeholder pension scheme*.

Application of COBS to trustee firms

- 18.1.2 R The provisions of *COBS* in the table do not apply to a *trustee firm* to which this section applies:

COBS	Description
6.2	Describing the breadth of a firm's advice on investments
6.3	Disclosing information about services, fees and commission - packaged products
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts – communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with <i>COBS</i> 16.2.1R and 16.3

- 18.1.3 G The provisions of *COBS* in the table are unlikely to be relevant in relation to a *trustee firm* to which this section applies:

COBS	Description
------	-------------

5	Distance communications
13	Preparing product information
14.2	Providing product information
15	Cancellation
17	Claims handling for long-term care insurance
18.2	Energy market activity and oil market activity
18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

Duties of trustee firms under the general law

- 18.1.4 G To the extent a *rule* in *COBS* applies to a *trustee firm*, that *rule*:
- (1) applies in addition to any duties or powers imposed or conferred upon a trustee by the general law; and
 - (2) does not qualify or restrict the duties or powers that the general law imposes or confers upon a trustee; *trustee firms* will be under a duty to observe the provisions of their trust instrument; if its provisions conflict with any applicable *rule*, *trustee firms* will need to take advice in resolving the conflict.

Considering and complying with applicable COBS rules

- 18.1.5 G In considering and reaching decisions as to how applicable *rules* in *COBS* apply in the context of a particular trust arrangement, a *trustee firm* should consider the nature of that arrangement and the provisions of the relevant trust instrument.

References to "client" in applicable COBS rules

- 18.1.6 G Where an applicable *rule* in *COBS* requires the doing of any thing in relation to a *client*, the *trustee firm* should consider who, in the context of that *rule* and having regard to the particular trust arrangement, is the most appropriate person to treat as its *client*. This might, for example, be the beneficiary, another trustee or the trust, depending on the particular circumstances.

18.2 Energy market activity and oil market activity

Energy market activity and oil market activity – MiFID business

- 18.2.1 R The provisions of *COBS* in the table do not apply in relation to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
6.2	Describing the breadth of a firm's advice on investments
6.3	Disclosing information about services, fees and commission - packaged products
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
11.6	Use of dealing commission
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts – communications to clients
16 Annex 1 R (1) 14	Information to be provided in accordance with <i>COBS</i> 16.2.1R and 16.3

- 18.2.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
5	Distance communications
7	Insurance mediation
13	Preparing product information
14.2	Providing product information to clients
15	Cancellation
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime

18.3	Corporate finance business
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

18.3 Corporate finance business

Corporate finance business – MiFID business

- 18.3.1 R The provisions of *COBS* in the table do not apply in respect of any *corporate finance business* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
6.2	Describing the breadth of a firm's advice on investments
6.3	Disclosing information about services, fees and commission - packaged products
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
11.6	Use of dealing commission
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts – communications to clients
16 Ann 1 R (1) 14	Information to be provided in accordance with <i>COBS</i> 16.2.1R and 16.3

- 18.3.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *corporate finance business* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
5	Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>

7	Insurance mediation
13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i>
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.2	Energy market activity and oil market activity
18.4	Stock lending activity
19	Pensions - supplementary provisions
20	With-profits

18.4 Stock lending activity

- 18.4.1 R The provisions of *COBS* in the table do not apply in relation to any *stock lending activity* carried on by a *firm* which is *MiFID* or equivalent *third country business*:

COBS	Subject
6.2	Describing the breadth of a firm's advice on investments
6.3	Disclosing information about services, fees and commission - packaged products
6.4	Disclosure of charges, remuneration and commission
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
11.6	Use of dealing commission
16.3.9	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts – communications to clients

16 Annex 1 R (1) 14	Information to be provided in accordance with <i>COBS</i> 16.2.1 and 16.3
------------------------	---

- 18.4.2 G The provisions of *COBS* in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a *firm* which is *MiFID* or equivalent *third country business*:

COBS	Description
5	Distance communications, except in relation to <i>distance contracts</i> concluded with <i>consumers</i>
7	Insurance mediation
13	Preparing product information
14.2	Providing product information
15	Cancellation, except cancellation and withdrawal rights in relation to <i>distance contracts</i> concluded with <i>consumers</i>
17	Claims handling for long-term care insurance
18.1	Trustee firms' regime
18.2	Energy market activity and oil market activity
18.3	Corporate finance business
19	Pensions - supplementary provisions
20	With-profits

Transitional Provisions

COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
...
<u>2.2A</u>	<u>COBS 6.3</u> (Disclosing information about services, fees and commission –	<u>R</u>	(1) A <i>firm</i> may use the keyfacts logo on an <i>initial disclosure document</i> , a <i>combined initial</i>	From <u>1 November 2007</u> until <u>1 May 2008</u> .	<u>1 November 2007</u>

	<u>packaged products)</u>		<u>disclosure document</u> or a <u>fees and commissions statement</u> that <u>complied with the rules in COB 4.3 in effect on 31 October 2007.</u> (2) In this <u>transitional rule</u> , " <u>fees and commissions statement</u> " has the <u>meaning given by the Handbook glossary on 31 October 2007.</u>		
<u>2.2A</u>	<u>COBS 6.3 (Disclosing information about services, fees and commission – packaged products)</u>	<u>G</u>	Under <u>GEN 5.1.5R</u> and <u>COBS 6.3.4R</u> , a <u>firm</u> may not use the <u>keyfacts logo</u> on a <u>document</u> designed to <u>comply with disclosure requirements in COBS</u> unless it is an <u>initial disclosure document</u> , a <u>combined initial disclosure document</u> or a <u>menu</u> prepared in accordance with <u>COBS 6.3. COBS TP 2.2A R</u> allows a <u>firm</u> to use existing stocks of the equivalent <u>documents</u> produced under <u>COB</u> for a <u>transitional period</u> .	<u>From 1 November 2007 until 1 May 2008.</u>	<u>1 November 2007</u>
...

Annex D

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text.

4.4.1 R ...

- (4) A *firm* must not use a *combined initial disclosure document* in relation to a combination of:
- (a) *regulated mortgage contracts* (other than lifetime mortgages) or *home purchase plans*; and
 - (b) *equity release transactions*.

...

4.10.2 R ...

- (3) A *firm* must not use a *combined initial disclosure document* in relation to a combination of *home purchase plans* and *equity release transactions*.

Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

4.6 Simplified Prospectus provisions

...

Composite documents for several schemes, sub-funds and classes

4.6.10 G ~~{intentionally blank}~~

In the FSA's view, a firm may, for the purposes of the rules in COBS 14 requiring a firm to provide a key features document or a simplified prospectus, combine the required information on several simplified prospectus schemes, key facts schemes or EEA simplified prospectus schemes or any combination of them into a composite document, provided the document continues to comply with the general requirements such as being clear. Similarly, the information on different sub-funds or classes within a scheme may be combined into a composite document or provided as separate documents. Where the latter approach is adopted, references in this section to "scheme" or "simplified prospectus scheme" should be taken as referring to the relevant sub-fund or class, as applicable.

INTEGRATED REGULATORY REPORTING (AMENDMENT) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Parts 1, 2 and 4 come into force on 6 August 2007;
 - (2) Parts 3 and 5 come into force on 1 November 2007; and
 - (3) Part 6 comes into force on 1 January 2008.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Amendment) Instrument 2007.

By order of the Board
26 July 2007

Annex A

Amendments to the Supervision manual (SUP)

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

Part 1 (comes into force 6 August 2007)

Amendments to SUP Transitional Provisions TP1

TP1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Transitional provision: dates in force
...					
12 J	...				
	(3) <i>SUP</i> 16.7.67R, <i>SUP</i> 16.7.68R and <i>SUP</i> 16.7.68AR	R	A <i>UCITS investment firm</i> is not required to submit <u>the</u> <u>Annual Financial Return and</u> the Consolidated Supervision Return under <i>SUP</i> 16.7.68R.	1 January 2007 to 31 December 2007	13 February 2004 and 1 January 2007
	...				
...					

Part 2 (comes into force 6 August 2007)

SUP 16 Annex 24R

In this Annex, underlining indicates new text and striking through indicates deleted text. In FSA017, highlighting indicates cells that have been deleted or inserted.

FSA001

Balance sheet

...

3 If no (to data element 1), is this a solo-consolidated report?

Yes/No

4 ~~If no (to data element 1), are you a member of a non-EEA sub-group?~~
(If you answer yes, you are also required to report FSA028.)

Yes/No

Assets

...

A B
Trading book Non-trading
book

Interest rate gap report

	A	B	C	D	E	F	G	H	J	K	L	M	N	P	Q
1	2%														
	Totals	Overnight to 3 months	3-6 months	6-12 months	1-2 years	2-3 years	3-4 years	4-5 years	5-6 years	6-7 years	7-8 years	8-9 years	9-10 years	Over 10 years	No specific re-pricing
Assets															
2	Monetary balance sheet assets (non-optional) as per contractual re-pricing date														
3	> Adjusted Adjustments for actual expected re-pricing date														
4	> Pipeline products														
5	Monetary balance sheet assets with option features and with re-pricing maturity determined as per note 1 below														
6	> Adjusted Adjustments for actual expected re-pricing date														
7	> Pipeline products														
8	Net Trading Book asset														
9	Non-monetary and other assets														
10	Asset sub-total														
11	> Linear derivative contracts														
12	> Non-linear derivative contracts														
13	Asset totals														
Liabilities															
14	Monetary balance sheet liabilities (non-optional) as per contractual re-pricing date														
15	> Adjusted Adjustments for actual expected re-pricing date														
16	> Pipeline products														
17	Monetary balance sheet liabilities with option features and with re-pricing maturity determined as per note 1 below														
18	> Adjusted Adjustments for actual expected re-pricing date														
19	> Pipeline products														
20	Net Trading Book Liability														
21	Non monetary and other liabilities														
22	Capital and Reserves														
23	> Adjusted Adjustments for capital investment term assumptions														
24	Liabilities sub-total														
25	> Linear derivative contracts														
26	> Non-linear derivative contracts														
27	Liability totals														
Gap sensitivity															
28	Net Gap	=0													
29	Gap limits (optional)														
30	Cumulative gap														
31	Reverse cumulative gap														
32	Cumulative gap limits (optional)														
33	Reverse cumulative gap limits (optional)														
34	Period to reprice (mid-point, in years)		0.125	0.375	0.75	1.5	2.5	3.5	4.5	5.5	6.5	7.5	8.5	9.5	12.5
35	Standard discount factors	%													
36	Bespoke discount factors/forward yield curve														
37	Forward yield curve														
43	Discount rate/rates (or forward yield curve)														
44	Discount factors for central rate														
45	Discount factors for + shift														
46	Discount factors for - shift														
47	PV of net gap at central rate														
48	PV of net gap with + shift														
49	PV of net gap with - shift														
38	NPV Sensitivity to + shift (as derived from above data)														
39	NPV Sensitivity to - shift (as derived from above data)														
40	Alternative estimate of NPV sensitivity to + shift														
41	Alternative estimate of NPV sensitivity to - shift														
42	NPV Sensitivity limits (optional)														

Note An option that is IN the money or would be in the event of the parallel shift calculated in 37 or 38 45 or 46 or more should be assigned a maturity (i.e re-pricing) date equal to the expiry date of the contract. This affects data elements 12 and 26 (options).
 1 An option that is OUT of the money and would remain so in the event of the parallel shift calculated in 37 or 38 45 or 46 or more should be assigned to the 'overnight to 3 month' maturity band. This affects data elements 12 and 26 (options).
 An option within these two bounds should have its re-pricing date determined by simple straight line interpolation - e.g. an option exactly at the money, would be assigned a notional maturity date halfway between overnight and the contract expiry date

FSA019 Pillar 2 information

B

... ..

5 When did you last review the ICAAP?

6 Have your external auditors audited your firm's financial statement in the 12 months?

... ..

32 Do you use credit risk mitigation techniques?

... ..

**FSA020
ELMIs balance sheet**

A

... ..

18 ~~Audited~~ Externally verified interim profits

... ..

21 Interim net losses (-ve)

... ..

**FSA024
Large exposures (electronic money institutions)**

For each large exposure, or group of closely related exposures, within 20% weighted credit institutions and qualifying debt securities

	Counterparty, or group, name	Exposure at reporting date	% total of own funds
	A	B	C
1			
1			
2			
n			
	Total		

Part 3 (comes into force 1 November 2007)

SUP 16 Annex 24R

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

FSA010 Mismatch liquidity

Part 1 - marketable assets

		Mark to market		Discount where denominated in Zone A currency (%)	Discount where denominated in Zone B currency (%)	Discounted to	
		Zone A currencies	Zone B currencies			8 days and under	over 8 days to 1 month
		A	B			C	D
...	...						
15	Highly liquid equities/equity indices			20	40		
126	<u>Other marketable assets</u>			<u>5</u>			
16	<u>Total discounted amount</u>						
...	...						

**FSA011
Building society liquidity**

	A	B	C	D	E
	Book value	Ineligible amount	Market value	Discounted value	Amount of prudential liquidity
Liquid assets realisable in up to 8 days					
...					
4 Total gilts					
17 <u>Qualifying Money Market Funds</u>					
5 Other					
6 Liquid assets realisable from 8 days to 3 months					
7 Liquid assets realisable in 3 months and over					
8 Total liquid assets					
...					
...					

FSA029

Balance Sheet

Fixed Assets		A
...	...	
Current liabilities		
14	Creditors	
15	Sundry creditors	
16	Accruals	
17	Bank loans and overdrafts segregated due within 1 year	

18	Bank loans and overdrafts non segregated due within 1 year	
19	Short term subordinated loan due within 1 year	
20	Long term subordinated loan due within 1 year	
55	<u>Total current liabilities</u>	
21	Net current assets (liabilities)	
	Long term liabilities	
...	...	

FSA031

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

Regulatory Capital

Part 1 (To be completed by all firms)

~~Tier 1~~

	A
1	Paid up Ordinary share capital which is fully paid (excluding preference shares)
5	Perpetual Non-cumulative preference shares capital which is fully paid
3	Share premium account
4	Reserves <u>excluding revaluation reserves</u>
36	<u>Audited retained earnings</u>
37	<u>Externally verified interim net profits</u>
38	<u>Partners' capital</u>
2	Eligible LLP Members' Capital <u>(in accordance with the provisions of IPRU(INV) Annex A)</u>
39	<u>Sole trader capital</u>
17	<u>Initial capital</u>

Part 2 (To be completed by those firms whose own funds requirement is calculated in accordance with IPRU(INV) 9.2.9R)

41	<u>Initial capital</u>
6	Less: Investment in own shares at book value
7	Intangible assets
8	Material current year losses
9	Material holdings in credit and financial institutions
10	Tier 1 Capital
	Tier 2
11	Revaluation reserves
12	Fixed term cumulative preference share capital
13	Long term subordinated loans
14	Perpetual Other <u>cumulative preference share capital and debt capital qualifying capital instruments</u>
15	Qualifying arrangements
9	Less <u>Material holdings in credit and financial institutions and material insurance holdings</u>
16	Own Funds

Part 23 (To be completed by those firms whose own funds requirement is calculated in accordance with IPRU(INV) 9.5)

4740	<u>Initial capital</u>
------	------------------------

18	Less: Investments in own shares <u>at book value</u>	
19	Intangible assets	
20	Material unaudited <u>current year</u> losses	
24	Original own funds	
22	Non-fixed term <u>Perpetual</u> cumulative preference shares	
23	Fixed term cumulative <u>capital</u> preference shares	
24	Non-fixed term <u>Perpetual</u> long term subordinated loans	
25	Fixed term long <u>Long</u> term subordinated loan	
26	Revaluation reserve	
27	Less the sum of material holdings in credit and financial institutions and material insurance holdings	
28	Own Funds	
	Part 4 (Regulatory capital test <u>to be completed by all firms</u>)	
29	How do you meet your regulatory capital requirement?	
	<i>Capital resources requirement</i>	
30	Own Funds requirement (Will always be a minimum of £5k / £10k even if PII/ combo indicated)	
31	Other FSA own funds requirement (if applicable)	
32	Surplus / (deficit)	
	<i>Professional Indemnity Insurance</i>	
...	...	

FSA032

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

	Regulatory Capital	A
	<i>Own Funds</i>	
1	Ordinary share capital which is fully paid <u>Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)</u>	
5	Perpetual Non-cumulative preference shares <u>capital which is fully paid (if not redeemable by shareholders within 2 years)</u>	
3	Share premium account	
4	Audited <u>Reserves (excluding valuation reserves) and verified interim net profits</u>	
45	<u>Audited retained earnings</u>	
46	<u>Externally verified interim net profits</u>	
47	<u>Partners' capital</u>	
2	Eligible LLP Members' Capital <u>(in accordance with the provisions of IPRU(INV) Annex A)</u>	
48	<u>Sole trader capital</u>	
6	Balances on proprietors' or partners' capital accounts	
7	Balances on proprietors' or partners' current accounts	
8	Less: Investments in own shares <u>at book value</u>	
9	Intangible assets	
10	Material current year losses	
44	Material holdings in credit and financial institutions	
12	Excess of current year's drawings over current year profits	
13	Revaluation Reserves	
14	Perpetual <u>Cumulative preference share capital and debt capital (if not redeemable by shareholders within 5 years)</u>	
15	Long-Term subordinated loans <u>(in accordance with IPRU(INV) 13.5.5AR)</u>	

16	Fixed term Preference share capital (if not redeemable by shareholders within 2 5 years) and debt capital	
11	Less Material holdings in credit and financial institutions and material insurance holdings	
17	Own Funds	
<i>Adjusted net current assets</i>		
18	Net current assets (from balance sheet)	
19	Less: Long term assets adjustment	
20	Connected persons adjustment	
21	Investments adjustment	
22	Adjusted Net Current assets	
Regulatory capital test		
23	How do you meet your regulatory capital requirement?	
<i>Capital requirement</i>		
24	Own funds requirement (<u>will always be a minimum of £10k even if PII / combination indicated</u>)	
25	Additional own funds requirement for PII (if applicable)	
26	Other FSA capital / own funds requirements (if applicable)	
27	Own Funds	
28	Surplus / (deficit)	
<i>Adjusted net current assets</i>		
29	Adjusted net current assets requirement (if applicable)	
30	Adjusted net current assets (if applicable)	
31	Surplus / (deficit) (if applicable)	
<i>Professional Indemnity Insurance</i>		
49	<u>Does your firm hold PII</u>	Yes / No
32	If not, D Does your firm hold a Comparable Guarantee or equivalent cover in lieu of PII or is it otherwise exempt from the requirement to holding PII?	Yes / No
33	If your firm does not hold a Comparable Guarantee or equivalent cover and is not exempt does the firm currently hold PII?	Yes / No
34	Does your firm conduct insurance mediation activities?	Yes / No
35	Has your firm renewed its PII cover since the last reporting date?	Yes / No
36	If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here. If not insert N/A.	
37	Is the cover compliant?	Yes / No
...	...	

FSA034

Capital adequacy (for firms subject to IPRU(INV) Chapter 5 not subject to the exemption in IPRU(INV) 5.2.3(2)R)

Regulatory capital		A	B
Tier 1			
1	Paid up share capital (excluding preference shares)		

35	<u>Eligible LLP member's capital</u>		
2	Share premium account		
3	Reserves		
4	Non-cumulative preference shares		
5	Less: Investment in own shares		
6	Intangible assets		
7	Material current year losses		
8	Material holdings in credit and financial institutions		
36	<u>Excess LLP member's drawings</u>		
9	Total deductions		
10	Tier 1 Capital		
	<i>Tier 2</i>		
...	...		

FSA035

Capital adequacy (for firms subject to IPRU(INV) Chapter 5 subject to the exemption in 5.2.3(2)R)

	Regulatory capital		
	<i>Tier 1</i>		
1	Paid up share capital (excluding preference shares)		
21	<u>Eligible LLP member's capital</u>		
2	Share premium account		
3	Reserves		
4	Non-cumulative preference shares		
5	Less: Investment in own shares		
6	Intangible assets		
7	Material current year losses		
8	Material holdings in credit and financial institutions		
22	<u>Excess LLP member's drawings</u>		
9	Total deductions		
10	Tier 1 Capital		
	<i>Tier 2</i>		
...	...		

FSA036

Capital adequacy (for UCITS firms subject to UPRU)

	Regulatory Capital		
	<i>Tier 1</i>		
1	Paid up share capital (excluding preference shares)		
2	Share premium account		
3	Reserves		
4	Non-cumulative preference shares		
41	<u>Eligible LLP members' capital</u>		
5	Less: Investment in own shares		

6	Intangible assets		
7	Material current year losses		
42	<u>Excess LLP members' drawings</u>		
8	Material holdings in credit and financial institutions		
9	Initial capital		
	<i>Tier 2</i>		
...	...		

FSA 037

Capital adequacy (for firms subject to IPRU(INV) Chapter 13)

Regulatory Capital		A	B
	<i>Own Funds</i>		
1	Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)		
57	<u>Eligible LLP Members' Capital</u>		
2	Share premium account		
3	Retained profits		
4	Interim net profits		
5	Revaluation reserves		
6	Short term subordinated loans		
7	Debt capital		
8	Balances on proprietors' or partners' capital accounts		
9	Balances on proprietors' or partners' current accounts		
10	Less Intangible assets		
11	Material current year losses		
12	Excess of current year drawings over current year profits		
58	<u>Excess LLP members' drawings</u>		
13	PASS Loan adjustments		
14	Own Funds		
15	Personal assets		
16	Total		
	<i>Adjusted net current assets</i>		
...	...		

FSA040

CFTC DATA: Specialist data for firms subject to CFTC part 30 exemption order

		A	B	C	D
12	Total excess / (deficiency) for individual letter of credit				
		Secured amount	Value of letter of credit	Excess / (deficiency)	Date rectified
1					
...					
n					
			Total	Total	
...					

FSA041

Asset Managers that use Hedge Fund Techniques Report

A

... ..
2 ~~Do you use derivatives for investment purposes in an uCIS that is not domiciled in the UK~~

--

... ..
Fund's Auditor(s)
For the auditor(s) you use to audit your funds, please provide the following:-

5 Name(s) of the auditing firm(s) that signed the most recent audit opinion

--

6 ~~(Name(s)) & Location(s) of the auditor's office responsible for the most recent audit~~

--

Prime broker(s)

7 Name(s) of prime broker(s)

--

8 ~~(Name(s)) & Location(s) of prime broker(s)~~

--

Custodian(s)

9 Name(s) of custodian(s)

--

10 ~~(Name(s)) & Location(s) of custodian(s)~~

--

Third Party Administrator(s)

11 Name(s) of the third party administrators(s)

--

12 ~~(Name(s)) & Location(s) of the third party administrator(s)~~

--

Part 4 (comes into force 6 August 2007)

SUP 16 Annex 25G

FSA001 – Balance sheet

...

~~4 — If no (to data element 1) are you a member of a non-EEA sub-group?~~

~~See *BIPRU* 8.2. Firms should answer ‘yes’ or ‘no’. A *BIPRU* firm that is the ultimate parent of a group (as a building society will always be) will always report ‘no’ here.~~

~~Firms that answer ‘yes’ to 4A will be required to report half yearly on FSA028. The figures reported in FSA028 may not necessarily be the same as those reported on FSA003 because the *non-EEA sub-group* may contain firms that are not included within the solo-consolidation. If the coverage is the same, it is likely that no detailed figures will be required on FSA028.~~

...

54A Direct credit substitutes

...

(f) standby letters of credit, or other irrevocable obligations, serving as financial guarantees where the firm has an irrevocable obligation to pay a third party beneficiary if the customer fails to repay an outstanding commitment, eg letters of credit supporting the issue of commercial paper, delivery of merchandise, or for stock lending (standby letters of credit which are related to non-financial transactions should be reported in ~~53A~~55A below);

(g) ...

...

64A Client money held

Provide the total amount of client money held at the reporting date. Firms should be identifying this already to ensure compliance with CASS. For UK consolidation group reports, firms should only include client money to which CASS applies.

FSA002 – Income statement

...

32B Fees and commissions expenses

Include commissions paid or shared with other firms, plus fees, brokerage and other charges paid in relation to the execution, registration or clearing of transactions. Commissions paid to staff should be reported under 35B.

...

36B Of which: Staff costs (ie non-discretionary)

Include salary costs, employer's national insurance contributions and social security costs, the employer's contribution to any pension scheme, and benefits in kind. Also include here commissions paid to staff on business they have introduced.

37B Of which: Charges for discretionary staff costs

Include discretionary bonuses and profit/performance share and share option schemes. Any commissions paid to staff on business they did not introduce should be recorded here.

...

FSA002 – Income statement validations

Internal validations

...

Validation number	Data element		
1	...		
<u>1a</u>	1A	≤	1B
2	...		
...			
8	...		
<u>8a</u>	34A	≤	34B
9	...		
10	39B	=	40B + 41B [deleted]
...			

FSA003 – Capital adequacy

...

31A Excess on limits for innovative tier one instruments

The amount reported in 26A which is in excess of the limits set out in *GENPRU 2.2.30R*. See also *GENPRU 2.2.25R*. As set out in *GENPRU 2.2.25R* to *GENPRU 2.2.27R*, the excess is however available in *upper tier two capital* in ~~3837A~~.

31B Excess on limits for innovative tier one instruments

In line with *GENPRU 2.2.42R*, *innovative tier one capital* cannot be included in *tier one capital resources*. This figure equates to the whole of the firm's *innovative tier one capital* (26A) ~~with the signs reversed~~. As set out in *GENPRU 2.2.25R* to *GENPRU 2.2.27R*, the capital is however available in *upper tier two capital* in ~~3837B~~.

...

39A Revaluation reserve

See *GENPRU 2.2.185R*.

[CEBS' CA 1.2.1.2 plus CA 1.2.1.3]

...

40A General/collective provisions

See ~~GENPRU 2.2.197~~187R to ~~GENPRU 2.2.189R~~.

...

69A Base capital resources requirement

...

If the report is for a *UK consolidation group*, this should be zero – see ~~BIPRU 8.3.6R~~8.3.3G.

...

76A Variable capital requirements to be met from tier one and tier two capital

See ~~BIPRU~~GENPRU 2.2.44R. This is the sum of the *credit risk capital component* (data element 77A), the *operational risk capital requirement* (data element 85A, less data element 90A if applicable) and the *counterparty risk capital component* (data element 91A). It also includes that part of 92A that is not met from tier three capital alone (58A).

77A Total credit risk capital component

See ~~GENPRU 2.1.39R~~BIPRU 3.1.5R, as modified if a firm has an IRB permission.

A further breakdown of this figure is provided quarterly in FSA004 for those firms that are required to report that data item.

...

81A Under foundation IRB approach

The *credit risk capital component* under *BIPRU 3* calculated in accordance with a firm's IRB permission to use the foundation IRB approach and *BIPRU 4*. This figure covers the following exposures classes:

- central government and central banks (~~BIPRU 4.3.2R (1)~~)
- institutions (~~BIPRU 3.4.2R (2)~~4.3.2R (2)); and
- corporates (~~BIPRU 3.4.2R (3)~~4.3.2R (3)).

...

82A Retail IRB

This covers the *credit risk capital component* under *BIPRU 3* calculated in accordance with a firm's IRB permission to use the advanced IRB approach and *BIPRU 4*, and covers the retail exposure class (~~BIPRU 3.4.2R (4)~~4.3.2R (4)).

...

91A Counterparty risk capital component

See ~~BIPRU 14.1.3R~~14.2.1R.

...

104A Fixed overheads requirement

This should only be completed by *BIPRU limited activity firms* and *BIPRU limited licence firms*. See ~~GENPRU 2.1.41~~53R to ~~GENPRU 2.1.46~~59G.

...

...			
72	...		
<u>72a</u>	71A		If $((72A + 73A + 74A + 75A) > 0)$, then 0 [deleted]
<u>72b</u>	72A		If $((71A + 73A + 74A + 75A) > 0)$, then 0 [deleted]
<u>72c</u>	73A		If $((71A + 72A + 74A + 75A) > 0)$, then 0 [deleted]
<u>72d</u>	74A		If $((71A + 72A + 73A + 75A) > 0)$, then 0 [deleted]
<u>72e</u>	75A		If $((71A + 72A + 73A + 74A) > 0)$, then 0 [deleted]
73	71A	=	$76A + 92A$ [deleted – replaced by validation 104]
74	72A	=	$76A + 92A$ [deleted – replaced by validation 105]
75	73A	=	$76A + 92A$ [deleted – replaced by validation 106]
76	74A	=	$\text{Max}((77A + 91A + 93A + 103A), 104A)$ [deleted – replaced by validation 107]
77	75A	=	$\text{Max}((77A + 91A + 93A + 103A), 104A)$ [deleted – replaced by validation 108]
78	...		
79			[Not used]
80	...		
...			
86	92A	=	$92A + 103A + 104A$ [deleted – replaced by validation 109]
...			
93	107A	=	$15A/70A$ [deleted – replaced by validation 110]
94	107B	=	$15B/70A$ [deleted – replaced by validation 111]
...			
97	112A		If $8A$ — no, then 0 [deleted – replaced by validation 112]
...			
99	127A + 128A	=	$51A + 52A + 53A$ — 126A [deleted – replaced by validation 113]
...			

<u>102</u>	<u>63A</u>	=	<u>Max (59A + 60A + 61A – 62A – 92A), 0</u>
<u>103</u>	<u>63B</u>	=	<u>Max (59B + 60B + 61B – 62B – 92A), 0</u>
<u>104</u>	<u>71A</u>		<u>If 1A = Yes, then 76A + 92A, else 0</u>
<u>105</u>	<u>72A</u>		<u>If 2A = Yes, then 76A + 92A, else 0</u>
<u>106</u>	<u>73A</u>		<u>If 3A = Yes, then 76A + 92A, else 0</u>
<u>107</u>	<u>74A</u>		<u>If 4A = Yes, then (if 8A = Yes, 0, else (Max (77A + 91A + 93A + 103A), 104A)), else 0</u>
<u>108</u>	<u>75A</u>		<u>If 8A = Yes, then (Max ((77A + 91A + 93A + 103A), 104A)), else 0</u>
<u>109</u>	<u>92A</u>	=	<u>93A + 103A + 104A</u>
<u>110</u>	<u>107A</u>	=	<u>(15A/70A) * 100</u>
<u>111</u>	<u>107B</u>	=	<u>(15B/70A) * 100</u>
<u>112</u>	<u>112A</u>		<u>If 8A = no, then 0</u>
<u>113</u>	<u>127A + 128A</u>	=	<u>49A + 50A + 51A – 126A</u>

...

External validations

Validation number Data element

...

4	...		
<u>4a</u>	<u>84A</u>	=	<u>FSA004.33A</u>
5	...		

...

<u>15</u>	<u>103A</u>	≥	<u>FSA008.5RT</u>
<u>16</u>	<u>103A</u>		<u>If FSA008.3A = no, then (103A = FSA008.5RT), else (103A ≥ FSA008.5RT)</u>

...

FSA004– Credit risk validations

...

Internal validations

...

Validation number Data element

1	1A	=	2A+3A+4A+5A+6A+7A+8A+9A+10A+11A+12A+13A+14A+15A+16A+17B [deleted – replaced by validation 14]
---	---------------	---	--

...

<u>14</u>	<u>1A</u>	=	<u>2A + 3A + 4A + 5A + 6A + 7A + 8A + 9A + 10A + 11A + 12A + 13A + 14A + 15A + 16A + 17A</u>
-----------	-----------	---	--

$$\underline{15} \quad \underline{33A} \quad = \quad \underline{34A + 35A + 36A}$$

$$\underline{16} \quad \underline{33B} \quad = \quad \underline{34B + 35B + 36B}$$

External validations

Validation number	Data element	
1	1A	= FSA003.83A [deleted – replaced by validation 6]
2	18A	= FSA003.85A [deleted – replaced by validation 7]
3	23A	= FSA003.86A [deleted – replaced by validation 8]
4	28A	= FSA003.87A [deleted – replaced by validation 9]
5	33A	= FSA003.88A [deleted – replaced by validation 10]
<u>6</u>	<u>1A</u>	= <u>FSA003.79A</u>
<u>7</u>	<u>18A</u>	= <u>FSA003.81A</u>
<u>8</u>	<u>23A</u>	= <u>FSA003.82A</u>
<u>9</u>	<u>28A</u>	= <u>FSA003.83A</u>
<u>10</u>	<u>33A</u>	= <u>FSA003.84A</u>

FSA005 – Market risk

...

18 Total interest rate PRR

This is the sum of the general interest rate, specific interest rate, securitisation exposures/unrated liquidity facilities, ordinary CDS, securitisation CDS, basic interest rate, options, CAD1 and other PRRs.

...

FSA005 – Market risk validations

Internal validations

Data elements are referenced by row then column.

Validation number	Data element	
...		
4	18G	= 3G + 10G + 11G + 12G + 13G + 14G + 15H + 16H + 17H [deleted – replaced by validation 52]
...		
<u>52</u>	<u>18G</u>	= <u>3G + 10G + 11G + 12G + 13G + 14G + 15G + 16G + 17G</u>

FSA007 – Operational risk

...

18 Loss events

In this section, report individual loss events that have occurred during the reporting period which are greater than 1% of the capital resources reported in data element ~~4A~~15A on data item FSA003 at the previous accounting reference date (in 2008 firms should alternatively use the figure reported in data element 25A on FSA009). List each loss event on a separate line.

...

FSA007 – Operational risk validations

Internal validations

...

Validation Data element
number

1 ~~4A~~ If $1A = \text{Yes}$, then $(2A+3A+5A+6A+6A+7A+8A+9A+10A+11A) > 0$, else $(2A+3A+5A+6A+6A+7A+8A+9A+10A+11A) = 0$
[deleted – replaced by validation 5]

...

5 1A If $1A = \text{Yes}$, then $(2A + 3A + 4A + 5A + 6A + 7A + 8A + 9A + 10A + 11A) > 0$, else $(2A + 3A + 4A + 5A + 6A + 7A + 8A + 9A + 10A + 11A) = 0$

...

FSA008 – Large exposures

...

Part 1 – Large exposures at the reporting date

This section should contain details of all *large exposures* at the reporting date, as defined in GENPRU-BIPRU 10.5.1R.

...

5D % of capital resources under *BIPRU* 10.5.3R

This is column C as a percentage of data element ~~5A~~4A, and should be 10% or more. It should be entered to two decimal places, omitting the % sign.

5E Exposure after credit risk mitigation

This is the figure reported in column ~~D~~C after *credit risk mitigation*. This figure is subsequently broken down in columns F to M.

...

5N Trading book concentration risk excess

This is the *trading book concentration risk excess*, arising under ~~BIPRU 10.5.10R~~10.5.20R, expressed as a percentage of data element 4B. See ~~BIPRU 10.5.9R to 10.5.13R~~ for further details. It should be entered to two decimal places, omitting the % sign.

5P Trading book concentration risk excesses that have existed for 10 business days or less

This is the amount of the *trading book concentration risk excesses* that have existed for 10 business days or less, as a percentage of data element 3B. A total is given for this column to monitor it against ~~BIPRU 10.5.11R~~10.5.12R.

5Q Trading book concentration risk excesses that have persisted for more than 10 business days

This is the amount of the *trading book concentration risk excesses* that have persisted for more than 10 business days. A total for this column is given to monitor it against ~~BIPRU 10.5.12R~~10.5.13R.

5R CNCOM

The amount of CNCOM calculated as set out in ~~BIPRU 10.5.14R to 10.5.31G~~10.5.16G to 10.5.24G. It should agree with the amount reported in data element 103A on FSA003 for the same reporting date, except when the firm is a member of a *UK integrated group* when there may be some additional CNCOM attributable to the firm.

...

5V Credit risk capital requirement

This is the credit risk capital requirement for the exposure, calculated in accordance with ~~BIPRU 2.1.39R~~ GENPRU 2.1.51R.

6A Confirmation

Firms should confirm that we have been notified under BIPRU 10.5.9R of all exposures ~~in accordance with BIPRU 10.5.7R~~ that have exceeded, or will exceed, the limits set out in BIPRU 10.5.6R or 10.5.8R.

...

FSA008 – Large exposures validations

Internal validations

...

<u>Validation number</u>	<u>Data element</u>		
1	4A	≠	4B <u>[deleted]</u>
...			
4	5D	=	5C/4A <u>[deleted – replaced by validation 38]</u>
...			
7	5G	=	5F/4A <u>[deleted – replaced by validation 39]</u>

...			
9	<u>5J</u>	=	<u>5H/4A [deleted – replaced by validation 40]</u>
...			
12	<u>5L</u>	=	<u>5K/4A [deleted – replaced by validation 41]</u>
13	<u>5M</u>	=	<u>(5H+5K)/4A [deleted – replaced by validation 42]</u>
...			
15	<u>5N</u>	=	<u>(5H+5K)/4B [deleted – replaced by validation 43]</u>
...			
23	<u>7D</u>	=	<u>7C/4A [deleted – replaced by validation 44]</u>
...			
26	<u>7G</u>	=	<u>7F/4A [deleted – replaced by validation 45]</u>
..			
28	<u>7J</u>	=	<u>7H/4A [deleted – replaced by validation 46]</u>
...			
31	<u>7L</u>	=	<u>7K/4A [deleted – replaced by validation 47]</u>
32	<u>7M</u>	=	<u>(7H+7K)/4A [deleted – replaced by validation 48]</u>
...			
<u>36</u>	<u>8H</u>	≡	<u>8F + 8G – (4B/4)</u>
<u>37</u>	<u>5D</u>	≥	<u>10.00</u>
<u>38</u>	<u>5D</u>	≡	<u>5C/4A * 100</u>
<u>39</u>	<u>5G</u>	≡	<u>5F/4A * 100</u>
<u>40</u>	<u>5J</u>	≡	<u>5H/4A * 100</u>
<u>41</u>	<u>5L</u>	≡	<u>5K/4A * 100</u>
<u>42</u>	<u>5M</u>	≡	<u>(5H+5K)/4A * 100</u>
<u>43</u>	<u>5N</u>	≡	<u>(5H+5K)/4B * 100</u>
<u>44</u>	<u>7D</u>	≡	<u>7C/4A * 100</u>
<u>45</u>	<u>7G</u>	≡	<u>7F/4A * 100</u>
<u>46</u>	<u>7J</u>	≡	<u>7H/4A * 100</u>
<u>47</u>	<u>7L</u>	≡	<u>7K/4A * 100</u>
<u>48</u>	<u>7M</u>	≡	<u>(7H+7K)/4A * 100</u>
...			

External validations

Validation number	Data element	
1	<u>5RT</u>	If 3A = no, then (5RT = FSA003.103A) [deleted]
<u>2</u>	<u>5RT</u>	<u>If 3A = no, then (5RT = FSA003.103A), else (5RT ≤</u>

FSA009 – Key data

...

19A Total tier one capital after deductions

This figure is equivalent to Stage F in:

- ...
- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 16A in FSA003.

20A Total tier two capital after deductions

This figure is equivalent to stage K in:

- ...
- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 35A in FSA003.

21A Deductions from the totals of tier one and two

This figure is equivalent to stage M in:

- ...
- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 48A in FSA003.

22A Capital resources for large exposures

This is the total tier one plus tier two capital after deductions. It is equivalent to Stage N in:

- ...
- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 57A in FSA003.

23A Total tier three capital

This figure is equivalent to Stage Q in:

- ...
- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 58A in FSA003.

24A Deductions from total capital

This is equivalent to Stage S in:

- ...

- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 65A in FSA003.

25A Total capital after deductions

This figure is equivalent to Stage T in:

- ...
- *GENPRU 2 Annex 6R*, for a *BIPRU investment firm* with a waiver from consolidated supervision.

It is also equivalent to data element 15A in FSA003.

...

29A Total credit risk capital component

This will be completed by firms that have adopted one of the new approaches to credit risk at the reporting date.

It is equivalent to data element 77A in FSA003.

30A Total operational risk capital requirement

This will be completed by firms that have adopted one of the new approaches to credit risk at the reporting date.

It is equivalent to data element 85A in FSA003.

31A Reduction in operational risk capital requirement under BIPRU TP 12.8R

...

Firms should report here the amount by which the *ORCR* reported in 29A is reduced as a result of the calculation in *BIPRU TP 12.8R* (thus 30A less this data element will give the reduced *ORCR*).

It is equivalent to data element 90A in FSA003.

32A Counterparty risk capital component

This will be completed by firms that have adopted one of the new approaches to credit risk at the reporting date.

It is equivalent to data element 91A in FSA003.

33A Total market risk capital requirement

This will only be completed by firms that have adopted one of the new approaches to credit risk at the reporting date.

It is equivalent to data element 93A in FSA003.

34A Concentration risk capital component

This will only be completed by firms that have adopted one of the new approaches to credit risk at the reporting date.

It is equivalent to data element 103A in FSA003.

35A Fixed overheads requirement

See *GENPRU 2.1.40R* to *GENPRU 2.1.46G* to *GENPRU 2.1.53R* to *GENPRU 2.1.59G*.

It is equivalent to data element 104A in FSA003.

36A Capital requirement

...

... Although this may be expected, firms should be able to explain how the differences from that have arisen.

For firms that have adopted the new approaches to credit risk and have answered Yes to data element 18A, it is equivalent to data element 70A in FSA003.

37A Base capital resources requirement

See ~~GENPRU 2.1.29R~~. Enter here the firm's *base capital resources requirement*, converted into the currency of reporting. See *GENPRU 2.1.41R* to *GENPRU 2.1.43G*, *GENPRU 2.1.47R* and *GENPRU 2.1.48R*. *UK banks* authorised before 1993 should also see *GENPRU 2.1.60R* to *GENPRU 2.1.62R*.

If the report is for a *UK consolidation group*, this should be zero – see *BIPRU 8.3.3G*.

It is equivalent to data element 69A in FSA003.

38A Capital resources requirement arising from the operation of capital floors

...

When reporting, the scaling factors set out in *BIPRU TP 2.8R* should have been applied.

It is equivalent to data element 105A in FSA003.

...

40A Individual capital guidance – total capital resources

...

... Total capital resources after deductions are as defined in *GENPRU 2.2.12R* and is stage T in *GENPRU 2 Annexes 2R* to *6R* as appropriate. The amount of total capital resources should be shown in data element ~~24A~~25A. See *BIPRU 2.2.16G*.

This data element should be used where an ICG letter provides guidance on the amount of total capital or is silent on the nature of the capital which can be used to meet the obligation in *GENPRU 1.2.26R*.

For firms (*UK banks* and *building societies*) that previously had an Individual Capital Ratio (ICR) or Threshold Ratio (TR) set, the data item should be completed as follows. For those firms that are not yet on the new approaches to credit risk (i.e. have responded 'no' to data item 18A), the figure reported should be the banking book risk weighted assets multiplied by the banking book ICR or TR plus, if appropriate, the total trading book notional risk weighted assets multiplied by the trading book ICR or TR. If the firm has adopted the new approaches to credit risk and responded 'yes' to data item 18A, then the figure entered here should be calculated in accordance with the letter sent to firms late last year, unless the FSA has subsequently set an ICG.

If no ICG has been set, firms should enter 0 here.

...

FSA010 – Liquidity Mismatch

...

Definitions

...

Part 4: Calculation of mismatches and exceptions reporting

Calculation of mismatches

...

All mismatch percentages (~~110A-110C and 121A-121C and also 125B and 125C~~ 110B-110D, 124B-124D, 125B and 125C) should be reported to two decimal places. ...

The figures that are entered in elements ~~114A-114C, 118A-118C and 120A-120C~~ 114B-114D, 118B-118D and 120B-120D should be shown to two decimal places. Thus, if it had been agreed that 15% of undrawn commitments to lend should be included in the 'demand' column, 15.00 should be entered in data elements ~~118A-118C~~ 118B-118D.

In order for the forms to be processed, mismatch calculations should be completed on both the contractual basis and the behaviourally adjusted basis, even if the final figures (in ~~110A-110C and 124A-124C~~ 110B-110D and 124B-124D) will be the same. Firms should only enter figures in ~~114A-114C~~ 114B-114D if figures have previously been agreed with the supervisors: if no figures have been agreed, line ~~113A-113C~~ 113B-113D should be blank. If no behavioural adjustments have been agreed for data elements ~~118A-118C or 120A-120C~~ 118B-118D and 120B-120D, firms should enter the figure 15.00 in these boxes (assuming they have figures in elements 58A or 59A respectively, otherwise the items should remain blank). ...

...

FSA010 – Mismatch liquidity validations

...

Internal validations

...

PART 4: CALCULATION OF LIQUIDITY MISMATCHES

Ref Item No
No

...

14 ~~107C~~ =~~104C~~ [~~deleted – replaced by validation 55~~]

...

16 ~~107D~~ =~~104D~~ [~~deleted – replaced by validation 56~~]

...

25 ~~113B~~ =~~if (114B <> 0, then (114B * 57A / 100), else no validation)~~ [~~deleted – replaced by validation 57~~]

...

29 ~~113C~~ =~~if (114C <> 0, then (114C * 57A / 100), else no validation)~~ [~~deleted – replaced by~~]

		<u>validation 58]</u>
...		
33	<u>113D</u>	= if (114D < 0, then (114D * 57A / 100), else no validation) [<u>deleted – replaced by validation 59]</u>
...		
36	<u>117B</u>	= if (118B < 0, then (118B * 58A / 100), else no validation) [<u>deleted – replaced by validation 60]</u>
37	<u>119B</u>	= if (120B < 0, then (120B * 59A / 100), else no validation) [<u>deleted – replaced by validation 61]</u>
...		
40	<u>117C</u>	= if (118C < 0, then (118C * 58A / 100), else no validation) [<u>deleted – replaced by validation 62]</u>
41	<u>119C</u>	= if (120C < 0, then (120C * 59A / 100), else no validation) [<u>deleted – replaced by validation 63]</u>
...		
44	<u>117D</u>	= if (118D < 0, then (118D * 58A / 100), else no validation) [<u>deleted – replaced by validation 64]</u>
45	<u>119D</u>	= if (120D < 0, then (120D * 59A / 100), else no validation) [<u>deleted – replaced by validation 65]</u>
...		
<u>55</u>	<u>107C</u>	<u>= 104C + 105B + 106B</u>
<u>56</u>	<u>107D</u>	<u>= 104D + 105B + 106B</u>
<u>57</u>	<u>113B</u>	<u>= 114B * 57A / 100</u>
<u>58</u>	<u>113C</u>	<u>= 114C * 57A / 100</u>
<u>59</u>	<u>113D</u>	<u>= 114D * 57A / 100</u>
<u>60</u>	<u>117B</u>	<u>= 118B * 58A / 100</u>
<u>61</u>	<u>119B</u>	<u>= 120B * 59A / 100</u>
<u>62</u>	<u>117C</u>	<u>= 118C * 58A / 100</u>
<u>63</u>	<u>119C</u>	<u>= 120C * 59A / 100</u>
<u>64</u>	<u>117D</u>	<u>= 118D * 58A / 100</u>
<u>65</u>	<u>119D</u>	<u>= 120D * 59A / 100</u>

FSA012 – Liquidity mismatch (for EEA branches that do not have permission to accept deposits) validations

Validations

...

Validation number	Data element		
1	3A	=	2A/1A [deleted – replaced by validation 3]
2	3B	=	2B/1A [deleted – replaced by validation 4]
<u>3</u>	<u>3A</u>	<u>=</u>	<u>(2A/1A) * 100</u>
<u>4</u>	<u>3B</u>	<u>=</u>	<u>(2B/1A) * 100</u>

FSA013 - Stock liquidity

...

3A UK Treasury Bills

Enter holdings of UK Treasury bills issued by H M Government. UK Treasury bills denominated in euros and Bills in any currency for which the Bank of England is obligor may also be included.

...

9A Wholesale sterling net outflow over five working days

A sterling stock liquidity bank's wholesale sterling net outflow is obtained by subtracting wholesale sterling assets maturing over the next five working days and reserves that are held in the Bank of England's reserves scheme, from wholesale sterling liabilities falling due over the same period.

...

16A Sterling liquidity ratio (LQR)

The sterling liquidity ratio should be 100% or more unless it is appropriate for the firm to maintain a lower ratio (such cases should be agreed with the FSA). The figure should be calculated to two decimal places (rounding .005 and above up, and below .005 down). ~~The calculated figure should then be multiplied by 100 and reported in this data element as integers.~~

...

FSA013 – Stock liquidity validations

Internal validations

...

Reference number	Data element		
------------------	--------------	--	--

...

8	16A	=	If 9A>0, then (6A/(9A-12A+15A)) multiplied by 100 to 2 decimal places, (rounding 5 and over up, and under 5 down), then multiplied by 100, otherwise (6A/(0-12A+15A)) multiplied by 100 to 2 decimal places, (rounding 5 and over up, and under 5 down), then multiplied
---	-----	---	---

FSA017 – Interest rate gap report validations

Internal validations

Data elements are referenced first by row then by column.

Validation number	Data element	
...		
3	...	
4	3A	= 2A <u>[deleted – replaced by validation 201]</u>
...		
8	6A	= 5A <u>[deleted – replaced by validation 202]</u>
...		
11	9A	= 9Q <u>[deleted – replaced by validation 203]</u>
...		
13	10A	= 2A+4A+5A+7A+8A+9A <u>[deleted – replaced by validation 205]</u>
14	10B	= 2B+4B+5B+7B+8B <u>[deleted – replaced by validation 206]</u>
15	10C	= 2C+4C+5C+7C <u>[deleted – replaced by validation 207]</u>
16	10D	= 2D+4D+5D+7D <u>[deleted – replaced by validation 208]</u>
17	10E	= 2E+4E+5E+7E <u>[deleted – replaced by validation 209]</u>
18	10F	= 2F+4F+5F+7F <u>[deleted – replaced by validation 210]</u>
19	10G	= 2G+4G+5G+7G <u>[deleted – replaced by validation 211]</u>
20	10H	= 2H+4H+5H+7H <u>[deleted – replaced by validation 212]</u>
21	10J	= 2J+4J+5J+7J <u>[deleted – replaced by validation 213]</u>
22	10K	= 2K+4K+5K+7K <u>[deleted – replaced by validation 214]</u>
23	10L	= 2L+4L+5L+7L <u>[deleted – replaced by validation 215]</u>
24	10M	= 2M+4M+5M+7M <u>[deleted – replaced by validation 216]</u>
25	10N	= 2N+4N+5N+7N <u>[deleted – replaced by validation 217]</u>
26	10P	= 2P+4P+5P+7P <u>[deleted – replaced by validation 218]</u>
27	10Q	= 2Q+4Q+5Q+7Q <u>[deleted – replaced by validation 219]</u>
...		
48	15A	= 14A <u>[deleted – replaced by validation 220]</u>
...		
52	18A	= 17A <u>[deleted – replaced by validation 221]</u>
...		
57	21A	= 21Q <u>[deleted – replaced by validation 223]</u>
...		
60	23A	= 22A <u>[deleted – replaced by validation 224]</u>

...

62 24A = ~~14A+16A+17A+19A+20A+21A+22A~~[deleted – replaced by validation 225]

63 24B = ~~14B+16B+17B+19B+20B+22B~~[deleted – replaced by validation 226]

64 24C = ~~14C+16C+17C+19C+22C~~[deleted – replaced by validation 227]

65 24D = ~~14D+16D+17D+19D+22D~~[deleted – replaced by validation 228]

66 24E = ~~14E+16E+17E+19E+22E~~[deleted – replaced by validation 229]

67 24F = ~~14F+16F+17F+19F+22F~~[deleted – replaced by validation 230]

68 24G = ~~14G+16G+17G+19G+22G~~[deleted – replaced by validation 231]

69 24H = ~~14H+16H+17H+19H+22H~~[deleted – replaced by validation 232]

70 24J = ~~14J+16J+17J+19J+22J~~[deleted – replaced by validation 233]

71 24K = ~~14K+16K+17K+19K+22K~~[deleted – replaced by validation 234]

72 24L = ~~14L+16L+17L+19L+22L~~[deleted – replaced by validation 235]

73 24M = ~~14M+16M+17M+19M+22M~~[deleted – replaced by validation 236]

74 24N = ~~14N+16N+17N+19N+22N~~[deleted – replaced by validation 237]

75 24P = ~~14P+16P+17P+19P+22P~~[deleted – replaced by validation 238]

76 24Q = ~~14Q+16Q+17Q+19Q+22Q~~[deleted – replaced by validation 239]

...

114 30B = ~~28B~~[deleted]

115 30C = ~~28B+28C~~[deleted]

116 30D = ~~28B+28C+28D~~[deleted]

117 30E = ~~28B+28C+28D+28E~~[deleted]

118 30F = ~~28B+28C+28D+28E+28F~~[deleted]

119 30G = ~~28B+28C+28D+28E+28F+28G~~[deleted]

120 30H = ~~28B+28C+28D+28E+28F+28G+28H~~[deleted]

121 30J = ~~28B+28C+28D+28E+28F+28G+28H+28J~~[deleted]

122 30K = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K~~[deleted]

123 30L = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K+28L~~[deleted]

124 30M = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K+28L+28M~~[deleted]

125 30N = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K+28L+28M+28N~~[deleted]

126 30P = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K+28L+28M+28N+28P~~[deleted]

127 30Q = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]

- 128 31B = ~~28B+28C+28D+28E+28F+28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 129 31C = ~~28C+28D+28E+28F+28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 130 31D = ~~28D+28E+28F+28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 131 31E = ~~28E+28F+28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 132 31F = ~~28F+28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 133 31G = ~~28G+28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 134 31H = ~~28H+28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 135 31J = ~~28J+28K+28L+28M+28N+28P+28Q~~[deleted]
- 136 31K = ~~28K+28L+28M+28N+28P+28Q~~[deleted]
- 137 31L = ~~28L+28M+28N+28P+28Q~~[deleted]
- 138 31M = ~~28M+28N+28P+28Q~~[deleted]
- 139 31N = ~~28N+28P+28Q~~[deleted]
- 140 31P = ~~28P+28Q~~[deleted]
- 141 31Q = ~~28Q~~[deleted]
- 142 32B = ~~29B~~[deleted]
- 143 32C = ~~29B+29C~~[deleted]
- 144 32D = ~~29B+29C+29D~~[deleted]
- 145 32E = ~~29B+29C+29D+29E~~[deleted]
- 146 32F = ~~29B+29C+29D+29E+29F~~[deleted]
- 147 32G = ~~29B+29C+29D+29E+29F+29G~~[deleted]
- 148 32H = ~~29B+29C+29D+29E+29F+29G+29H~~[deleted]
- 149 32J = ~~29B+29C+29D+29E+29F+29G+29H+29J~~[deleted]
- 150 32K = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K~~[deleted]
- 151 32L = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K+29L~~[deleted]
- 152 32M = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K+29L+29M~~[deleted]
- 153 32N = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K+29L+29M+29N~~[deleted]
- 154 32P = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K+29L+29M+29N+29P~~[deleted]
- 155 32Q = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K+29L+29M+29N+29P+29Q~~[deleted]
- 156 33B = ~~29B+29C+29D+29E+29F+29G+29H+29J+29K+29L+29M+29N+29P+29Q~~[deleted]
- 157 33C = ~~29C+29D+29E+29F+29G+29H+29J+29K+29L+29M+29N+29P~~

+29Q[deleted]

158 33D = 29D+29E+29F+29G+29H+29J+29K+29L+29M+29N+29P+29Q
[deleted]

159 33E = 29E+29F+29G+29H+29J+29K+29L+29M+29N+29P+29Q[delet
ed]

160 33F = 29F+29G+29H+29J+29K+29L+29M+29N+29P+29Q[deleted]

161 33G = 29G+29H+29J+29K+29L+29M+29N+29P+29Q[deleted]

162 33H = 29H+29J+29K+29L+29M+29N+29P+29Q[deleted]

163 33J = 29J+29K+29L+29M+29N+29P+29Q[deleted]

164 33K = 29K+29L+29M+29N+29P+29Q[deleted]

165 33L = 29L+29M+29N+29P+29Q[deleted]

166 33M = 29M+29N+29P+29Q[deleted]

167 33N = 29N+29P+29Q[deleted]

168 33P = 29P+29Q[deleted]

169 33Q = 29Q[deleted]

170 36A = 36B+36C+36D+36E+36F+36G+36H+36J+36K+36L+36M+36N
+36P+36Q[deleted]

171 37A = 37B+37C+37D+37E+37F+37G+37H+37J+37K+37L+37M+37N
+37P+37Q[deleted]

172 38A = 38B+38C+38D+38E+38F+38G+38H+38J+38K+38L+38M+38N
+38P+38Q[deleted – replaced by validation 253]

173 39A = 39B+39C+39D+39E+39F+39G+39H+39J+39K+39L+39M+39N
+39P+39Q[deleted – replaced by validation 254]

174 36B = 28C*34C*1A*45/365 [deleted]

175 36C = 28D*34D*1A*136/365[deleted]

176 36D = 28E*34E*1A*273/365[deleted]

177 36E = 28F*34F*1A*1.5[deleted]

178 36F = 28G*34G*1A*2.5[deleted]

179 36G = 28H*34H*1A*3.5[deleted]

180 36H = 28J*34J*1A*4.5[deleted]

181 36J = 28K*34K*1A*5.5[deleted]

182 36K = 28L*34L*1A*6.5[deleted]

183 36L = 28M*34M*1A*7.5[deleted]

184 36M = 28N*34N*1A*8.5[deleted]

185 36N = 28P*34P*1A*9.5[deleted]

186 36P = 28Q*34Q*1A*10[deleted]

187 37B = -36B[deleted]

188 37C = -36C[deleted]

189	37D	=	-36D[deleted]
190	37E	=	-36E[deleted]
191	37F	=	-36F[deleted]
192	37G	=	-36G[deleted]
193	37H	=	-36H[deleted]
194	37J	=	-36J[deleted]
195	37K	=	-36K[deleted]
196	37L	=	-36L[deleted]
197	37M	=	-36M[deleted]
198	37N	=	-36N[deleted]
199	37P	=	-36P[deleted]
200	37Q	=	-36Q[deleted]
<u>201</u>	<u>3A</u>	≡	<u>0</u>
<u>202</u>	<u>6A</u>	≡	<u>0</u>
<u>203</u>	<u>9A</u>	≡	<u>9B+9C+9D+9E+9F+9G+9H+9J+9K+9L+9M+9N+9P+9Q</u>
<u>204</u>	<u>10A</u>	≡	<u>24A</u>
<u>205</u>	<u>10A</u>	≡	<u>2A+3A+4A+5A+6A+7A+8A+9A</u>
<u>206</u>	<u>10B</u>	≡	<u>2B+3B+4B+5B+6B+7B+8B+9B</u>
<u>207</u>	<u>10C</u>	≡	<u>2C+3C+4C+5C+6C+7C+9C</u>
<u>208</u>	<u>10D</u>	≡	<u>2D+3D+4D+5D+6D+7D+9D</u>
<u>209</u>	<u>10E</u>	≡	<u>2E+3E+4E+5E+6E+7E+9E</u>
<u>210</u>	<u>10F</u>	≡	<u>2F+3F+4F+5F+6F+7F+9F</u>
<u>211</u>	<u>10G</u>	≡	<u>2G+3G+4G+5G+6G+7G+9G</u>
<u>212</u>	<u>10H</u>	≡	<u>2H+3H+4H+5H+6H+7H+9H</u>
<u>213</u>	<u>10J</u>	≡	<u>2J+3J+4J+5J+6J+7J+9J</u>
<u>214</u>	<u>10K</u>	≡	<u>2K+3K+4K+5K+6K+7K+9K</u>
<u>215</u>	<u>10L</u>	≡	<u>2L+3L+4L+5L+6L+7L+9L</u>
<u>216</u>	<u>10M</u>	≡	<u>2M+3M+4M+5M+6M+7M+9M</u>
<u>217</u>	<u>10N</u>	≡	<u>2N+3N+4N+5N+6N+7N+9N</u>
<u>218</u>	<u>10P</u>	≡	<u>2P+3P+4P+5P+6P+7P+9P</u>
<u>219</u>	<u>10Q</u>	≡	<u>2Q+3Q+4Q+5Q+6Q+7Q+9Q</u>
<u>220</u>	<u>15A</u>	≡	<u>0</u>
<u>221</u>	<u>18A</u>	≡	<u>0</u>
<u>222</u>	<u>19A</u>	≡	<u>4A+7A-16A</u>
<u>223</u>	<u>21A</u>	≡	<u>21B+21C+21D+21E+21F+21G+21H+21J+21K+21L+21M+21N+21P+21Q</u>

<u>224</u>	<u>23A</u>	=	<u>0</u>
<u>225</u>	<u>24A</u>	=	<u>14A+15A+16A+17A+18A+19A+20A+21A+22A+23A</u>
<u>226</u>	<u>24B</u>	=	<u>14B+15B+16B+17B+18B+19B+20B+21B+22B+23B</u>
<u>227</u>	<u>24C</u>	=	<u>14C+15C+16C+17C+18C+19C+21C+22C+23C</u>
<u>228</u>	<u>24D</u>	=	<u>14D+15D+16D+17D+18D+19D+21D+22D+23D</u>
<u>229</u>	<u>24E</u>	=	<u>14E+15E+16E+17E+18E+19E+21E+22E+23E</u>
<u>230</u>	<u>24F</u>	=	<u>14F+15F+16F+17F+18F+19F+21F+22F+23F</u>
<u>231</u>	<u>24G</u>	=	<u>14G+15G+16G+17G+18G+19G+21G+22G+23G</u>
<u>232</u>	<u>24H</u>	=	<u>14H+15H+16H+17H+18H+19H+21H+22H+23H</u>
<u>234</u>	<u>24J</u>	=	<u>14J+15J+16J+17J+18J+19J+21J+22J+23J</u>
<u>235</u>	<u>24K</u>	=	<u>14K+15K+16K+17K+18K+19K+21K+22K+23K</u>
<u>236</u>	<u>24L</u>	=	<u>14L+15L+16L+17L+18L+19L+21L+22L+23L</u>
<u>237</u>	<u>24M</u>	=	<u>14M+15M+16M+17M+18M+19M+21M+22M+23M</u>
<u>238</u>	<u>24N</u>	=	<u>14N+15N+16N+17N+18N+19N+21N+22N+23N</u>
<u>239</u>	<u>24P</u>	=	<u>14P+15P+16P+17P+18P+19P+21P+22P+23P</u>
<u>240</u>	<u>24Q</u>	=	<u>14Q+15Q+16Q+17Q+18Q+19Q+21Q+22Q+23Q</u>
<u>241</u>	<u>31B</u>	=	<u>31C+28B</u>
<u>242</u>	<u>31C</u>	=	<u>31D+28C</u>
<u>243</u>	<u>31D</u>	=	<u>31E+28D</u>
<u>244</u>	<u>31E</u>	=	<u>31F+28E</u>
<u>245</u>	<u>31F</u>	=	<u>31G+28F</u>
<u>246</u>	<u>31G</u>	=	<u>31H+28G</u>
<u>247</u>	<u>31H</u>	=	<u>31J+28H</u>
<u>248</u>	<u>31J</u>	=	<u>31K+28J</u>
<u>249</u>	<u>31K</u>	=	<u>31L+28K</u>
<u>250</u>	<u>31L</u>	=	<u>31M+28L</u>
<u>251</u>	<u>31M</u>	=	<u>31N+28M</u>
<u>252</u>	<u>31N</u>	=	<u>28N</u>
<u>253</u>	<u>38A</u>	=	<u>38B+38C+38D+38E+38F+38G+38H+38J+38K+38L+38M+38N+38P</u>
<u>254</u>	<u>39A</u>	=	<u>39B+39C+39D+39E+39F+39G+39H+39J+39K+39L+39M+39N+39P</u>
<u>255</u>	<u>40A</u>	=	<u>40B+40C+40D+40E+40F+40G+40H+40J+40K+40L+40M+40N+40P</u>
<u>256</u>	<u>41A</u>	=	<u>41B+41C+41D+41E+41F+41G+41H+41J+41K+41L+41M+41N+41P</u>
<u>257</u>	<u>42A</u>	=	<u>42B+42C+42D+42E+42F+42G+42H+42J+42K+42L+42M+42N</u>

+42P

<u>258</u>	<u>44B</u>	\equiv	$\frac{1}{((1+43B)^{34B})}$
<u>259</u>	<u>44C</u>	\equiv	$\frac{1}{((1+43C)^{34C})}$
<u>260</u>	<u>44D</u>	\equiv	$\frac{1}{((1+43D)^{34D})}$
<u>261</u>	<u>44E</u>	\equiv	$\frac{1}{((1+43E)^{34E})}$
<u>262</u>	<u>44F</u>	\equiv	$\frac{1}{((1+43F)^{34F})}$
<u>263</u>	<u>44G</u>	\equiv	$\frac{1}{((1+43G)^{34G})}$
<u>264</u>	<u>44H</u>	\equiv	$\frac{1}{((1+43H)^{34H})}$
<u>265</u>	<u>44J</u>	\equiv	$\frac{1}{((1+43J)^{34J})}$
<u>266</u>	<u>44K</u>	\equiv	$\frac{1}{((1+43K)^{34K})}$
<u>267</u>	<u>44L</u>	\equiv	$\frac{1}{((1+43L)^{34L})}$
<u>268</u>	<u>44M</u>	\equiv	$\frac{1}{((1+43M)^{34M})}$
<u>269</u>	<u>44N</u>	\equiv	$\frac{1}{((1+43N)^{34N})}$
<u>270</u>	<u>44P</u>	\equiv	$\frac{1}{((1+43P)^{34P})}$
<u>271</u>	<u>45B</u>	\equiv	$\frac{1}{((1+(43B+1A))^{34B})}$
<u>272</u>	<u>45C</u>	\equiv	$\frac{1}{((1+(43C+1A))^{34C})}$
<u>273</u>	<u>45D</u>	\equiv	$\frac{1}{((1+(43D+1A))^{34D})}$
<u>274</u>	<u>45E</u>	\equiv	$\frac{1}{((1+(43E+1A))^{34E})}$
<u>275</u>	<u>45F</u>	\equiv	$\frac{1}{((1+(43F+1A))^{34F})}$
<u>276</u>	<u>45G</u>	\equiv	$\frac{1}{((1+(43G+1A))^{34G})}$
<u>277</u>	<u>45H</u>	\equiv	$\frac{1}{((1+(43H+1A))^{34H})}$
<u>278</u>	<u>45J</u>	\equiv	$\frac{1}{((1+(43J+1A))^{34J})}$
<u>279</u>	<u>45K</u>	\equiv	$\frac{1}{((1+(43K+1A))^{34K})}$
<u>280</u>	<u>45L</u>	\equiv	$\frac{1}{((1+(43L+1A))^{34L})}$
<u>281</u>	<u>45M</u>	\equiv	$\frac{1}{((1+(43M+1A))^{34M})}$
<u>282</u>	<u>45N</u>	\equiv	$\frac{1}{((1+(43N+1A))^{34N})}$
<u>283</u>	<u>45P</u>	\equiv	$\frac{1}{((1+(43P+1A))^{34P})}$
<u>284</u>	<u>46B</u>	\equiv	$\frac{1}{((1+(43B+1A))^{34B})}$
<u>285</u>	<u>46C</u>	\equiv	$\frac{1}{((1+(43C-1A))^{34C})}$
<u>286</u>	<u>46D</u>	\equiv	$\frac{1}{((1+(43D-1A))^{34D})}$
<u>287</u>	<u>46E</u>	\equiv	$\frac{1}{((1+(43E-1A))^{34E})}$
<u>288</u>	<u>46F</u>	\equiv	$\frac{1}{((1+(43F-1A))^{34F})}$
<u>289</u>	<u>46G</u>	\equiv	$\frac{1}{((1+(43G-1A))^{34G})}$
<u>290</u>	<u>46H</u>	\equiv	$\frac{1}{((1+(43H-1A))^{34H})}$
<u>291</u>	<u>46J</u>	\equiv	$\frac{1}{((1+(43J-1A))^{34J})}$
<u>292</u>	<u>46K</u>	\equiv	$\frac{1}{((1+(43K-1A))^{34K})}$

<u>293</u>	<u>46L</u>	\equiv	<u>$1/((1+(43L-1A))^{\wedge}34L)$</u>
<u>294</u>	<u>46M</u>	\equiv	<u>$1/((1+(43M-1A))^{\wedge}34M)$</u>
<u>295</u>	<u>46N</u>	\equiv	<u>$1/((1+(43N-1A))^{\wedge}34N)$</u>
<u>296</u>	<u>46P</u>	\equiv	<u>$1/((1+(43P-1A))^{\wedge}34P)$</u>
<u>297</u>	<u>47B</u>	\equiv	<u>$28B*44B$</u>
<u>298</u>	<u>47C</u>	\equiv	<u>$28C*44C$</u>
<u>299</u>	<u>47D</u>	\equiv	<u>$28D*44D$</u>
<u>300</u>	<u>47E</u>	\equiv	<u>$28E*44E$</u>
<u>301</u>	<u>47F</u>	\equiv	<u>$28F*44F$</u>
<u>302</u>	<u>47G</u>	\equiv	<u>$28G*44G$</u>
<u>303</u>	<u>47H</u>	\equiv	<u>$28H*44H$</u>
<u>304</u>	<u>47J</u>	\equiv	<u>$28J*44J$</u>
<u>305</u>	<u>47K</u>	\equiv	<u>$28K*44K$</u>
<u>306</u>	<u>47L</u>	\equiv	<u>$28L*44L$</u>
<u>307</u>	<u>47M</u>	\equiv	<u>$28M*44M$</u>
<u>308</u>	<u>47N</u>	\equiv	<u>$28N*44N$</u>
<u>309</u>	<u>48B</u>	\equiv	<u>$28B*45B$</u>
<u>310</u>	<u>48C</u>	\equiv	<u>$28C*45C$</u>
<u>311</u>	<u>48D</u>	\equiv	<u>$28D*45D$</u>
<u>312</u>	<u>48E</u>	\equiv	<u>$28E*45E$</u>
<u>313</u>	<u>48F</u>	\equiv	<u>$28F*45F$</u>
<u>314</u>	<u>48G</u>	\equiv	<u>$28G*45G$</u>
<u>315</u>	<u>48H</u>	\equiv	<u>$28H*45H$</u>
<u>316</u>	<u>48J</u>	\equiv	<u>$28J*45J$</u>
<u>317</u>	<u>48K</u>	\equiv	<u>$28K*45K$</u>
<u>318</u>	<u>48L</u>	\equiv	<u>$28L*45L$</u>
<u>319</u>	<u>48M</u>	\equiv	<u>$28M*45M$</u>
<u>320</u>	<u>48N</u>	\equiv	<u>$28N*45N$</u>
<u>321</u>	<u>49B</u>	\equiv	<u>$28B*46B$</u>
<u>322</u>	<u>49C</u>	\equiv	<u>$28C*46C$</u>
<u>323</u>	<u>49D</u>	\equiv	<u>$28D*46D$</u>
<u>324</u>	<u>49E</u>	\equiv	<u>$28E*46E$</u>
<u>325</u>	<u>49F</u>	\equiv	<u>$28F*46F$</u>
<u>326</u>	<u>49G</u>	\equiv	<u>$28G*46G$</u>
<u>327</u>	<u>49H</u>	\equiv	<u>$28H*46H$</u>
<u>328</u>	<u>49J</u>	\equiv	<u>$28J*46J$</u>

329 49K = 28K*46K
330 49L = 28L*46L
331 49M = 28M*46M
332 49N = 28N*46N

FSA018 – UK integrated group large exposures

...

General

...

3A Group capital resources under *BIPRU* 10.8.4013R

This is the *capital resources* of the *UK integrated group* calculated in accordance with *BIPRU* 10.8.4013R and *BIPRU* 10.8.14G.

...

4B ~~Counterparty name~~ Wider integrated group diverse blocks, and residual block

...

4D % of capital resources under *BIPRU* 10.8.4013R

...

4G % of capital resources under *BIPRU* 10.8.4013R

...

4J % of capital resources under *BIPRU* 10.8.4013R

This is column H as a percentage of the capital resources under *BIPRU* 10.8.4013R. It should be entered to two decimal places, omitting the % sign.

...

4L % of capital resources under *BIPRU* 10.8.4013R

This is column K as a percentage of the capital resources under *BIPRU* 10.8.4013R. It should be entered to two decimal places, omitting the % sign.

4M Aggregate % of capital resources under *BIPRU* 10.8.4013R

...

FSA018 – UK integrated group large exposures validations

Internal validations

Data elements are referenced by row then column.

<u>Validation</u>	<u>Data element</u>		

<u>number</u>			
...			
2	4D	=	4C/3A [deleted – replaced by validation 16]
3	4G	=	4F/3A [deleted – replaced by validation 17]
...			
5	4J	=	4H/3A [deleted – replaced by validation 18]
...			
9	4L	=	4K/3A [deleted – replaced by validation 19]
...			
11	4M	=	(4H+4K)/3A [deleted – replaced by validation 20]
...			
<u>14</u>	<u>4E</u>	≤	<u>4C</u>
<u>15</u>	<u>4F</u>	≤	<u>4E</u>
<u>16</u>	<u>4D</u>	≡	<u>(4C/3A) * 100</u>
<u>17</u>	<u>4G</u>	≡	<u>(4F/3A) * 100</u>
<u>18</u>	<u>4J</u>	≡	<u>(4H/3A) * 100</u>
<u>19</u>	<u>4L</u>	≡	<u>(4K/3A) * 100</u>
<u>20</u>	<u>4M</u>	≡	<u>((4H+4K)/3A) * 100</u>

...

FSA019 – Pillar 2 questionnaire

...

6B Have your external auditors audited your firm's financial statements in the last 12 months?

The answer is either 'Yes', or 'No' or 'Not applicable'.

...

FSA020 – Balance sheet (ELMIs) validations

Internal validations

...

Validation number Data elements

...

8 33A = 11A+13A+20A+21A+28A+30A+31A+32A[deleted – replaced by validation 10]

9 ...

10 33A ≡ 11A+13A+14A+20A-21A+28A+30A+31A+32A

$$\underline{11} \quad \underline{22A} \quad \geq \quad \underline{6A+8A}$$

External validations

Validation number	Data elements		
...			
<u>3</u>	<u>3A</u>	\equiv	<u>FSA025.3A</u>
<u>4</u>	<u>4A</u>	\geq	<u>FSA025.3A</u>
<u>5</u>	<u>11A</u>	\equiv	<u>FSA025.5A</u>

FSA023 – Foreign exchange risk (ELMIs) validations

Internal validations

...			
Validation number	Data element		
...			
<u>4</u>	<u>12C</u>	$=$	<u>8A*8%</u> [deleted – replaced by validation 5]
<u>5</u>	<u>12C</u>	\equiv	<u>11A*8%</u>
<u>6</u>	<u>15C</u>	\equiv	<u>13C-12C</u>
<u>7</u>	<u>16C</u>	\equiv	<u>14C-12C</u>
...			

FSA024 – Large exposures (ELMIs) validations

Internal validations

~~There are no validations for this data item.~~

<u>Validation number</u>	<u>Data element</u>		
<u>1</u>	<u>1BT</u>	\equiv	<u>Σ1B</u>
<u>2</u>	<u>1CT</u>	\equiv	<u>Σ1C</u>

FSA025 – Liquidity (ELMIs) validations

Internal validations

Data elements are referenced first by row then by column.

Validation number	Data elements		
1	1A	$=$	FSA021.1A+FSA021.2A [deleted – see external validation 5]
2	...		
3	4A	$=$	1A+(min (FSA021.29A*20%), (2A+3A)) [deleted – see external validation 6]

$$\underline{4} \qquad \underline{4A} \qquad \equiv \qquad \underline{1A+2A+3A}$$

External validations

Validation number	Data elements		
...			
<u>2</u>	<u>3A</u>	=	<u>FSA020.4A[deleted – replaced by validation 4]</u>
...			
<u>4</u>	<u>3A</u>	≤	<u>FSA020.4A</u>
<u>5</u>	<u>1A</u>	≡	<u>FSA020.1A+FSA020.2A</u>
<u>6</u>	<u>4A</u>	≡	<u>1A+2A+(min (FSA020.29A*20%), 3A)</u>

FSA028 – Non-EEA sub-groups

...

Firms should use the diagrams in *BIPRU* 8 Annex 3G, in conjunction with *BIPRU* 8.3, to help them understand in the first instance whether a *non-EEA sub-group* exists. For reporting dates up to and including 31 December 2007, if a *non-EEA sub-group* exists, and has been identified as existing on FSA001 (or FSA009), then this data item should be completed. For reporting dates on and after 1 January 2008, all firms that are members of a *UK consolidation group* at the relevant reporting date (other than a *building society*) will be required to complete this data item. However, where a firm concludes that the reporting requirement is fully met by another regulatory submission of FSA003/FSA009 (which will either be a solo-consolidated submission, or a *UK consolidation group* submission), it should be noted on this data item, which can then be submitted with no further information required.

...

25A Capital resources

Enter here the figure ~~previously reported for this *non-EEA sub-group* in data element 8A on the last submission. If it is the first occasion on which this sub-group has reported, use the figure in 8A above.~~

...

26F Non-exempt % of capital resources under *BIPRU* 10.5.23R

This is columns D plus E as a percentage of the capital resources under *BIPRU* 10.5.23R reported in data element 25A. It should be entered to two decimal places, omitting the % sign.

26G CNCOM

The amount of CNCOM calculated as set out in *BIPRU* 10.5.1416R to 10.5.2124G.

Part 5 (comes into force 1 November 2007)

SUP 16 Annex 25G

FSA010 – Liquidity Mismatch

...

41

...
(i) ...

...

(iv) Equities

Equities which are listed on a recognised stock index (see paragraph 43).	20% (40% if recognised stock index in a Zone B country)
---	---

(v) Other marketable assets

<u>Other marketable assets (usually Zone A)</u>	<u>5%</u>
---	-----------

42

...

15A-15D Highly liquid equities and equity indices

...

126A, C and D Other marketable assets (usually Zone A)

Include here *qualifying money market funds*.

...

Part 2: Contractual Basis: Residual Maturity

FSA010 – Mismatch liquidity validations

Internal validations

Data elements are referenced by row then column.

PART 1: MARKETABLE ASSETS

Ref Data elements

No

...

15 16C $= 1C + 2C + 3C + 4C + 5C + 6C + 7C + 8C + 9C + 10C + 11C + 12C + 13C + 14C + 15C$ [deleted – replaced by validation 17]

16 16D $= 2D + 3D + 4D + 5D + 6D + 7D + 8D + 9D + 10D + 11D + 12D + 13D + 14D + 15D$ [deleted –

replaced by validation 18]

<u>17</u>	<u>16C</u>		$= 1C + 2C + 3C + 4C + 5C + 6C + 7C + 8C + 9C + 10C + 11C + 12C + 13C + 14C + 15C + 126C$
<u>18</u>	<u>16D</u>		$= 2D + 3D + 4D + 5D + 6D + 7D + 8D + 9D + 10D + 11D + 12D + 13D + 14D + 15D + 126D$
<u>19</u>	<u>126A * 0.95</u>		$= 126C + 126D$

...

FSA011 – Building society liquidity

...

4 Total gilts

...

17 Qualifying Money Market Funds

See Annex 5A in IPRU(BSOC) Chapter 5, and paragraph 5.4.3 in the same chapter.

5 Other

...

FSA011 – Building society liquidity validations

Internal validations

Data elements are referenced by row then column.

Validation number	Data element		
...			
8	8A	=	4A + 5A + 6A + 7A [deleted – replaced by validation 14]
...			
10	8E	=	4E + 5E + 6E + 7E [deleted – replaced by validation 15]
...			
<u>13</u>	<u>17E</u>	≡	<u>17A</u>
<u>14</u>	<u>8A</u>	≡	<u>4A + 17A + 5A + 6A + 7A</u>
<u>15</u>	8E	≡	<u>4E + 17E + 5E + 6E + 7E</u>

FSA029 – Balance sheet validations

Internal validations

Data elements are referenced by row, then column.

Validation number Data element

...

3	21A	=	13A + 14A + 15A + 16A + 17A + 18A + 19A + 20A <u>[deleted – replaced by validation 16]</u>
...			
15	55A	≡	<u>14A + 15A + 16A + 17A + 18A + 19A + 20A</u>
16	21A	≡	<u>13A – 55A</u>

FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...

Defined Terms

...

- ...

Description	Data element	Guidance
Regulatory capital	<p>This section has two<u>four</u> parts. Each firm need only complete one part.</p> <ul style="list-style-type: none"> • Part 1 should only be completed by <u>all</u> firms previously subject to the requirements of IPRU(INV) Chapter 5 • Part 2 should only be completed by <u>those</u> firms previously subject to the requirements of IPRU(INV) Chapter 3 or 10 whose <u>own funds requirement is calculated in accordance with IPRU(INV) 9.2.9R</u> • Part 3 should <u>only</u> be completed by <u>those</u> firms whose <u>own funds requirement is calculated in accordance with IPRU(INV) 9.5</u> • Part 4 should be completed by <u>all</u> firms 	
Part 1	Covers data elements 1A to 17A	
<u>Paid-up Ordinary share capital which is fully paid (excluding preference shares)</u>	1A	Item 1 in <i>IPRU(INV)</i> Table 5.2.2(1) 9.3.1R
<u>Perpetual non-cumulative preference share capital which is fully paid</u>	5A	Item 2 in <i>IPRU(INV)</i> 9.3.1R
Share premium account	3A	Item 23 in <i>IPRU(INV)</i> Table 5.2.2(1) <u>9.3.1R</u>
Reserves <u>excluding</u>	4A	Item 34 in <i>IPRU(INV)</i> Table 5.2.2(1) <u>9.3.1R</u>

<u>revaluation reserves</u>		
<u>Non-cumulative preference shares</u>	<u>5A</u>	<u>Item 4 in IPRU(INV) Table 5.2.2(1)</u>
<u>Audited retained earnings</u>	<u>36A</u>	<u>Item 5 in IPRU(INV) 9.3.1R</u>
<u>Externally verified interim net profits</u>	<u>37A</u>	<u>Item 6 in IPRU(INV) 9.3.1R</u>
<u>Partners' capital</u>	<u>38A</u>	<u>Item 7 in IPRU (INV) 9.3.1R</u>
<u>Eligible LLP Members Capital (in accordance with the provisions of IPRU(INV) Annex A)</u>	<u>2A</u>	<u>Item 8 in IPRU (INV) 9.3.1R</u>
<u>Sole trader capital</u>	<u>39A</u>	<u>Item 9 in IPRU(INV) 9.3.1R</u>
Part 2	<u>Covers data elements 17A to 28A</u>	
<u>Initial capital</u>	<u>17A</u>	<u>This comprises the items listed in IPRU(INV) 9.3.1R</u>
Part 2	<u>To be completed by those firms whose own funds requirement is calculated in accordance with IPRU(INV) 9.2.9R</u>	
<u>Initial capital</u>	<u>40A</u>	<u>As calculated in Part 1 data element 17A</u>
<u>Investment in own shares at book value</u>	<u>6A</u>	<u>Item 5 in IPRU(INV) Table 5.2.2(1)</u>
...		
<u>Material holdings in credit and financial institutions and material insurance holdings</u>	<u>9A</u>	<u>Item 8 in IPRU(INV) Table 5.2.2(1)</u>
...		
<u>Perpetual Other cumulative preference share capital and debt capital qualifying capital instruments</u>	<u>14A</u>	<u>Item 12 in IPRU(INV) Table 5.2.2(1)</u>
<u>Qualifying arrangements</u>	<u>15A</u>	<u>Item 13 in IPRU(INV) Table 5.2.2(1)</u>
<u>Material holdings in credit and financial institutions and material insurance holdings</u>	<u>9A</u>	<u>Item 8 in IPRU(INV) Table 5.2.2(1)</u>
Part 23	<u>Covers data elements 17A to 28A To be completed by those firms whose own funds requirement is calculated in accordance with</u>	

	<u>IPRU(INV) 9.5</u>	
Initial capital	<u>17A</u> <u>41A</u>	Initial capital includes ordinary share capital (which is fully paid), perpetual non-cumulative preference share capital (which is fully paid), share premium account, reserves excluding revaluation reserves, audited retained earnings, externally verified interim net profits or current account, partners' capital, eligible LLP members' capital and sole trader capital. As calculated in Part 1 data element 17A
<u>Investments in own shares at book value</u>	<u>18A</u>	<u>In IPRU(INV) Table 9.5.2, item 1 of part B</u>
<u>Intangible assets</u>	<u>19A</u>	<u>In IPRU(INV) Table 9.5.2, item 2 of part B</u>
<u>Material current year losses</u>	<u>20A</u>	<u>In IPRU(INV) Table 9.5.2, item 3 of part B</u>
<u>Perpetual cumulative preference share capital</u>	<u>22A</u>	<u>In IPRU(INV) Table 9.5.2, item 2 of part C</u>
<u>Fixed term cumulative capital preference shares</u>	<u>23A</u>	<u>Limited to 50% of original own funds (21A) In IPRU(INV) Table 9.5.2, item 5 of part C</u>
<u>Perpetual long term subordinated loans</u>	<u>24A</u>	<u>In IPRU(INV) Table 9.5.2, item 4 of part C</u>
<u>Long term subordinated loans</u>	<u>25A</u>	<u>In IPRU(INV) Table 9.5.2, item 3 of part C</u>
<u>Revaluation reserves</u>	<u>26A</u>	<u>In IPRU(INV) Table 9.5.2, item 1 of part C</u>
<u>Regulatory capital test</u> <u>Part 4</u>	<u>Regulatory capital test to be completed by all exempt CAD firms</u>	
How do you meet your regulatory capital requirement?	<u>29A</u>	<p>The rules allow a firm to specify the method in which it will meet the regulatory capital requirement. A firm can:</p> <ul style="list-style-type: none"> • use capital to meet the regulatory requirement; or • use PII to meet the regulatory requirement; or • use a combination of capital and PII to meet the regulatory requirement. <p>A firm should select from the drop-down options. <u>(If a firm uses PII to meet the regulatory requirement it will nevertheless always require a minimum of £5,000 initial capital.)</u></p>
<u>Own funds requirement</u>	<u>30A</u>	<u>The own funds requirement ('OFR') should be calculated in accordance with section IPRU(INV) 9.2.</u>

		<u>Where a firm chooses to meet the regulatory requirements using PII the OFR will always be a minimum of £5,000.</u>
Other FSA own funds requirements (if applicable)	31A	<p>Firms subject to a requirement under another chapter of <i>IPRU(INV)</i> should include that requirement to the extent it exceeds the own funds requirement in 30A.</p> <p><u>For example, where an ECF also conducts non-MiFID activities, such as operating an unregulated collective investment scheme, it may be subject to a liquid capital requirement under <i>IPRU(INV)</i> chapter 5. The firm would need to express the liquid capital requirement in terms of 'own funds' by adjusting (adding back or deducting as relevant) those items of liquid capital which do not constitute items of the own funds computation e.g. the illiquid assets deduction. Where the liquid capital requirement, expressed in terms of own funds, exceeds the own funds requirement reported in 30A, the difference between both requirements should be reported here.</u></p>
...		
Does your firm hold a Comparable Guarantee in lieu of PII or is it otherwise exempt from PII?	33A	<p>...</p> <p>A firm is NOT exempt from holding PII if:</p> <ul style="list-style-type: none"> • the firm has a group policy with an insurer; or • the firm has permission for the regulated business that requires PII, but does not currently carry it out; or • it is a personal investment firm meeting the exemption requirements for mortgage intermediaries and insurance intermediaries in PRU 9.2 <u>MIPRU 3.1</u>. <p>...</p>
...		
Business line	35J	<p>For policies that cover all business lines, firms should select 'All' from the list provided (to follow). Where the policy contains different excess for different business lines, firms should identify these business lines from the list (or the closest equivalent) and report the (highest) excess for that business line in data element 36K <u>35K</u>. Once these 'non-standard' excesses have been identified, the remaining business lines should be reported under 'All other'.</p> <p>...</p>

...		
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FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU (INV) Chapter 9) validations

Internal validations

Data elements are referenced by row, then column

Validation number	Data element		
1	10A	=	1A + 2A + 3A + 4A + 5A + 6A + 7A + 8A + 9A [deleted – replaced by validation 9]
2	16A	=	10A + 11A + 12A + 13A + 14A + 15A [deleted – replaced by validation 10]
3	21A	=	17A + 18A + 19A + 20A [deleted]
4	23A	≤	50% * 21A[deleted]
5	28A	=	21A + 22A + 23A + 24A + 25A + 26A – 27A
6	32A	=	30A + 31A [deleted]
7	17A	≡	<u>1A + 5A + 3A + 4A + 36A + 37A + 38A + 2A + 39A</u>
8	40A	≡	<u>17A or 0</u>
9	10A	≡	<u>40A – 6A – 7A – 8A</u>
10	16A	≡	<u>10A + 11A + 12A + 13A + 14A + 15A – 9A</u>
11	41A	≡	<u>17A or 0</u>
12	28A	≡	<u>41A – 18A – 19A – 20A + 22A + 23A + 24A + 25A + 26A – 27A</u>
13	32A	≡	<u>(16A or 28A) – (30A + 31A)</u>

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

...

Defined Terms

...

- ...

Description	Data element	Guidance
Regulatory Capital		
Ordinary share capital (which is fully paid up)	1A	Share capital which is eligible for inclusion as regulatory capital. <u>Item 1 in IPRU(INV) 13.1A.7R</u>

<u>Perpetual non-cumulative preference share which is fully paid</u>	<u>5A</u>	<u>Item 2 in IPRU(INV) 13.1A.7R</u>
<u>Share premium account</u>	<u>3A</u>	<u>Item 3 in IPRU(INV) 13.1A.7R</u>
<u>Reserves excluding revaluation reserves</u>	<u>4A</u>	<u>Item 4 in IPRU(INV) 13.1A.7R</u>
<u>Audited retained earnings</u>	<u>45A</u>	<u>Item 5 in IPRU(INV) 13.1A.7R</u>
<u>Externally verified interim net profits</u>	<u>46A</u>	<u>Item 6 in IPRU(INV) 13.1A.7R</u>
<u>Partners' capital</u>	<u>47A</u>	<u>Item 7 in IPRU(INV) 13.1A.7R</u>
<u>Eligible LLP members' capital (in accordance with the provisions of IPRU(INV) Annex A</u>	<u>2A</u>	<u>Item 8 in IPRU(INV) 13.1A.7R</u>
<u>Sole trader capital</u>	<u>48A</u>	<u>Item 9 in IPRU(INV) 13.1A.7R</u>
Revaluation reserves	13A	Revaluation reserves (unrealised reserves arising from revaluation of fixed assets) can only be included here if audited.

Regulatory capital test(s)		
How do you meet your regulatory capital requirement?	23A	<p>The rules allow a firm to specify the method in which it will meet the regulatory capital requirement. A firm can:</p> <ul style="list-style-type: none"> • use capital to meet the regulatory requirement; or • use PII to meet the regulatory requirement; or • use a combination of capital and PII to meet the regulatory requirement. <p>A firm should select from the drop-down options. <u>(If a firm uses PII to meet the regulatory requirements it will nevertheless always require a minimum of £10,000 initial capital. For the purposes of this question the minimum initial capital held by the firm can be ignored.)</u></p>
<i>Capital requirement</i>		
Own funds requirement	24A	<p>The own funds requirement ('OFR') should be calculated in accordance with section IPRU(INV) 13.1A.</p> <p><u>Where a firm chooses to meet the regulatory</u></p>

		requirements using PII the OFR will be a minimum of £10,000.
...		
Other FSA capital / own funds requirements (if applicable)	26A	<p>Firms subject to a requirement under <i>IPRU(INV)</i> 13.2-8 or 13.9-12 should include that requirement as calculated by reference to the firm's own funds calculated under <i>IPRU(INV)</i> 13.3<u>13.1A</u> to the extent it exceeds the own funds requirement in 24A. This excludes capital requirements in relation to PII.</p> <p><u>For example, where an ECF is subject to an expenditure based requirement (EBR) the firm would need to express the EBR in terms of 'own funds' by adjusting for the extent to which the own funds exceeds its Test 2 financial resources. Where the adjusted requirement exceeds the own funds requirement reported in 24A, the difference between both requirements should be reported here.</u></p>
...		

Does your firm hold a Comparable Guarantee or equivalent cover in lieu of PII or is it otherwise exempt from holding PII?	32A	<p>...</p> <p>A firm is NOT exempt from holding PII if:</p> <ul style="list-style-type: none"> • the firm has a group policy with an insurer; or • the firm has permission for regulated business that requires PII, but does not currently carry it out; or • it is a personal investment firm meeting the exemption requirements for mortgage intermediaries and insurance intermediaries in <u>PRU 9.2</u> <i>MIPRU</i> 3.1. <p>...</p>
...		

Total of additional own funds required	42A	This represents the total of additional own funds required under <i>IPRU(INV)</i> 13.1.4 to 13.1.4(13)G for all of the firm's PII policies (data element 26A <u>25A</u>).
--	-----	---

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU (INV) Chapter 13) validations

Internal validations

...

Validation number	Data element		
1	17A	=	1A + 2A + 3A + 4A + 5A + 6A + 7A - 8A - 9A - 10A - 11A - 12A + 13A + 14A + 15A + 16A <u>[deleted – replaced by validation 9]</u>
...			
6	41A	≥	40A [deleted]
7	41A	=	25A [deleted – replaced by validation 10]
8	44A	=	43A - 42A
9	<u>17A</u>	≡	<u>1A + 5A + 3A + 4A + 45A + 46A + 47A + 2A + 48A - 8A - 9A - 10A - 12A + 13A + 14A + 15A + 16A - 11A</u>
<u>10</u>	<u>42A</u>	≡	<u>25A</u>
<u>11</u>	<u>42A</u>	=	<u>40A + 41A</u>

FSA034 – Capital Adequacy (for firms subject to IPRU (INV) Chapter 5 not subject to exemption in IPRU(INV) 5.2.3(2)R) validations

Internal validations

...

Validation number	Data item		
1	9B	=	5A + 6A + 7A + 8A <u>[deleted – replaced by validation 10]</u>
2	10B	=	1B + 2B + 3B + 4B + 9B <u>[deleted – replaced by validation 11]</u>
...			
<u>10</u>	<u>9B</u>	≡	<u>5A + 6A + 7A + 8A + 36A</u>
<u>11</u>	<u>10B</u>	≡	<u>1B + 35B + 2B + 3B + 4B - 9B</u>

FSA035 – Capital Adequacy (for firms subject to IPRU (INV) Chapter 5 subject to the exemption in IPRU(INV) 5.2.3(2)R) validations

Internal validations

...

Validation number	Data element		
1	9B	=	5A + 6A + 7A + 8A <u>[deleted – replaced by validation 8]</u>

2	10B	=	1B + 2B + 3B + 4B + 9B <u>[deleted – replaced by validation 9]</u>
...			
<u>8</u>	<u>9B</u>	=	<u>5A + 6A + 7A + 8A + 22A</u>
<u>9</u>	<u>10B</u>	=	<u>1B + 21B + 2B + 3B + 4B – 9B</u>

FSA036 – Capital Adequacy (for UCITS firms) validations

Internal validations

...

Validation number	Data element		
1	9B	=	1B + 2B + 3B + 4B – 5B – 6B – 7B – 8B <u>[deleted – replaced by validation 12]</u>
...			
<u>12</u>	<u>9B</u>	=	<u>1B + 2B + 3B + 4B + 41B – 5B – 6B – 7B – 42B – 8B</u>

FSA037 – Capital Adequacy (for firms subject to IPRU (INV) Chapter 13) validations

Internal validations

...

Validation number	Data element		
1	14B	=	1B + 2B + 3B + 4B + 5B + 6B + 7B + 8B + 9B – 10A – 11A – 12A + 13B <u>[deleted – replaced by validation 11]</u>
...			
<u>11</u>	<u>14B</u>	=	<u>1B + 57B + 2B + 3B + 4B + 5B + 6B + 7B + 8B + 9B – 10A – 11A – 12A – 58A + 13B</u>

FSA040 – CFTC validations

Internal validations

...

Validation number	Data item
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...

5 12CT ≡ Σ12C

FSA041 – Asset Managers that use Hedge Fund Techniques Report

Description	Data element	Guidance
...	1A	...
Do you use derivatives for investment purposes in an uCIS that is not domiciled in the UK?	2A	"Using derivatives for investment purposes" is a term used in European legislation with which we believe managers are familiar. This term suggests that derivatives are not being used solely in pursuit of efficient portfolio management.
...		
For the auditor(s) you use to audit your funds please provide the following: Name(s) of auditing firm(s) that signed the most recent audit opinion.	5A	The configuration of this data field is yet to be decided. At present, we propose that a <u>A list of the most frequently occurring auditor firms is available will be provided in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None'). There will also be the option to add, in free text, other auditor firms not included in the list provided.</u> We are conscious that several branches of the same audit firm or group may have been involved in effecting a single fund audit. On the basis of legal responsibility, we believe it is appropriate that the name and location of the signatory audit firm be captured in this section.
For the auditor(s) you use to audit your funds please provide the following: (Name(s)) & Location(s) of the auditor's office responsible for the audit.	6A	We propose that this field will be configured for free text completion. If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name(s) of the auditor(s) also be included in the free text response. The relevant location(s) should be recorded as City and Country.
Name(s) of prime broker(s)	7A	The configuration of this data field is yet to be decided. At present, we propose that a <u>A list of the most frequently occurring prime broker firms is available will be provided in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None'). There is also the option to add, in free text, other prime brokers not included in the list provided.</u>

(Name(s) & Location(s) of prime broker(s))	8A	<p>We propose that this field be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name of the prime broker(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>
Name(s) of custodian(s)	9A	<p>The configuration of this data field is yet to be decided. At present, we propose that a list of the most frequently occurring custodian firms is available in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None').</p>
(Name(s) & Location(s) of custodian(s))	10A	<p>We propose that this field be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name of the custodian(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>
Name(s) of the third party administrator(s)	11A	<p>The configuration of this data field is yet to be decided. At present, we propose that a list of the most frequently occurring third party administrator firms is available <u>will be provided</u> in drop-down list format, as well as other relevant options for selection (i.e. 'Other', 'None'). <u>There is also the option to add, in free text, other third party administrators not included in the list provided</u></p>
(Name(s)) & Location(s) of the third party administrator(s)	12A	<p>We propose that this field be configured for free text completion.</p> <p>If a firm has selected 'Other' from the proposed drop-down list of firms in the question above, we propose that the name of the custodian(s) also be included in the free text response.</p> <p>The relevant location(s) should be recorded as City and Country.</p>

Part 6 (comes into force 1 January 2008)

SUP 16.12

...

16.12.4 R Table of applicable rules containing ~~data items~~ *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/ period	Due date
...				
RAG 8	<ul style="list-style-type: none"> making arrangements with a view to transactions in investments <u>operating a multilateral trading facility</u> 	SUP 16.12.25AR	SUP 16.12.26R	SUP 16.12.27R
...				

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to firm type in the table below:

Description of data item	Prudential category of firm and applicable data items (Note 1)						
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</i>	<i>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</i>	Electronic money institutions	<i>Credit union</i>
...							
Note 8	This will be applicable to <i>firms</i> (other than <i>building societies</i>) that are members of a UK consolidation group <i>UK consolidation group</i> on a half-yearly reporting date. <i>Firms'</i> attention is drawn to SUP 16.3.25G regarding a single submission for all <i>firms</i> in the group <i>group</i> .						
...							

...

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

<i>Firms</i> prudential category and applicable data items (note 1)	
---	--

Description of data item	Firms prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
Note 9	This will be applicable to firms that report 'yes' in data element 4A in FSA001 are members of a <i>UK consolidation group</i> on the reporting date. Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.							
...								

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	Firms prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
Note 9	This will be applicable to firms that report 'yes' in data element 4A in FSA001 are members of a <i>UK consolidation group</i> on the reporting date. Firms' attention is drawn to SUP 16.3.25G regarding a single submission for all firms in the group.							
...								

16.12.22 R A The applicable *data items* referred to in SUP 16.12.4R are set out in the table below:

Description of Data item	Firm prudential category and applicable <i>data item</i> (note 1)				
	BIPRU 730K firm	BIPRU 125K firm and UCITS investment firm	BIPRU 50K firm	IPRU(INV) Chapter 13 firms carrying out European – wide activities under MiFID	IPRU(INV) Chapter 13 firms not carrying out European-wide activities under MiFID
...					
Note 9	This will be applicable to firms that report 'yes' in data element 4A in FSA001 are members of a <i>UK consolidation group</i> on the reporting date. Firms' attention is				

	drawn to <i>SUP</i> 16.3.25G regarding a single submission for all firms in the group.
...	

...

16.12.25 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according
A to the type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms</i> prudential category and applicable data item (note 1)							
	<i>BIPRU</i>			<i>Firms</i> other than <i>BIPRU firms</i>				
	730K	125K	50K	<i>IPRU</i> (<i>INV</i>) Chapter 3	<i>IPRU</i> (<i>INV</i>) Chapter 5	<i>IPRU</i> (<i>INV</i>) Chapter 9	<i>IPRU</i> (<i>INV</i>) Chapter 13	<i>UPRU</i>
...								
Note 9	This will be applicable to firms that report 'yes' in data element 4A in FSA001 are members of a <i>UK consolidation group</i> on the reporting date. Firms' attention is drawn to <i>SUP</i> 16.3.25G regarding a single submission for all firms in the group.							
...								

DECISION PROCEDURE AND PENALTIES MANUAL INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the Financial Services and Markets Act 2000:
- (1) section 69(1) (Statement of policy);
 - (2) section 93(1) (Statement of policy);
 - (3) section 124(1) (Statement of policy);
 - (4) section 157(1) (Guidance);
 - (5) section 169(9) (Investigations etc. in support of overseas regulator);
 - (6) section 210(1) (Statements of policy); and
 - (7) section 395(5) (The Authority's procedures).

Commencement

- B. Annex A to this instrument comes into force on 28 August 2007.
- C. Annex B to this instrument comes into force on 1 November 2007.

Making the Decision Procedure and Penalties manual

- D. The Financial Services Authority gives the guidance set out in Annex A to this instrument.
- E. The manual in Annex A to this instrument (including its schedules) may be cited as the Decision Procedure and Penalties manual (or DEPP).

Changes to the Handbook

- F. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Citation

- G. This instrument may be cited as the Decision Procedure and Penalties Manual Instrument 2007.

By order of the Board
26 July 2007

Annex A

Decision Procedure and Penalties manual (DEPP)

This Annex makes the new Decision Procedure and Penalties manual (DEPP). All the text is new and is not shown underlined. This Annex contains the following sections of DEPP.

Chapter	Chapter Title	Sections made
1	Application and Purpose	Sections 1.1 to 1.2
2	Statutory notices and the allocation of decision making	Sections 2.1 to 2.5
3	The nature and procedure of the RDC	Sections 3.1 to 3.4
4	Decisions by FSA staff under executive procedures	Sections 4.1 to 4.2
5	Settlement decision procedure	Section 5.1
6	Penalties	Sections 6.1 to 6.7
7	The FSA's statement of policy on section 169(7) interviews	Sections 7.1 to 7.2

1 Application and Purpose

1.1 Application and Purpose

Application

- 1.1.1 G This manual (*DEPP*) is relevant to *firms, approved persons* and other *persons*, whether or not they are regulated by the *FSA*. It sets out:
- (1) the *FSA's* decision-making procedure for giving *statutory notices*. These are *warning notices, decision notices* and *supervisory notices* (*DEPP* 1.2 to *DEPP* 5);
 - (2) the *FSA's* policy with respect to the imposition and amount of penalties under the *Act* (see *DEPP* 6);
 - (3) the *FSA's* policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator (*DEPP* 7).

Purpose

- 1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 69(1), 93(1), 124(1), 169(7), 210(1) and 395 of *the Act* that the *FSA* publish the statements of procedure or policy referred to in *DEPP* 1.1.1G.

1.2 Introduction to statutory notices

Statutory notices

- 1.2.1 G Section 395 of the *Act* (The *FSA's* procedures) requires the *FSA* to publish a statement of its procedure for the giving of *statutory notices*. The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a *statutory notice* is taken by a person not directly involved in establishing the evidence on which that decision is based. The types of *statutory notices* and related notices, and the principal references to them in the *Act* and *DEPP* are set out in *DEPP* 1.2.2G.
- 1.2.2 G Table: Summary of statutory and related notices

Notice	Description	Act reference	Further information
<i>Warning notice</i>	Gives the recipient details about action that the <i>FSA</i> proposes to take and about the right to make representations.	Section 387	<i>DEPP</i> 2.2

<i>Decision notice</i>	Gives the recipient details about action that the <i>FSA</i> has decided to take. The <i>FSA</i> may also give a further <i>decision notice</i> if the recipient of the original <i>decision notice</i> consents.	Section 388	<i>DEPP</i> 2.3
<i>Notice of discontinuance</i>	Identifies proceedings set out in a <i>warning notice</i> or <i>decision notice</i> and which are not being taken or are being discontinued.	Section 389	<i>DEPP</i> 1.2.4G and <i>DEPP</i> 3.2.26G
<i>Final notice</i>	Sets out the terms of the action that the <i>FSA</i> is taking.	Section 390	<i>DEPP</i> 1.2.4G
<i>Supervisory notice</i>	Gives the recipient details about action that the <i>FSA</i> has taken or proposes to take, for example to vary a <i>Part IV permission</i> .	Section 395(13)	<i>DEPP</i> 2.2 and 2.3

1.2.3 G In *DEPP* the *supervisory notice* about a matter first given to the recipient is referred to as the "first *supervisory notice*" and the *supervisory notice* given after consideration of any representations is referred to as the "second *supervisory notice*".

1.2.4 G The requirement in section 395 of the *Act* to publish a procedure for the giving of notices does not extend to the giving of a *notice of discontinuance* or a *final notice*. Neither of these notices is a *statutory notice* for the purposes of *DEPP*; nor is the decision to give such a notice a *statutory notice associated decision*.

The decision makers

1.2.5 G Decisions on whether to give a *statutory notice* will be taken by a 'decision maker'. The *FSA*'s assessment of who is the appropriate decision maker is subject to the requirements of section 395 of the *Act* and will depend upon the nature of the decision, including its complexity, importance and urgency. References to the 'decision maker' in *DEPP* are to:

- (1) the *Regulatory Decisions Committee (RDC)*; or
- (2) *FSA* staff under *executive procedures*; or
- (3) *FSA* staff under the *settlement decision procedure*.

- 1.2.6 G The decision maker will also take decisions associated with a *statutory notice* (a '*statutory notice associated decision*'). *Statutory notice associated decisions* include decisions:
- (1) to set or extend the period for making representations;
 - (2) on whether the *FSA* is required to give a copy of the *statutory notice* to any third party and, if so, the period for the third party to make representations; and
 - (3) on whether to refuse access to *FSA* material, relevant to the relevant *statutory notice*, under section 394 of the *Act*.
- 1.2.7 G In each case, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law, and *FSA* priorities and policies (including on matters of legal interpretation).
- 1.2.8 G The *FSA* will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision makers.
- 1.2.9 G *DEPP 2 to DEPP 5* set out:
- (1) which decisions require the giving of statutory notices and who takes them (*DEPP 2*);
 - (2) the nature and procedures of the *RDC* (*DEPP 3*);
 - (3) the procedure for decision making by *FSA* staff under *executive procedures* (*DEPP 4*);
 - (4) the procedure for decision making by *FSA* staff under the *settlement decision procedure* (*DEPP 5*).

2 Statutory notices and the allocation of decision making

2.1 Statutory notices

When statutory notices are required

- 2.1.1 G The circumstances in which the *warning notice* and *decision notice* procedure apply are set out in *DEPP 2 Annex 1G*.
- 2.1.2 G The circumstances in which the *supervisory notice* procedure apply are set out in *DEPP 2 Annex 2G*.
- 2.1.3 G *DEPP 2 Annex 1G* and *DEPP 2 Annex 2G* identify the provisions of the *Act* or other enactment giving rise to the need for the relevant notice, and whether the decision maker is the *RDC* or *FSA* staff under *executive procedures* in each case.

Consistent decision making

- 2.1.4 G *FSA* staff responsible for the taking of a *statutory notice* decision under *executive procedures* may refer the matter to the *RDC* for the *RDC* to decide whether to give the statutory notice if:
 - (1) the *RDC* is already considering, or is shortly to consider, a closely related matter; and
 - (2) the relevant *FSA* staff believe, having regard to all the circumstances, that the *RDC* should have responsibility for the decision. The relevant considerations might include:
 - (a) the desirability of consistency in *FSA* decision making;
 - (b) potential savings in the time and cost of reaching a decision;
 - (c) the factors identified in *DEPP 3.3.2G* as relevant to an assessment of whether a decision should be regarded as straightforward.

2.2 Warning notices and first supervisory notices

- 2.2.1 G If *FSA* staff consider that action requiring a *warning notice* or first *supervisory notice* is appropriate, they will recommend to the relevant decision maker that the notice be given.
- 2.2.2 G For first *supervisory notices*, the *FSA* staff will recommend whether the action should take effect immediately, on a specified date, or when the matter is no longer open to review (see *DEPP 2.2.5G*).
- 2.2.3 G The decision maker will:

- (1) consider whether the material on which the recommendation is based is adequate to support it; the decision maker may seek additional information about or clarification of the recommendation, which may necessitate additional work by the relevant *FSA* staff;
 - (2) satisfy itself that the action recommended is appropriate in all the circumstances;
 - (3) decide whether to give the notice and the terms of any notice given.
- 2.2.4 G If the *FSA* decides to take no further action and the *FSA* had previously informed the *person* concerned that it intended to recommend action, the *FSA* will communicate this decision promptly to the *person* concerned.
- 2.2.5 G A matter is open to review (as defined in section 391(8) (Publication) of the *Act*) (in relation to a *supervisory notice* which does not take effect immediately or on a specified date) when:
- (1) the period during which any *person* may refer a matter to the *Tribunal* is still running; or
 - (2) the matter has been referred to the *Tribunal* but has not been dealt with; or
 - (3) the matter has been referred to the *Tribunal* and dealt with but the period during which an appeal may be brought against the *Tribunal's* decision is still running; or
 - (4) such an appeal has been brought but has not been determined.

2.3 Decision notices and second supervisory notices

Approach of decision maker

- 2.3.1 G If a decision maker is asked to decide whether to give a *decision notice* or second *supervisory notice*, it will:
- (1) review the material before it;
 - (2) consider any representations made (whether written, oral or both) and any comments by *FSA* staff or others in respect of those representations;
 - (3) decide whether to give the notice and the terms of any notice given.

Default procedures

- 2.3.2 G If the *FSA* receives no response or representations within the period specified in a *warning notice*, the decision maker may regard as undisputed the allegations or matters in that notice and a *decision notice* will be given

accordingly. A *person* who has received a *decision notice* and has not previously made any response or representations to the *FSA*, may nevertheless refer the *FSA's* decision to the *Tribunal*.

- 2.3.3 G If the *FSA* receives no response or representations within the period specified in a first *supervisory notice*, the *FSA* will not give a second *supervisory notice*. The outcome depends on when the relevant action took or takes effect (as stated in the notice). If the action:
- (1) took effect immediately, or on a specified date which has already passed, it continues to have effect (subject to any decision on a referral to the *Tribunal*); or
 - (2) was to take effect on a specified date which is still in the future, it takes effect on that date (subject to any decision on a referral to the *Tribunal*); or
 - (3) was to take effect when the matter was no longer *open for review*, it takes effect when the period to make representations (or the period for referral to the *Tribunal*, if longer) expires, unless the matter has been referred to the *Tribunal*.

- 2.3.4 G In exceptional cases, the decision maker may permit representations from a *person* who has received a *decision notice* (or a second *supervisory notice*) or against whom action, detailed in a first *supervisory notice*, has taken effect, and shows on reasonable grounds that he did not receive the *warning notice* (or first *supervisory notice*), or that he had reasonable grounds for not responding within the specified period. In these circumstances, the decision maker may decide to give a further *decision notice* (or a written notice or a *supervisory notice*).

Further decision notice

- 2.3.5 G Under section 388(3) of the *Act*, following the giving of a *decision notice* but before the *FSA* takes action to which the *decision notice* relates, the *FSA* may give the *person* concerned a further *decision notice* relating to different action concerning the same matter. Under section 388(4) of the *Act*, the *FSA* can only do this if the *person* receiving the further *decision notice* gives its consent. In these circumstances the following procedure will apply:
- (1) *FSA* staff will recommend to the decision maker that a further *decision notice* be given, either before or after obtaining the *person's* consent;
 - (2) the decision maker will consider whether the action proposed in the further *decision notice* is appropriate in the circumstances;
 - (3) if the decision maker decides that the action proposed is inappropriate, he will decide not to give the further *decision notice*. In this case, the original *decision notice* will stand and the *person's* rights in relation to that notice will be unaffected. If the *person's* consent has already been obtained, the *FSA* will notify the *person* of

the decision not to give the further *decision notice*;

- (4) if the decision maker decides that the action proposed is appropriate then, subject to the *person's* consent being (or having been) obtained, a further *decision notice* will be given;
- (5) a *person* who had the right to refer the matter to the *Tribunal* under the original *decision notice* will have that right under the further *decision notice*. The time period in which the reference to the *Tribunal* may be made will begin from the date on which the further *decision notice* is given.

- 2.3.6 G For the purpose of establishing whether the *person* receiving the further *decision notice* gives its consent, the *FSA* will normally require consent in writing.

2.4 Third party rights and access to *FSA* material

- 2.4.1 G Sections 393 (Third party rights) and 394 (Access to *FSA* material) of the *Act* confer additional procedural rights relating to third parties and to disclosure of *FSA* material. These rights apply in certain *warning notice* and *decision notice* cases referred to in section 392 of the *Act* (Application of sections 393 and 394). The cases in which these additional rights apply are identified in *DEPP 2* Annex 1G by asterisks; these are generally cases in which the *warning notice* or *decision notice* is given on the *FSA's* own initiative rather than in response to an application or notification made to the *FSA*.

2.5 Provision for certain categories of decision

Purpose

- 2.5.1 G Some of the decisions referred to in *DEPP 2* Annex 1G and *DEPP 2* Annex 2G share similar characteristics. For convenience, *DEPP 2.5* sets out some of these and the particular features they have.

Different decision makers

- 2.5.2 G The decision to give a *warning notice* and a *decision notice* in a particular matter will often not be taken by the same decision maker. Certain types of action require that the *warning notice* decision be taken by *FSA* staff under *executive procedures* and the *decision notice* decision be taken by the *RDC*. Similarly, in enforcement cases the *RDC* might take the decision to give a *warning notice*, but the decision to give a *decision notice* could be taken by the *settlement decision makers* on the basis that the *person* concerned does not contest the action proposed (see *DEPP 5*).

Decisions relating to applications for authorisation or approval

- 2.5.3 G *FSA* staff under *executive procedures* will take the decision to give a *warning notice* if the *FSA* proposes to:
- (1) refuse an application for a *Part IV permission* or to refuse an application to cancel a *Part IV permission*;
 - (2) impose a limitation or a requirement which was not applied for, or specify a narrower description of regulated activity than that applied for, on the grant of a *Part IV permission*;
 - (3) refuse an application to vary a *Part IV permission*, or to restrict a *Part IV permission* on the grant of a variation (by imposing a limitation or a requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for);
 - (4) refuse *approved person* status;
 - (5) refuse an application for a *small e-money issuer certificate* (see *ELM* 8 (Small e-money issuers));
 - (6) refuse an application for variation or rescission of a requirement imposed on an *incoming EEA firm*.
- 2.5.4 G If no representations are made in response to a *warning notice* proposing the action set out at *DEPP* 2.5.3G within the period specified, a *decision notice* will be given accordingly: see *DEPP* 2.3.2G (Default procedures).
- 2.5.5 G If representations are made in response to a *warning notice* proposing the action set out at *DEPP* 2.5.3G(1), (4) or (5), then the *RDC* will take the decision to give a *decision notice*.
- 2.5.6 G If representations are made in response to a *warning notice* proposing the action set out at *DEPP* 2.5.3G(2) (3) or (6), then the *RDC* will take the decision to give a *decision notice* if the action involves a fundamental change (see *DEPP* 2.5.8G) to the nature of a *permission*. Otherwise, the decision to give the *decision notice* will be taken by *FSA* staff under *executive procedures*.

FSA's own-initiative power

- 2.5.7 G The *RDC* will take the decision to give a *supervisory notice* exercising the *FSA's* own initiative power (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental change (see *DEPP* 2.5.8G) to the nature of a *permission*. Otherwise, the decision to give the *decision notice* will be taken by *FSA* staff under *executive procedures*.
- 2.5.8 G A fundamental change to the nature of a *permission* means:
- (1) removing a type of activity or *investment* from the *firm's permission*;
- or

- (2) refusing an application to include a type of activity or *investment*; or
- (3) restricting a *firm* from taking on new business, dealing with a particular category of *client* or handling *client money* by imposing a *limitation* or *requirement*, or refusing an application to vary or cancel such a *limitation* or *requirement*; or
- (4) imposing or varying an assets requirement (as defined in section 48(3) of the *Act* (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.

Decisions relating to listing of securities

- 2.5.9 G *FSA* staff under *executive procedures* will take the following *statutory notice* decisions:
- (1) the refusal of an application for listing of securities;
 - (2) the suspension of *listing* on the *FSA's* own initiative or at the request of the issuer;
 - (3) the suspension of trading in a *financial instrument*;
 - (4) the discontinuance of *listing* of securities at the issuer's request;
 - (5) the exercise of any of the powers in sections 87K or 87L of the *Act* in respect of a breach of any applicable provision;
 - (6) the cancellation of a *person's* approval as a *sponsor* at the *sponsor's* request; and
 - (7) the refusal of an application by an issuer for cancellation of a suspension of *listing* made under section 77 of the *Act*.
- 2.5.10 G The *RDC* will take *statutory notice decisions* relating to the discontinuance of listing of securities on the *FSA's* own initiative.
- 2.5.11 G If securities have matured or otherwise ceased to exist the *FSA* will remove any reference to them from the official list. This is a purely administrative process, and not a discontinuance of listing in the sense used in Part 6 of the *Act*.

Modified procedures in collective investment scheme and certain other cases

- 2.5.12 G *FSA* staff will usually inform or discuss with the *person* concerned any action they contemplate before they recommend to the *RDC* that the *FSA* takes formal action. The *FSA* may also be invited to exercise certain powers by the *persons* who would be affected by the exercise of those powers. In these circumstances if the *person* concerned has agreed to or accepted the action proposed then the decisions referred to in *DEPP* 2.5.13G will be taken by *FSA* staff under *executive procedures* rather than by the *RDC*.

- 2.5.13 G The decisions referred to in *DEPP 2.5.12G* are:
- (1) the decision to give a *supervisory notice* pursuant to section 259(3), (8) or 9(b) (directions on authorised unit trust schemes); section 268(3), 7(a) or 9(a) (directions in respect of recognised overseas schemes); or section 282(3), (6) or (7)(b) (directions in respect of relevant recognised schemes) of the *Act*;
 - (2) the decision to give a *warning notice* or *decision notice* pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) of the *Act*;
 - (3) the decision to give a *supervisory notice* in accordance with regulation 27(3), (8) or 9(b) of the *OEIC Regulations*;
 - (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC Regulations*;
 - (5) the decision to give a direction under section 42B(1) of the Building Societies Act 1986 that a building society transfers all its engagements to one or more other building societies or that it transfers its business to an existing company (under section 94 or section 97 respectively of the Building Societies Act 1986); and
 - (6) the decision to give a decision notice under section 93(6) of the Building Societies Act 1986 (permission for successor society on amalgamation) where the terms of the permission have been agreed with the successor building society.
- 2.5.14 G In determining whether there is agreement to or acceptance of the action proposed, an indication by the following *persons* will be regarded as conclusive:
- (1) in relation to an authorised unit trust, the manager and trustee;
 - (2) in relation to an *ICVC*, the directors and the depositary;
 - (3) in relation to a *recognised scheme*, the *operator* and, if any, the trustee or *depositary*.
- 2.5.15 G A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a unit trust scheme to be an *AUT* will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the *operator* of an existing *AUT* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by *FSA* staff under executive procedures.
- 2.5.16 G A notice under section 264(2) of the *Act* (notification of non-compliance with *UK* law) relating to a collective investment scheme constituted in another *EEA* State is not a *warning notice*, but the *FSA* will operate a procedure for a section 264(2) notice which will be similar to the procedure for a *warning notice*.

Notices under the Building Societies Act 1986 and other enactments

- 2.5.17 G The *FSA* expects to adopt a procedure in respect of notices under enactments other than the *Act* which is similar to that for *statutory notices* under the *Act*, but which recognises any differences in the legislative framework and requirements. *DEPP 2 Annex 1G* and *DEPP 2 Annex 2G* therefore identify notices to be given pursuant to other enactments and the relevant *FSA* decision maker.
- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:
- (1) Building Societies Act 1986, section 36A: There is no right to refer a decision to issue a prohibition order under section 36A to the *Tribunal*. Accordingly, a *decision notice* under section 36A(5A) is not required to give an indication of whether any such right exists. A *decision notice* under section 36A(5A) may only relate to the issue of a prohibition order under section 36A. Where such a *decision notice* is given, no *final notice* is required under section 390 of the *Act* and the *FSA* may issue the order at the same time as or after giving the *decision notice*. For the purposes of section 391 of the *Act* (Publication), the *decision notice* is treated as if it were a *final notice*.
 - (2) Building Societies Act 1986, section 93(6): The *FSA* notifies the successor of the *permission* by giving it a *decision notice*. The *decision notice* is not preceded by the giving of a *warning notice*. No *final notice* is required under section 390 of the *Act* and for the purposes of section 391 of the *Act* (Publication), the *decision notice* is treated as if it were a *final notice*. The giving of *permission* is treated for the purposes of section 55 of the *Act* (Right to refer matters to the *Tribunal*) as if it were the determination of an application made by the successor under Part IV of the *Act*. Part IX of the *Act* (Hearings and appeals) accordingly applies, but with the omission of section 133(9), which would otherwise prevent the *FSA* from giving the *permission* on the terms notified in the *decision notice* until after any reference and appeal.
 - (3) Friendly Societies Act 1992, section 58: The *warning notice* and *decision notice* must set out the terms of the direction which the *FSA* proposes or has decided to give and any specification of when the friendly society is to comply with it. A *decision notice* given under section 58A(3) must give an indication of the society's right, given by section 58A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 58A(3) may only relate to action under the same section of the *Friendly Societies Act 1992* as the action proposed in the *warning notice*. A *final notice* under section 390 of the *Act* must set out the terms of the direction and state the date from which it takes effect. Section 392 of the *Act* is to be read as if it included references to a *warning notice* given under section 58A(1) and a *decision notice* given under section 58A(3).

Note: Third party rights and access to FSA material apply to the powers listed in this Annex where indicated by an asterisk * (see DEPP 2.4)

Section of the Act	Description	Handbook reference	Decision maker
52(6)(a)	when the FSA is proposing to grant an application for a <i>Part IV permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for	SUP 6	<i>Executive procedures</i>
52(6)(b)	when the FSA is proposing to grant an application to vary a <i>firm's Part IV permission</i> but, other than as part of the application, to restrict the <i>Part IV permission</i> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)		<i>Executive procedures</i>
52(7)	when the FSA is proposing to refuse an application for a <i>Part IV permission</i>		<i>Executive procedures</i>
52(7)	when the FSA is proposing to refuse an application to vary a <i>firm's Part IV permission</i>	SUP 6	<i>Executive procedures</i>
52(7)	when the FSA is proposing to refuse an application to cancel a <i>firm's Part IV permission</i>	SUP 6	<i>Executive procedures</i>
52(9)(a)	when the FSA is deciding to grant an application for a <i>Part IV permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for		<i>RDC</i> or <i>executive procedures</i> See DEPP 2.5.6G
52(9)(b)	when the FSA is deciding to grant an	SUP 6	<i>RDC</i> or

	application to vary a <i>firm's Part IV permission</i> but, other than as part of the application, to restrict the <i>Part IV permission</i> (either by imposing a <i>limitation or requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)		<i>executive procedures</i> See <i>DEPP 2.5.6G</i>
52(9)(c)	when the <i>FSA</i> is deciding to refuse an application for a <i>Part IV permission</i>		<i>RDC or executive procedures</i> See <i>DEPP 2.5.5G</i>
52(9)(c)	when the <i>FSA</i> is deciding to refuse an application to vary a <i>firm's Part IV permission</i>	<i>SUP 6</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i>
52(9)(c)	when the <i>FSA</i> is deciding to refuse an application to cancel a <i>firm's Part IV permission</i>	<i>SUP 6</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.5G</i>
54(1)/(2)	when the <i>FSA</i> is proposing or deciding to cancel a <i>firm's Part IV permission</i> otherwise than at its request*		<i>RDC</i>
57(1)/(3)	when the <i>FSA</i> is proposing or deciding to make a <i>prohibition order</i> against an individual*		<i>RDC</i>
58(3)/(4)	when the <i>FSA</i> is proposing or deciding to refuse an application for the variation or revocation of a <i>prohibition order</i>		<i>RDC</i>
62(2)	when the <i>FSA</i> is proposing to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i>	<i>SUP 10</i>	<i>Executive procedures</i>
62(3)	when the <i>FSA</i> is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i>	<i>SUP 10</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.5G</i>
63(3)/(4)	when the <i>FSA</i> is proposing or deciding to		<i>RDC</i>

	withdraw approval from an <i>approved person</i> *		
67(1)/(4)	when the <i>FSA</i> is proposing or deciding to take action against an <i>approved person</i> by exercising the disciplinary powers conferred by section 66*		<i>RDC</i>
76(4)/(5)	when the <i>FSA</i> is proposing or deciding to refuse an application for <i>listing</i> of securities	<i>LR 2 and 3</i>	<i>Executive procedures</i>
78(10)/ (11)(a)	when the <i>FSA</i> has suspended the <i>listing</i> of securities and is proposing or deciding to refuse an application by an issuer for cancellation of the suspension	<i>LR 5</i>	<i>Executive procedures</i>
87M(2)/(3)	when the <i>FSA</i> is proposing or deciding to publish a statement censuring an issuer of <i>transferable securities</i> , a <i>person</i> offering <i>transferable securities</i> to the public or a <i>person</i> requesting the admission of <i>transferable securities</i> to trading on a <i>regulated market</i>		<i>RDC</i>
88(4)/(6)	when the <i>FSA</i> is proposing or deciding to (1) refuse a <i>person's</i> application for approval as a <i>sponsor</i> ; or (2) on its own initiative, cancel a <i>person's</i> approval as a <i>sponsor</i>	<i>LR 8</i>	<i>RDC</i>
88(4)/(6)	when the <i>FSA</i> is proposing or deciding to cancel a <i>person's</i> approval as a <i>sponsor</i> at the <i>sponsor's</i> request		<i>Executive procedures</i>
89(2)/(3)	when the <i>FSA</i> is proposing or deciding to publish a statement censuring a <i>sponsor</i>		<i>RDC</i>
92(1)/(4)	when the <i>FSA</i> is proposing or deciding to take action against any person under section 91 for breach of Part 6 rules		<i>RDC</i>
126(1)/ 127(1)	when the <i>FSA</i> is proposing or deciding to impose a sanction for <i>market abuse</i> *		<i>RDC</i>
183(3)/ 186(1)	when the <i>FSA</i> is proposing or deciding to object to a change in <i>control</i> following receipt of a notice of <i>control</i>	<i>SUP 11</i>	<i>Executive procedures</i>
185(3)/(4)	when the <i>FSA</i> is proposing or deciding to approve a change in <i>control</i> following	<i>SUP 11</i>	<i>Executive procedures</i>

	receipt of a notice of control but subject to conditions		
187(1)/(3) and 188(1)	when the <i>FSA</i> is proposing or deciding to object to a <i>person</i> who has failed to submit a notice of <i>control</i> or a notice on acquiring, or increasing, <i>control</i> , or to object to an existing <i>controller</i>	<i>SUP 11</i>	<i>Executive procedures</i>
200(4)/(5)	when the <i>FSA</i> is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an <i>EEA incoming firm</i>		<i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.6G</i>
207(1)/208(1)	when the <i>FSA</i> is proposing or deciding to publish a statement in respect of an <i>authorised person</i> (under section 205) or impose a financial penalty on an <i>authorised person</i> (under section 206)*		<i>RDC</i>
245(1)/(2)	when the <i>FSA</i> is proposing or deciding to refuse an application for an <i>authorisation</i> order declaring a <i>unit trust scheme</i> to be an <i>AUT</i>	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.15G</i>
252(1)/(4)	when the <i>FSA</i> is proposing or deciding to refuse approval of a proposal to replace the <i>trustee</i> or <i>manager</i> of an <i>AUT</i>	<i>COLL 2</i>	<i>Executive procedures</i>
255(1)/(2)	when the <i>FSA</i> is proposing or deciding to make an order under section 254 revoking the <i>authorisation order</i> of an <i>AUT</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	<i>RDC</i>
260(1)/(2)	when the <i>FSA</i> , on an application to revoke or vary a direction under section 257, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application		<i>RDC</i>
264(2)/265(4)	when the <i>FSA</i> is notifying or deciding not to withdraw a notice, to the <i>operator</i> and relevant <i>EEA State</i> authorities, that the way in which a <i>collective investment scheme</i> constituted in another <i>EEA State</i>	<i>COLL 9</i> See <i>DEPP 2.5.16G</i>	<i>Executive procedures</i>

	intends to invite <i>persons</i> in the <i>United Kingdom</i> to participate in the <i>scheme</i> does not comply with <i>UK</i> law		
269(1)/(2)	when the <i>FSA</i> , on an application under section 267(4) or (5) by an <i>operator</i> of a section 264 <i>recognised scheme</i> to revoke or vary a direction that the promotion of the <i>scheme</i> be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application		<i>RDC</i>
271(1)/(3)	when the <i>FSA</i> is proposing or deciding to refuse approval of a <i>collective investment scheme</i> as a <i>recognised scheme</i> under section 270	<i>COLL 9</i>	<i>Executive procedures</i>
276(1)/(2)	when the <i>FSA</i> is proposing or deciding to refuse an application for an order declaring a <i>collective investment scheme</i> to be a <i>recognised scheme</i> under section 272	<i>COLL 9</i>	<i>Executive procedures</i>
280(1)/(2)	when the <i>FSA</i> is proposing or deciding to direct that a section 270 <i>recognised scheme</i> is to cease to be recognised or to revoke a section 272 order in respect of a <i>recognised scheme</i> *		<i>RDC</i>
321(8)/(9)	when the <i>FSA</i> is proposing or deciding to refuse an application for variation or revocation of a direction or a requirement imposed on a former underwriting member of Lloyd's*		<i>RDC</i>
331(1)/(3)	when the <i>FSA</i> is proposing or deciding to make an order disapplying the exemption from the <i>general prohibition</i> under section 327*		<i>RDC</i>
331(7)/(8)	when the <i>FSA</i> is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329*		<i>RDC</i>
345(2)/(3)	when the <i>FSA</i> is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any <i>authorised person</i> or class of <i>authorised person</i> or from being		<i>RDC</i>

	the auditor of any <i>AUT</i> or <i>ICVC</i> *		
385(1)/ 386 (1)	when the <i>FSA</i> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution*		<i>RDC</i>
Paragraph 15A(5) of Schedule 3	when the <i>FSA</i> is notifying or deciding not to withdraw a notice issued to an <i>EEA UCITS management company</i> wishing to deal in units in a <i>collective investment scheme</i> in the <i>United Kingdom</i> and relevant <i>EEA State</i> authorities, that the way in which the <i>EEA UCITS management company</i> intends to market a <i>relevant scheme</i> in the <i>United Kingdom</i> does not comply with <i>UK law</i>	<i>SUP 13A</i>	<i>Executive procedures</i>
Paragraph 19(8)/ (12) of Schedule 3	when the <i>FSA</i> is proposing or deciding to refuse to give a <i>consent notice</i> to a <i>UK firm</i> wishing to establish a <i>branch</i> under an <i>EEA right</i>	<i>SUP 13</i>	<i>RDC</i>

Section of the Building Societies Act 1986	Description	Handbook reference	Decision maker
36A(5)/(5A)	when the <i>FSA</i> is proposing or deciding to issue a prohibition order under section 36A prohibiting the continuance or carrying on of an activity and requiring the disposal of assets acquired or otherwise in a <i>building society's</i> possession by virtue of the activity, where the society has failed to carry into effect a restructuring plan which it has been directed to carry out by the <i>FSA</i> under section 36(8)	See <i>DEPP</i> 2.5.18G(1)	<i>RDC</i>
46A(1)(a)/ (3)(a)	when the <i>FSA</i> is proposing or deciding to give a direction under section 36(3), (5), (6), (7) or (10) requiring a <i>building society</i> to submit for its approval a restructuring plan or to submit to the society's members the requisite transfer resolutions for a transfer of the society's business to a company or (if such a direction is given) imposing limitations		<i>RDC</i>

	on the issue of shares, acceptance of deposits or making of loans or requiring the society to take certain steps or refrain from certain action or requiring the removal of a director or other officer		
46A(1)(b)/ (3)(b)	when the <i>FSA</i> is proposing or deciding to give a direction under section 42B(1) (other than a direction varying a previous direction with the agreement of the <i>building society</i> concerned) that a <i>building society</i> transfers all its engagements to one or more other <i>building societies</i> under section 94 or that it transfers its business to an existing company under section 97*		<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.12G
93(6)	when the <i>FSA</i> , on an amalgamation between <i>building societies</i> , each of which has a <i>Part IV permission</i> to accept deposits , notifies the successor society of the terms of its <i>Part IV permission</i>	See <i>DEPP</i> 2.5.18G(2)	<i>RDC</i> or <i>executive procedures</i> see <i>DEPP</i> 2.5.12G

Section of the Credit Unions Act 1979	Description	Handbook reference	Decision maker
20	where the <i>FSA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i>	<i>CRED</i> 15 Annex 1G	<i>RDC</i>

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(a)/ (3)(a)	when the <i>FSA</i> is proposing or deciding to give a direction under section 54 or section 55 requiring a <i>friendly society</i> to take or refrain from taking steps where certain activities have become disproportionate to those of the <i>friendly society</i> group or, as the case may be, the society, or varying such a direction other	See <i>DEPP</i> 2.5.18G(3)	<i>RDC</i>

	than at the request of the society*		
58A(1)(b)/ (3)(b)	when the <i>FSA</i> is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i> *		<i>RDC</i>
85(4A)	when the <i>FSA</i> , on an amalgamation between <i>friendly societies</i> each of which has a <i>Part IV permission</i> , notifies the successor society of the terms of its <i>Part IV permission</i>		<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.12G

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 16(1)/(2)	when the <i>FSA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i>	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.15G
Regulation 22(1)/(2)/ (4)/(5)	when the <i>FSA</i> is proposing to refuse approval of (or, having given a <i>warning notice</i> , deciding to refuse) a proposal to replace the <i>depository</i> or director of an <i>ICVC</i> , or any other proposal or decision falling within regulation 21	<i>COLL 2</i>	<i>Executive procedures</i>
Regulation 24(1)/(2)	when the <i>FSA</i> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)*		<i>RDC</i>
Regulation 28(1)/(2)	when the <i>FSA</i> is proposing or deciding to refuse an application to revoke or vary a direction in accordance with a request under regulation 25(7) or to vary the direction in accordance with the application		<i>RDC</i>
Paragraph 20 of Schedule 5	when the <i>FSA</i> is proposing or deciding to use the disqualification powers under section 249(1)*		<i>RDC</i>

Regulated Activities	Description	Handbook	Decision
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Order		reference	maker
Article 95(2)/(3)	when the <i>FSA</i> is proposing or deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	<i>SUP</i> 12.4.10G	<i>RDC</i>
Article 95(7)/(8)	when the <i>FSA</i> is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	<i>SUP</i> 12.4.10G	<i>RDC</i>

DEPP 2 Supervisory notices
Annex 2G

Section of the Act	Description	Handbook reference	Decision maker
53(4)/(7)/(8)(b)	when the <i>FSA</i> is exercising its <i>own-initiative power</i> to vary a firm's <i>Part IV permission</i>	<i>SUP</i> 6	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.7G
78(2)/(5)	when the <i>FSA</i> is proposing to discontinue or discontinues the <i>listing</i> of a security	<i>LR</i> 5	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.9G(4) and 2.5.10G
78(2)/(5)	when the <i>FSA</i> is proposing to suspend or suspends the <i>listing</i> of a security	<i>LR</i> 5	<i>Executive procedures</i>
87O(2)/(5)	when the <i>FSA</i> is proposing or deciding to exercise or deciding to maintain, vary or revoke any of the powers in sections 87K or 87L in respect of an infringement of any applicable provision.	<i>PR</i> 5	<i>Executive procedures</i>
96C	when the <i>FSA</i> is proposing to suspend or suspends trading in a <i>financial instrument</i>	<i>DTR</i>	<i>Executive procedures</i>
197(3)/	when the <i>FSA</i> is exercising its power of	<i>SUP</i> 14	<i>RDC</i> or

(6)/(7)(b)	intervention in respect of an <i>incoming firm</i>		<i>executive procedures</i> See <i>DEPP 2.5.7G</i>
259(3)/(8)/(9) (b)	when the <i>FSA</i> is exercising its power to give or, on its own initiative, to vary a direction to the <i>manager</i> and <i>trustee</i> of an <i>AUT</i>	<i>COLL</i>	<i>RDC</i>
268(3)/(7)(a) or (9)(a) (as a result of (8)(b)/(13))	when the <i>FSA</i> is proposing or deciding to give or, on its own initiative, to vary a direction to the <i>operator</i> of a <i>recognised scheme</i>	<i>COLL</i>	<i>RDC</i>
282 (3)/(6)/(7)(b)	when the <i>FSA</i> is exercising its power to give a direction to an <i>operator, trustee</i> or <i>depository</i> of a <i>recognised scheme</i>	<i>COLL</i>	<i>RDC</i>
321(2)/(5)	when the <i>FSA</i> is exercising its power to impose a requirement on a former underwriting member of Lloyd's		<i>RDC</i>

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 27	when the <i>FSA</i> is exercising its power to give or, on its own initiative, to vary a direction to an <i>ICVC</i> and its <i>depository</i>	<i>COLL</i>	<i>RDC</i>

3 The nature and procedure of the RDC

3.1 The Regulatory Decisions Committee

- 3.1.1 G The *Regulatory Decisions Committee (RDC)* is a committee of the *FSA* Board. It is part of the *FSA*. It exercises certain regulatory powers on behalf of the *FSA* and is accountable to the *FSA* Board for its decisions generally.
- 3.1.2 G (1) The *RDC* is separate from the *FSA*'s executive management structure. Apart from its Chairman, none of the members of the *RDC* is an *FSA* employee.
- (2) All members of the *RDC* are appointed for fixed periods by the *FSA* Board. The *FSA* Board may remove a member of the *RDC*, but only in the event of that member's misconduct or incapacity.
- 3.1.3 G The *RDC* has its own legal advisers and support staff. The *RDC* staff are separate from the *FSA* staff involved in conducting investigations and making recommendations to the *RDC*.

3.2 The operation of the RDC

RDC meetings and composition of panels

- 3.2.1 G The *RDC* meets as often as necessary to discharge its functions. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means. The *RDC* meets in private.
- 3.2.2 G The *RDC* may meet as a full committee, but will ordinarily meet in panels. Each meeting of the *RDC* will generally include:
- (1) its Chairman or a Deputy Chairman (who will chair the meeting); and
- (2) at least two other members.
- 3.2.3 G The composition and size of panels of the *RDC* may vary depending on the nature of the particular matter under consideration. In cases in which representations are made, it will be usual for the panel that is to consider the representations and decide whether to give a *decision notice* to include additional members of the *RDC* who have not previously considered the matter.

Conflicts of interest

- 3.2.4 G The *RDC* will seek not to invite a member to join a panel to consider a matter in which he has a potential conflict of interest.
- 3.2.5 G (1) If a member of the *RDC* has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict

to the *RDC* Office, and disclose it:

- (a) in the case of the Chairman of the *RDC*, to the Chairman or Deputy Chairman of the *FSA*; or
- (b) in the case of a Deputy Chairman of the *RDC*, to the Chairman of the *RDC*, or if he is unavailable to the Chairman or Deputy Chairman of the *FSA*; or
- (c) in the case of any other member, to the Chairman or a Deputy Chairman of the *RDC*.

- (2) If the *person* to whom a conflict has been disclosed in accordance with (1)(a) to (c) considers it reasonable and appropriate, he will require the member of the *RDC* to stand down from consideration of that matter. He may ask another member of the *RDC* to assist him in considering the potential conflict.

- 3.2.6 G The *RDC* Office will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

Procedure: general

- 3.2.7 G The *RDC* will follow the procedure described in this section, but subject to that it will conduct itself in the manner the *RDC* Chairman or a Deputy Chairman considers suitable in order to enable the *RDC* to determine fairly and expeditiously the matter which it is considering.

- 3.2.8 G Each member of the *RDC* present is entitled to vote on the matter under consideration. The chairman of the meeting will have a vote as a member of the *RDC* and will have the casting vote in a tie.

- 3.2.9 G The *RDC* Chairman or a Deputy Chairman may, acting alone, decide:

- (1) matters relating to the arrangements for an *RDC* meeting, including its timing; and
- (2) the composition of the panel to consider a particular matter.

- 3.2.10 G If the *RDC* considers it relevant to its consideration, it may ask *FSA* staff to explain or provide any or all of the following:

- (1) additional information about the matter (which *FSA* staff may seek by further investigation); or
- (2) further explanation of any aspect of the *FSA* staff recommendation or accompanying papers; or
- (3) information about *FSA* priorities and policies (including as to the *FSA*'s view on the law or on the correct legal interpretation of provisions of the *Act*).

- 3.2.11 G The *RDC* has no power under the *Act* to require *persons* to attend before it or provide information. It is not a tribunal and will make a decision based

on all the relevant information available to it, which may include views of *FSA* staff about the relative quality of witness and other evidence.

Procedure: warning notices and first supervisory notices

- 3.2.12 G If *FSA* staff consider that action is appropriate in a matter for which the *RDC* is the decision maker, they will make a recommendation to the *RDC* that a *warning notice* or a *supervisory notice* should be given.
- 3.2.13 G In accordance with *DEPP* 2.2 the *RDC* will consider whether it is right in all the circumstances to give the statutory notice.
- 3.2.14 G If the *RDC* decides that the *FSA* should give a *warning notice* or a first *supervisory notice*:
- (1) the *RDC* will settle the wording of the *warning notice* or first *supervisory notice*, and will ensure that the *notice* complies with the relevant provisions of the *Act*;
 - (2) the *RDC* will make any relevant *statutory notice associated decisions*;
 - (3) the *RDC* staff will make appropriate arrangements for the *notice* to be given; and
 - (4) the *RDC* staff will make appropriate arrangements for the disclosure of the substantive communications between the *RDC* and the *FSA* staff who made the recommendation on which the *RDC's* decision is based. This may include providing copies in electronic format.

Procedure: representations

- 3.2.15 G (1) A *warning notice* or a first *supervisory notice* will (as required by the *Act*) specify the time allowed for making representations. This will not be less than 28 days.
- (2) The *FSA* will also, when giving a *warning notice* or a first *supervisory notice*, specify a time within which the recipient is required to indicate whether he wishes to make oral representations.
- 3.2.16 G (1) The recipient of a *warning notice* or a first *supervisory notice* may request an extension of the time allowed for making representations. Such a request must normally be made within 14 days of the notice being given.
- (2) If a request is made, the Chairman or a Deputy Chairman of the *RDC* will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making representations. In reaching his decision he may take account of any relevant comments from the *FSA* staff responsible for the matter.
- (3) The *RDC* staff will notify the relevant party and the *FSA* staff responsible for the matter of the decision in writing.

- 3.2.17 G (1) If the recipient of a *warning notice* or a first *supervisory notice* indicates that he wishes to make oral representations, the *RDC* staff, in conjunction with the Chairman or a Deputy Chairman of the *RDC*, will fix a date or dates for a meeting at which the relevant *RDC* members will receive those representations.
- (2) In making those arrangements the *RDC* staff will draw the Chairman's or Deputy Chairman's attention to any particular issues about the timing of the meeting which have been raised by the recipient of the *notice* or the relevant *FSA* staff.
- 3.2.18 G The chairman of the relevant meeting will ensure that the meeting is conducted so as to enable:
- (1) the recipient of the *warning notice* or first *supervisory notice* to make representations;
- (2) the relevant *FSA* staff to respond to those representations;
- (3) the *RDC* members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and
- (4) the recipient of the notice to respond to points made by *FSA* staff or the *RDC*;
- but the chairman may ask the recipient of the notice or *FSA* staff to limit their representations or response in length or to particular issues arising from the *warning notice* or first *supervisory notice*.
- 3.2.19 G The recipient of the *warning notice* or *supervisory notice* may wish to be legally represented at the meeting, but this is not a requirement.
- 3.2.20 G In appropriate cases, the chairman of a meeting for oral representations may ask those present to provide additional information in writing after the meeting. If he does so, he will specify the time within which that information is to be provided.
- 3.2.21 G The *RDC* will not, after the *FSA* has given a *warning notice* or a first *supervisory notice*, meet with or discuss the matter whilst it is still ongoing with the *FSA* staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

Procedure: decision notices and second supervisory notices

- 3.2.22 G If no representations are made in response to the *warning notice* or first *supervisory notice*, the *FSA* will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply: see *DEPP* 2.3.2G to 2.3.4G).
- 3.2.23 G However, if representations are made, in accordance with *DEPP* 2.3.1G the *RDC* will consider whether it is right in all the circumstances to give the *decision notice* or a second *supervisory notice* (as appropriate).

- 3.2.24 G If the *RDC* decides that the *FSA* should give a *decision notice* or a second *supervisory notice*:
- (1) the *RDC* will settle the wording of the *notice* which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the *notice* complies with the relevant provisions of the *Act*;
 - (2) the *RDC* will make any relevant *statutory notice associated decisions*, including whether the *FSA* is required to give a copy of the *notice* to a third party; and
 - (3) the *RDC* staff will make appropriate arrangements for the *notice* to be given.
- 3.2.25 G If the *RDC* decides that the *FSA* should not give a *decision notice* or a second *supervisory notice* the *RDC* staff will notify the relevant parties (including the relevant *FSA* staff) in writing of that decision.

Discontinuance of *FSA* action

- 3.2.26 G *FSA* staff responsible for recommending action to the *RDC* will continue to assess the appropriateness of the proposed action in the light of new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that they decide to give a *notice of discontinuance* to a *person* to whom a *warning notice* or *decision notice* has been given. The decision to give a *notice of discontinuance* does not require the agreement of the *RDC*, but *FSA* staff will inform the *RDC* of the discontinuance of the proceedings.

Tribunal proceedings

- 3.2.27 G A decision by the *RDC* to give a *decision notice* or *supervisory notice* may lead to a reference to the *Tribunal* under the *Act*. The conduct of proceedings before the *Tribunal* is not however a matter for the *RDC*.

3.3 Straightforward decisions

- 3.3.1 G In *statutory notice* cases for which the *RDC* is the decision-maker, the Chairman or a Deputy Chairman of the *RDC* may take a straightforward decision to give the *statutory notice*.
- 3.3.2 G The Chairman or, if he is unavailable, a Deputy Chairman will decide whether a decision is straightforward. In doing so he will have regard to all the circumstances. These may include:
- (1) the significance of the decision to those who would be affected by it;
 - (2) its novelty in the light of stated policy and established practice;

- (3) the complexity of the relevant considerations, including whether representations have been made;
 - (4) the range of alternative options;
 - (5) the extent to which the facts relating to the decision are or may be disputed.
- 3.3.3 G The *RDC* Chairman or a Deputy Chairman may, notwithstanding the fact that a decision is straightforward, take the decision to give the *statutory notice* jointly with one or more other members of the *RDC* if he considers it appropriate to do so.

3.4 Urgent supervisory notice cases

- 3.4.1 G In urgent *supervisory notice* cases for which the *RDC* is the decision maker, the decision to give the *supervisory notice* may be taken by the *RDC* Chairman or, if he is unavailable, a Deputy Chairman, and, if it is practicable, one or more other *RDC* members.
- 3.4.2 G The *RDC* Chairman or Deputy Chairman will take such a decision only if satisfied that the action proposed should occur before it is practicable to convene an *RDC* panel.
- 3.4.3 G In an exceptionally urgent case the decision to give a *supervisory notice* may be taken by a member of the *FSA's* executive of at least director of division level if:
- (1) *FSA* staff consider that the action should be taken before a recommendation to the Chairman or a Deputy Chairman of the *RDC* can be made; and
 - (2) an urgent decision on the proposed action is necessary to protect the interests of consumers.
- 3.4.4 G In the circumstances described in *DEPP* 3.4.3G, the *FSA* considers that it may be necessary for an *FSA* director of division to take the decision to give the *supervisory notice* even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the *Act*. Where practicable, however, *FSA* staff will seek to ensure that the *FSA* director has not been so involved.

4 Decisions by FSA staff under executive procedures

4.1 Executive decision maker

Who takes the decision

4.1.1 G All *statutory notice decisions* under *executive procedures* will be taken either by a *senior staff committee* or by an individual *FSA* staff member.

4.1.2 G In either case, the decision will be taken by *FSA* staff who have not been directly involved in establishing the evidence on which the decision is based, except in accordance with section 395(3) of the *Act*.

Decisions by senior staff committee

4.1.3 G The *FSA's* senior executive committee will from time to time determine that particular categories of *statutory notice decision* to be taken under *executive procedures* will be taken by a *senior staff committee*.

4.1.4 G A *senior staff committee* will consist of such *FSA* staff members as the *FSA's* senior executive committee may from time to time determine. The *FSA's* senior executive committee may authorise the chairman of a *senior staff committee* to select its other members. A *senior staff committee* is accountable for its decisions to the *FSA's* senior executive committee and, through it, to the *FSA* Board.

4.1.5 G A *senior staff committee* may operate through standing or specific sub-committees to consider particular decisions or classes of decision, for which accountability will lie through the committee. Each meeting of a *senior staff committee*, or sub-committee, will include:

- (1) an individual with authority to act as its chairman; and
- (2) at least two other members.

4.1.6 G A *senior staff committee* will operate on the basis of a recommendation from an *FSA* staff member of at least the level of associate, and with the benefit of legal advice from an *FSA* staff member of at least the level of associate.

Decisions by individual *FSA* staff members

4.1.7 G *Statutory notice decisions* to be taken under *executive procedures*, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual *FSA* staff member. The decision will be:

- (1) made by an executive director of the *FSA* Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an *FSA* staff member of at least the level of associate; and

- (3) with the benefit of legal advice from an *FSA* staff member of at least the level of associate.
- 4.1.8 G The individual who takes a decision under *executive procedures* is accountable to the *FSA* Board directly (if an executive director) or otherwise through line management responsible for the decision concerned.
- 4.1.9 G An *FSA* staff member who considers that a *statutory notice decision* should be taken above his own level is free to refer that decision to a more senior level. If an *FSA* staff member consults another staff member about a decision, the decision remains the independent decision of the *FSA* staff member who consults his colleague, unless it is agreed that the decision should instead be taken by the colleague, and the colleague has the delegated authority to do so.
- 4.1.10 G If an individual responsible for a decision under *executive procedures* (or a more senior *FSA* staff member with responsibilities in relation to the decision concerned) considers that it warrants collective consideration, the individual may:
- (1) take the decision himself, following consultation with other *FSA* staff members, as above; or
 - (2) refer it to a *senior staff committee*, which will take the decision itself.

Conflicts of interest

- 4.1.11 G
- (1) *FSA* staff are required by their contract of employment to comply with a code of conduct which imposes strict rules to cover the handling of conflicts of interest which may arise from personal interests or associations. *FSA* staff subject to a conflict of interest must declare that interest to the *person* to whom they are immediately responsible for a decision.
 - (2) If a member of a *senior staff committee* has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the secretariat of the *senior staff committee*, and disclose it:
 - (a) in the case of the chairman of the senior staff committee, to a member of the *FSA's* senior executive committee or, if the *person* with the conflict is the chairman of the *FSA's* senior executive committee, to the Chairman of the *FSA*;
 - (b) in the case of the deputy chairman of the senior staff committee, to the chairman of the committee, or if he is unavailable, to a member of the *FSA's* senior executive committee;
 - (c) in the case of any other member to the chairman or deputy chairman of the *senior staff committee*.

- (3) If the person to whom the conflict has been disclosed in accordance with *DEPP* 4.1.11G(2) considers it reasonable and appropriate, he will require the member of the *senior staff committee* to stand down from consideration of the matter.

- 4.1.12 G The secretariat to the *senior staff committee* will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

Procedure

- 4.1.13 G The procedure for taking decisions under *executive procedures* will generally be less formal and structured than that for decisions by the *RDC*. Broadly, however, *FSA* staff responsible for taking *statutory notice* decisions under *executive procedures* will follow a procedure similar to that described at *DEPP* 3.2.7G to 3.2.27G for the *RDC* except that:

- (1) in a case where the decision will be taken by a *senior staff committee*:
 - (a) the chairman or deputy chairman of the *senior staff committee* will perform the role of the Chairman of the *RDC*; and
 - (b) the secretariat to the *senior staff committee* will perform the role of the *RDC* staff;
- (2) in a case where the decision will be taken by individual members of *FSA* staff, the distinction between the role of the *RDC*, its Chairman and the *RDC* staff has no application;
- (3) the *FSA* staff responsible for taking the *statutory notice decision* may be advised by legal advisers who have also advised *FSA* staff recommending action by the *FSA*;
- (4) the *FSA* will not normally disclose the communications between the *FSA* staff recommending that action be taken and those responsible for the decision to give the *statutory notice* unless the *FSA* has stated publicly that it will adopt a practice of disclosing such communications, or a class of communications, in respect of particular categories of decision taken by *FSA* staff under *executive procedures*; and
- (5) *DEPP* 3.2.11G and 3.2.21G will not apply.

4.2 Urgent statutory notice cases

- 4.2.1 G If *FSA* staff recommend that action be taken and they consider that the decision falls within the responsibility of a *senior staff committee*:

- (1) in general the *FSA* staff's recommendation will go before the *senior staff committee*;
- (2) in urgent *statutory notice* cases for which a *senior staff committee* is responsible, the decision to give the *statutory notice* may be taken by the chairman or, if he is unavailable, a deputy chairman of the *senior staff committee*, and, if it is practicable, one or more other members of the committee;
- (3) the chairman or deputy chairman of the senior staff committee will take such a decision only if satisfied that the action proposed should occur before it is practicable to convene a meeting of the senior staff committee;
- (4) in an exceptionally urgent *statutory notice* case, if in the *FSA* staff's opinion:
 - (a) the action should be taken before a recommendation to the chairman or a deputy chairman of the *senior staff committee* could be made; and
 - (b) an urgent decision on the proposed action is necessary to protect the interests of consumers;

the decision may be taken by a member of the *FSA*'s executive of at least director of division level or, in the case of a *senior staff committee* which reports directly to the *FSA*'s senior executive committee, by a member of that committee.

- 4.2.2 G In the circumstances described in *DEPP* 4.2.1G(4) the *FSA* considers that it may be necessary for an *FSA* director of division or member of a *senior staff committee* to take the decision to give a *supervisory notice* even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the *Act*. Where practicable, however, *FSA* staff will seek to ensure that the *FSA* director or committee member has not been so involved.

5 Settlement decision procedure

5.1 Settlement decision makers

Introduction

- 5.1.1 G (1) A *person* subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the *FSA*.
- (2) The fact that he does so will not usually obviate the need for a statutory notice recording the *FSA's* decision to take that action. Where, however, the *person* subject to enforcement action agrees not to contest the content of a proposed *statutory notice*, the decision to give that statutory notice will be taken by senior *FSA* staff.
- (3) The decision will be taken jointly by two members of the *FSA's* executive of at least director of division level (the "*settlement decision makers*").
- (4) One of the directors taking the decision will usually be, but need not be, the director of Enforcement. (In exceptional cases, the director of Enforcement may have been directly involved in establishing the evidence on which the decision is based and would not therefore be able to participate (see section 395(2) of the *Act*.)
- (5) "Statutory notice" for these purposes:
- (a) means any *statutory notice* the giving of which would otherwise require a decision by the *RDC*;
 - (b) includes a *statutory notice associated decision*.

Procedure: general

- 5.1.2 G A *person* who is or may be subject to enforcement action may wish to discuss the proposed action with *FSA* staff through settlement discussions.
- 5.1.3 G Settlement discussions may take place at any time during the enforcement process if both parties agree. This might be before the giving of a *warning notice*, before a *decision notice*, or even after referral of the matter to the *Tribunal*. But the *FSA* would not normally agree to detailed settlement discussions until it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. Settlement after a *decision notice* will be rare.
- 5.1.4 G *FSA* staff and the *person* concerned may agree that neither the *FSA* nor the *person* concerned would seek to rely against the other on any admissions or statements made in the course of their settlement discussions if the matter is considered subsequently by the *RDC* or the *Tribunal*.

Procedure: participation of decision makers in discussions

- 5.1.5 G (1) The *settlement decision makers* may, but need not, participate in the discussions exploring possible settlement.
- (2) If the *settlement decision makers* have not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant *FSA* staff or the *person* concerned in order to assist in the consideration of the proposed settlement.
- 5.1.6 G The terms of any proposed settlement:
- (1) will be put in writing and be agreed by *FSA* staff and the *person* concerned;
- (2) may refer to a draft of the proposed *statutory notices* setting out the facts of the matter and the *FSA's* conclusions;
- (3) may, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the *person* concerned to:
- (a) waive and not exercise any rights under sections 387 (Warning notices) and 394 (Access to Authority material) of the *Act* to notice of, or access to, material relied upon by the *FSA* and any secondary material which might undermine the *FSA* decision to give the *statutory* notice;
- (b) waive and not exercise any rights under section 387 of the *Act* or otherwise to make representations to the *RDC* in respect of a *warning notice* or first *supervisory notice*;
- (c) not object to the giving of a *decision notice* before the expiry of the 28 day period after the giving of a *warning notice* specified under section 387 of the *Act*;
- (d) not dispute with the *FSA* the facts and matters set out in a *warning notice*, *decision notice*, *supervisory notice* or *final notice* and to waive and not exercise any right under section 208 (Decision notice) of the *Act* to refer the matter to the *Tribunal*.
- 5.1.7 G The *settlement decision makers* may:
- (1) accept the proposed settlement by deciding to give a *statutory notice* based on the terms of the settlement; or
- (2) decline the proposed settlement;
- whether or not the *settlement decision makers* have met with the relevant *FSA* staff or the *person* concerned.

- 5.1.8 G (1) Where the *settlement decision makers* decline to issue a *statutory notice* despite the proposed settlement, they may invite *FSA* staff and the *person* concerned to enter into further discussions to try to achieve an outcome the *settlement decision makers* would be prepared to endorse.
- (2) However, if the proposed action by the *FSA* has been submitted to the *RDC* for consideration, it will be for the *RDC* to decide:
- (a) whether to extend the period for representations in response to a *warning notice* or first *supervisory notice*; or
- (b) if representations have been made in response to a *warning notice* or first *supervisory notice*, whether to proceed to give a *decision notice* or second *supervisory notice*.

Settlement by mediation

- 5.1.9 G The *FSA* and other parties may agree to mediation as a way of facilitating settlement in appropriate cases.

Third party rights

- 5.1.10 G (1) *DEPP 2.4* sets out the *FSA's* approach to giving third parties copies of *statutory notices* pursuant to section 393 (Third party rights) of the *Act*.
- (2) The decision to give a *warning notice* or a *decision notice* to a third party is a *statutory notice associated decision*.
- (3) In cases therefore where the decision to give a *warning notice* or *decision notice* is taken by *settlement decision makers*, those decision makers will decide whether a copy of the notice should be given to a third party in accordance with section 393 of the *Act*. Any representations made by the third party in response to a *warning notice* will be considered by the *settlement decision makers*.

6 Penalties

6.1 Introduction

- 6.1.1 G *DEPP* 6 includes the *FSA*'s statement of policy with respect to the imposition and amount of penalties under the *Act*, as required by sections 69(1), 93(1), 124(1), and 210(1) of the *Act*.
- 6.1.2 G The principal purpose of imposing a financial penalty or issuing a *public censure* is to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches*, helping to deter other *persons* from committing similar *breaches*, and demonstrating generally the benefits of compliant behaviour. Financial penalties and *public censures* are therefore tools that the *FSA* may employ to help it to achieve its *regulatory objectives*.

6.2 Deciding whether to take action

- 6.2.1 G The *FSA* will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or *public censure*. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.
- (1) The nature, seriousness and impact of the suspected *breach*, including:
 - (a) whether the *breach* was deliberate or reckless;
 - (b) the duration and frequency of the *breach*;
 - (c) the amount of any benefit gained or loss avoided as a result of the *breach*;
 - (d) whether the *breach* reveals serious or systemic weaknesses of the management systems or *internal controls* relating to all or part of a *person's* business;
 - (e) the impact or potential impact of the *breach* on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;
 - (f) the loss or risk of loss caused to *consumers* or other market users;
 - (g) the nature and extent of any *financial crime* facilitated,

- occasioned or otherwise attributable to the *breach*; and
- (h) whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken collectively.
- (2) The conduct of the *person* after the *breach*, including the following:
- (a) how quickly, effectively and completely the *person* brought the *breach* to the attention of the *FSA* or another relevant regulatory authority;
 - (b) the degree of co-operation the *person* showed during the investigation of the *breach*;
 - (c) any remedial steps the *person* has taken in respect of the *breach*;
 - (d) the likelihood that the same type of *breach* (whether on the part of the *person* under investigation or others) will recur if no action is taken;
 - (e) whether the *person* concerned has complied with any requirements or rulings of another regulatory authority relating to his *behaviour* (for example, where relevant, those of the *Takeover Panel* or an *RIE*); and
 - (f) the nature and extent of any false or inaccurate information given by the *person* and whether the information appears to have been given in an attempt to knowingly mislead the *FSA*.
- (3) The previous disciplinary record and compliance history of the *person* including:
- (a) whether the *FSA* (or any *previous regulator*) has taken any previous disciplinary action resulting in adverse findings against the *person*;
 - (b) whether the *person* has previously undertaken not to do a particular act or engage in particular *behaviour*;
 - (c) whether the *FSA* (or any *previous regulator*) has previously taken protective action in respect of a *firm*, using its own initiative powers, by means of a variation of a *Part IV permission* or otherwise, or has previously requested the *firm* to take remedial action, and the extent to which such action has been taken; and
 - (d) the general compliance history of the *person*, including whether the *FSA* (or any *previous regulator*) has previously issued the *person* with a private warning.

(4) *FSA guidance* and other published materials:

The *FSA* will not take action against a person for *behaviour* that it considers to be in line with *guidance*, other materials published by the *FSA* in support of the *Handbook* or *FSA*-confirmed Industry Guidance which were current at the time of the *behaviour* in question. (The manner in which *guidance* and other published materials may otherwise be relevant to an enforcement case is described in *EG 2*.)

(5) Action taken by the *FSA* in previous similar cases.

(6) Action taken by other domestic or international regulatory authorities:

Where other regulatory authorities propose to take action in respect of the *breach* which is under consideration by the *FSA*, or one similar to it, the *FSA* will consider whether the other authority's action would be adequate to address the *FSA*'s concerns, or whether it would be appropriate for the *FSA* to take its own action.

6.2.2 G When deciding whether to take action for *market abuse* or *requiring or encouraging*, the *FSA* may consider the following additional factors:

(1) The degree of sophistication of the users of the market in question, the size and liquidity of the market, and the susceptibility of the market to *market abuse*.

(2) The impact, having regard to the nature of the *behaviour*, that any financial penalty or *public censure* may have on the financial markets or on the interests of *consumers*:

(a) a penalty may show that high standards of market conduct are being enforced in the financial markets, and may bolster market confidence;

(b) a penalty may protect the interests of *consumers* by deterring future *market abuse* and improving standards of conduct in a market;

(c) in the context of a *takeover bid*, the *FSA* may consider that the impact of the use of its powers is likely to have an adverse effect on the timing or outcome of that bid, and therefore it would not be in the interests of financial markets or *consumers* to take action for *market abuse* during the *takeover bid*. If the *FSA* considers that the proposed use of its powers may have that effect, it will consult the *Takeover Panel* and give due weight to its views.

Discipline for breaches of *FSA* rules on systems and controls against money laundering

6.2.3 G The *FSA's* rules on systems and controls against *money laundering* are set out in *SYSC 3.2* and *SYSC 6.3*. The *FSA*, when considering whether to take action for a financial penalty or censure in respect of a breach of those rules, will have regard to whether a *firm* has followed relevant provisions in the *Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group*.

Action against approved persons under section 66 of the Act

6.2.4 G The primary responsibility for ensuring compliance with a *firm's* regulatory obligations rests with the *firm* itself. However, the *FSA* may take disciplinary action against an *approved person* where there is evidence of personal culpability on the part of that *approved person*. Personal culpability arises where the *behaviour* was deliberate or where the *approved person's* standard of *behaviour* was below that which would be reasonable in all the circumstances at the time of the conduct concerned.

6.2.5 G In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an *approved person* (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FSA* to take action against both the *firm* and the *approved person*. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (*SYSC 3.1.1R* or *SYSC 4.1.1R*), and an *approved person* may have taken advantage of those deficiencies to front run orders or misappropriate assets.

6.2.6 G In addition to the general factors outlined in *DEPP 6.2.1G*, there are some additional considerations that may be relevant when deciding whether to take action against an *approved person* pursuant to section 66 of the *Act*. This list of those considerations is non-exhaustive. Not all considerations below may be relevant in every case, and there may be other considerations, not listed, that are relevant.

(1) The *approved person's* position and responsibilities. The *FSA* may take into account the responsibility of those exercising *significant influence functions* in the *firm* for the conduct of the *firm*. The more senior the *approved person* responsible for the misconduct, the more seriously the *FSA* is likely to view the misconduct, and therefore the more likely it is to take action against the *approved person*.

(2) Whether disciplinary action against the *firm* rather than the *approved person* would be a more appropriate regulatory response.

(3) Whether disciplinary action would be a proportionate response to the nature and seriousness of the breach by the *approved person*.

6.2.7 G The *FSA* will not discipline *approved persons* on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see *APER 4.6.13G* and *APER 4.6.14G*). In particular, disciplinary action will not be taken

against an *approved person* performing a *significant influence function* simply because a regulatory failure has occurred in an area of business for which he is responsible. The *FSA* will consider that an *approved person* performing a *significant influence function* may have breached *Statements of Principle 5 to 7* only if his conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also *APER 3.1.8G*).

- 6.2.8 G An *approved person* will not be in breach if he has exercised due and reasonable care when assessing information, has reached a reasonable conclusion and has acted on it.
- 6.2.9 G Where disciplinary action is taken against an *approved person* the onus will be on the *FSA* to show that the *approved person* has been guilty of misconduct.
- Action against directors, former directors and persons discharging managerial responsibilities for breaches under Part VI of the Act
- 6.2.10 G The primary responsibility for ensuring compliance with Part VI of the *Act*, the *Part 6 rules*, the *prospectus rules* or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) (Penalties for breach of Part 6 rules) of the *Act* respectively. Normally therefore, any disciplinary action taken by the *FSA* for contraventions of these obligations will in the first instance be against those persons.
- 6.2.11 G However, in the case of a contravention by a *person* referred to in section 91(1)(a) or section 91(1)(b)(i) or section 91(1A) of the *Act* ("P"), where the *FSA* considers that another *person* who was at the material time a *director* of P was knowingly concerned in the contravention, the *FSA* may take disciplinary action against that *person*. In circumstances where the *FSA* does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such person), the *FSA* may nonetheless seek a disciplinary sanction against any other person who was at the material time a *director* of P and was knowingly concerned in the contravention.
- 6.2.12 G *Persons* discharging managerial responsibilities within an issuer and their *connected persons*, who have requested or approved the admission of a *financial instrument* to trading on a *regulated market*, and *connected persons* have their own responsibilities under the *disclosure rules*, as set out in *DTR 3*, for which they are primarily responsible. Accordingly, disciplinary action for a breach of the *disclosure rules* will not necessarily involve the issuer.

[**Note:** In paragraph 6.2.12, 'connected person' has the meaning in relation to a *person discharging managerial responsibilities* within an *issuer* attributed to it in subsection (5) of the definition of 'connected person' in the *Handbook Glossary*.]

- 6.2.13 G In deciding whether to take action, the *FSA* will consider the full circumstances of each case. Factors that may be relevant for this purpose include, but are not limited to, the factors at *DEPP* 6.2.1G.

Discipline for breaches of the Principles for Businesses

- 6.2.14 G The *Principles* are set out in *PRIN* 2.1.1R. The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. The *Principles* derive their authority from the *FSA's* rule-making powers set out in section 138 (General rule-making power) of the *Act*. A breach of a *Principle* will make a *firm* liable to disciplinary action. Where the *FSA* considers this is appropriate, it will discipline a *firm* on the basis of the *Principles* alone.

- 6.2.15 G In determining whether a *Principle* has been breached, it is necessary to look to the standard of conduct required by the *Principle* in question at the time. Under each of the *Principles*, the onus will be on the *FSA* to show that a *firm* has been at fault in some way.

Discipline for breaches of the Listing Principles

- 6.2.16 G The Listing Principles are set out in *LR* 7. The Listing Principles are a general statement of the fundamental obligations of *listed companies*. The Listing Principles derive their authority from the *FSA's* rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle will make a *listed company* liable to disciplinary action by the *FSA*.

- 6.2.17 G In determining whether a Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle in question. Under each of the Listing Principles, the onus will be on the *FSA* to show that a *listed company* has been at fault in some way. This requirement will differ depending upon the Listing Principle.

- 6.2.18 G In certain cases, it may be appropriate to discipline a *listed company* on the basis of the Listing Principles alone. Examples include the following:

- (1) where there is no detailed listing rule which prohibits the *behaviour* in question, but the *behaviour* clearly contravenes a Listing Principle;
- (2) where a *listed company* has committed a number of breaches of detailed rules which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a Listing Principle.

Action involving other regulatory authorities or enforcement agencies

- 6.2.19 G Some types of *breach* may potentially result not only in action by the *FSA*, but also action by other domestic or overseas regulatory authorities or enforcement agencies.

- 6.2.20 G When deciding how to proceed in such cases, the *FSA* will examine the circumstances of the case, and consider, in the light of the relevant investigation, disciplinary and enforcement powers, whether it is appropriate for the *FSA* or another authority to take action to address the *breach*. The *FSA* will have regard to all the circumstances of the case including whether the other authority has adequate powers to address the *breach* in question.
- 6.2.21 G In some cases, it may be appropriate for both the *FSA* and another authority to be involved, and for both to take action in a particular case arising from the same facts. For example, a breach of *RIE* rules may be so serious as to justify the *FSA* varying or cancelling the *firm's Part IV permission*, or withdrawing approval from *approved persons*, as well as action taken by the *RIE*. In such cases, the *FSA* will work with the relevant authority to ensure that cases are dealt with efficiently and fairly, under operating arrangements in place (if any) between the *FSA* and the relevant authority.
- 6.2.22 G In relation to *behaviour* which may have happened or be happening in the context of a *takeover bid*, the *FSA* will refer to the *Takeover Panel* and give due weight to its views in the context of the *Takeover Panel's* powers and responsibilities. Where the *Takeover Code* has procedures for complaint about any behaviour, the *FSA* expects parties to exhaust those procedures. The *FSA* will not, save in exceptional circumstances, take action under any of section 123 (*FSA's* power to impose penalties), section 129 (Power of court to impose penalties), section 381 (Injunctions), sections 383 or 384 (Restitution) in respect of *behaviour* to which the *Takeover Code* is relevant before the conclusion of the procedures available under the *Takeover Code*.
- 6.2.23 G The *FSA* will not take action against a *person* over *behaviour* which (a) conforms with the *Takeover Code* or rules of an *RIE* and (b) falls within the terms of any provision of the *Code of Market Conduct* which states that *behaviour* so conforming does not amount to *market abuse*. The *FSA* will seek the *Takeover Panel's* or relevant *RIE's* views on whether *behaviour* complies with the *Takeover Code* or *RIE* rules and will attach considerable weight to its views.
- 6.2.24 G If any of the circumstances in *DEPP* 6.2.26G apply, and the *FSA* considers that the use of its disciplinary powers under section 123 or section 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the *Takeover Code* applies except in the circumstances set out in *DEPP* 6.2.27G.
- 6.2.25 G In any case where the *FSA* considers that the use of its powers under any of sections 123, 129, 381, 383 or 384 of the *Act* may be appropriate, if that use may affect the timetable or outcome of a *takeover bid* or where it is appropriate in the context of any exercise by the *Takeover Panel* of its powers and authority, the *FSA* will consult the *Takeover Panel* before using any of those powers.

- 6.2.26 G Where the *behaviour* of a *person* which amounts to *market abuse* is *behaviour* to which the *Takeover Code* is relevant, the use of the *Takeover Panel's* powers will often be sufficient to address the relevant concerns. In cases where this is not so, the *FSA* will need to consider whether it is appropriate to use any of its own powers under the *market abuse regime*. The principal circumstances in which the *FSA* is likely to consider such exercise are:
- (1) where the *behaviour* falls within sections 118(2), 118(3) or 118(4) of the *Act*;
 - (2) where the *FSA's* approach in previous similar cases (which may have happened otherwise than in the context of a *takeover bid*) suggests that a financial penalty should be imposed;
 - (3) where the *behaviour* extends to *securities* or a class of *securities* which may be outside the *Takeover Panel's* jurisdiction;
 - (4) where the *behaviour* threatens or has threatened the stability of the *financial system*; and
 - (5) where for any other reason the *Takeover Panel* asks the *FSA* to consider the use of any of its powers referred to in *DEPP* 6.2.22G.
- [**Note:** In this section, 'securities' has the same meaning given in subsection (1) of the definition of 'security' in the *Handbook Glossary*]
- 6.2.27 G The exceptional circumstances in which the *FSA* will consider the use of powers during a *takeover bid* are listed in *DEPP* 6.2.26G(1), *DEPP* 6.2.26G(3) and *DEPP* 6.2.26G(4), and, depending on the circumstances, *DEPP* 6.2.26G(5).
- 6.2.28 G *DEPP* 6.2.26G and *DEPP* 6.2.27G do not apply to a *person* who has no responsibilities under the *Takeover Code*.

6.3 Penalties for market abuse

- 6.3.1 G Section 123(2) of the *Act* states that the *FSA* may not impose a penalty on a *person* if there are reasonable grounds to be satisfied that:
- (1) the *person* concerned believed, on reasonable grounds, that his *behaviour* did not amount to *market abuse* or *requiring or encouraging*; or
 - (2) the *person* concerned took all reasonable precautions and exercised all due diligence to avoid engaging in *market abuse* or *requiring or encouraging*.
- 6.3.2 G The factors which the *FSA* may take into account when deciding whether

either of the two conditions in *DEPP* 6.3.1G are met include, but are not limited to:

- (1) whether, and if so to what extent, the *behaviour* in question was or was not analogous to *behaviour* described in the *Code of Market Conduct* (see *MAR* 1) as amounting or not amounting to *market abuse* or *requiring or encouraging*;
- (2) whether the *FSA* has published any *guidance* or other materials on the *behaviour* in question and if so, the extent to which the *person* sought to follow that *guidance* or take account of those materials (see the Reader's Guide to the *Handbook* regarding the status of *guidance*.) The *FSA* will consider the nature and accessibility of any *guidance* or other published materials when deciding whether it is relevant in this context and, if so, what weight it should be given;
- (3) whether, and if so to what extent, the *behaviour* complied with the rules of any relevant *prescribed market* or any other relevant market or other regulatory requirements (including the *Takeover Code*) or any relevant codes of conduct or best practice;
- (4) the level of knowledge, skill and experience to be expected of the *person* concerned;
- (5) whether, and if so to what extent, the *person* can demonstrate that the *behaviour* was engaged in for a legitimate purpose and in a proper way;
- (6) whether, and if so to what extent, the *person* followed internal consultation and escalation procedures in relation to the *behaviour* (for example, did the *person* discuss the *behaviour* with internal line management and/or internal legal or compliance departments);
- (7) whether, and if so the extent to which, the *person* sought any appropriate expert legal or other expert professional advice and followed that advice; and
- (8) whether, and if so to what extent, the *person* sought advice from the market authorities of any relevant *prescribed market* or, where relevant, consulted the *Takeover Panel*, and followed the advice received.

6.4 Financial penalty or public censure

- 6.4.1 G The *FSA* will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a *public censure*. As such, the factors set out in *DEPP* 6.4.2G are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

- 6.4.2 G The criteria for determining whether it is appropriate to issue a *public censure* rather than impose a financial penalty are similar to those for determining the amount of penalty set out in *DEPP* 6.5. Some particular considerations that may be relevant when the *FSA* determines whether to issue a *public censure* rather than impose a financial penalty are:
- (1) whether or not deterrence may be effectively achieved by issuing a *public censure*;
 - (2) if the *person* has made a profit or avoided a loss as a result of the *breach*, this may be a factor in favour of a financial penalty, on the basis that a *person* should not be permitted to benefit from its *breach*;
 - (3) if the *breach* is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the *breach*; other things being equal, the more serious the *breach*, the more likely the *FSA* is to impose a financial penalty;
 - (4) if the *person* has brought the *breach* to the attention of the *FSA*, this may be a factor in favour of a *public censure*, depending upon the nature and seriousness of the *breach*;
 - (5) if the *person* has admitted the *breach* and provides full and immediate co-operation to the *FSA*, and takes steps to ensure that those who have suffered loss due to the *breach* are fully compensated for those losses, this may be a factor in favour of a *public censure*, rather than a financial penalty, depending upon the nature and seriousness of the *breach*;
 - (6) if the *person* has a poor disciplinary record or compliance history (for example, where the *FSA* has previously brought disciplinary action resulting in adverse findings in relation to the same or similar *behaviour*), this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
 - (7) the *FSA's* approach in similar previous cases: the *FSA* will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a *public censure*; and
 - (8) the impact on the *person* concerned. In exceptional circumstances, if the *person* has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their *breach* would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. However, it would only be in an exceptional case that the *FSA* would be prepared to agree to issue a *public censure* rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could

include where there is:

- (a) verifiable evidence that a *person* would suffer serious financial hardship if the *FSA* imposed a financial penalty;
- (b) verifiable evidence that the *person* would be unable to meet other regulatory requirements, particularly financial resource requirements, if the *FSA* imposed a financial penalty at an appropriate level; or
- (c) in Part VI cases in which the *FSA* may impose a financial penalty, where there is the likelihood of a severe adverse impact on a *person's* shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a *person's* shareholders.

6.5 Determining the appropriate level of financial penalty

- 6.5.1 G (1) The *FSA* will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the *breach* concerned. The list of factors in *DEPP* 6.5.2G is not exhaustive: not all of these factors may be relevant in a particular case, and there may be other factors, not included below, that are relevant.
- (2) The *FSA* does not apply a tariff of penalties for different kinds of *breach*. This is because there will be very few cases in which all the circumstances of the case are essentially the same and because of the wide range of different *breaches* in respect of which the *FSA* may take action. The *FSA* considers that, in general, the use of a tariff for particular kinds of *breach* would inhibit the flexible and proportionate policy which it adopts in this area.
- 6.5.2 G The following factors may be relevant to determining the appropriate level of financial penalty to be imposed on a *person* under the *Act*:
- (1) Deterrence
- When determining the appropriate level of penalty, the *FSA* will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring *persons* who have committed *breaches* from committing further *breaches* and helping to deter other *persons* from committing similar *breaches*, as well as demonstrating generally the benefits of compliant business.
- (2) The nature, seriousness and impact of the *breach* in question

The *FSA* will consider the seriousness of the *breach* in relation to the nature of the *rule*, requirement or provision breached. The following considerations are among those that may be relevant:

- (a) the duration and frequency of the *breach*;
 - (b) whether the *breach* revealed serious or systemic weaknesses in the *person's* procedures or of the management systems or *internal controls* relating to all or part of a *person's* business;
 - (c) in market abuse cases, the *FSA* will consider whether the breach had an adverse effect on markets and, if it did, how serious that effect was, which may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk. This factor may also be relevant in other types of case;
 - (d) the loss or risk of loss caused to *consumers*, investors or other market users;
 - (e) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*; and
 - (f) in the context of contraventions of Part VI of the *Act*, the extent to which the *behaviour* which constitutes the contravention departs from current market practice.
- (3) The extent to which the *breach* was deliberate or reckless

The *FSA* will regard as more serious a *breach* which is deliberately or recklessly committed. The matters to which the *FSA* may have regard in determining whether a *breach* was deliberate or reckless include, but are not limited to, the following:

- (a) whether the *breach* was intentional, in that the *person* intended or foresaw the potential or actual consequences of its actions;
- (b) where the *person* has not followed a *firm's* internal procedures and/or *FSA guidance*, the reasons for not doing so;
- (c) where the *person* has taken decisions beyond its or his field of competence, the reasons for the decisions and for them being taken by that *person*;
- (d) whether the *person* has given no apparent consideration to the consequences of the *behaviour* that constitutes the *breach*;
- (e) in the context of a contravention of any *rule* or requirement imposed by or under Part VI of the *Act*, whether the *person* sought any professional advice before the contravention

occurred and whether the *person* followed that professional advice. Seeking professional advice does not remove a *person's* responsibility for compliance with applicable *rules* and requirements.

If the *FSA* decides that the *breach* was deliberate or reckless, it is more likely to impose a higher penalty on a *person* than would otherwise be the case.

- (4) Whether the person on whom the penalty is to be imposed is an individual

When determining the amount of a penalty to be imposed on an individual, the *FSA* will take into account that individuals will not always have the resources of a *body corporate*, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a *body corporate*. The *FSA* will also consider whether the status, position and/or responsibilities of the individual are such as to make a *breach* committed by the individual more serious and whether the penalty should therefore be set at a higher level.

- (5) The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

- (a) The *FSA* may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the *person* were to pay the level of penalty appropriate for the particular *breach*. The *FSA* regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.
- (b) The purpose of a penalty is not to render a *person* insolvent or to threaten the *person's* solvency. Where this would be a material consideration, the *FSA* will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a *person* with lower financial resources; but if a *person* reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the *FSA* will take account of those assets when determining the amount of a penalty.
- (c) The degree of seriousness of a *breach* may be linked to the size of the *firm*. For example, a systemic failure in a large *firm* could damage or threaten to damage a much larger number of *consumers* or investors than would be the case with a small *firm*: *breaches* in *firms* with a high volume of business over a protracted period may be more serious than *breaches* over

similar periods in *firms* with a smaller volume of business.

- (d) The size and resources of a *person* may also be relevant in relation to mitigation, in particular what steps the *person* took after the *breach* had been identified; the *FSA* will take into account what it is reasonable to expect from a *person* in relation to its size and resources, and factors such as what proportion of a *person's* resources were used to resolve a problem.
- (e) The *FSA* may decide to impose a financial penalty on a mutual (such as a *building society*), even though this may have a direct impact on that mutual's *customers*. This reflects the fact that a significant proportion of a mutual's *customers* are shareholder-members; to that extent, their position involves an assumption of risk that is not assumed by *customers* of a *firm* that is not a mutual. Whether a *firm* is a mutual will not, by itself, increase or decrease the level of a financial penalty.

(6) The amount of benefit gained or loss avoided

The *FSA* may have regard to the amount of benefit gained or loss avoided as a result of the *breach*, for example:

- (a) the *FSA* will propose a penalty which is consistent with the principle that a *person* should not benefit from the *breach*; and
- (b) the penalty should also act as an incentive to the *person* (and others) to comply with regulatory standards and required standards of market conduct.

(7) Difficulty of detecting the *breach*

A *person's* incentive to commit a *breach* may be greater where the *breach* is, by its nature, harder to detect. The *FSA* may, therefore, impose a higher penalty where it considers that a *person* committed a *breach* in such a way as to avoid or reduce the risk that the *breach* would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the *behaviour* in question.

(8) Conduct following the *breach*

The *FSA* may take the following factors into account:

- (a) the conduct of the *person* in bringing (or failing to bring) quickly, effectively and completely the *breach* to the *FSA's* attention (or the attention of other regulatory authorities, where relevant);

- (b) the degree of co-operation the *person* showed during the investigation of the *breach* by the *FSA*, or any other regulatory authority allowed to share information with the *FSA*, such as an *RIE* or the *Takeover Panel*. Where a *person* has fully co-operated with the *FSA*'s investigation, this will be a factor tending to reduce the level of financial penalty;
 - (c) any remedial steps taken since the *breach* was identified, including whether these were taken on the *person*'s own initiative or that of the *FSA* or another regulatory authority; for example, identifying whether *consumers* or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future; and
 - (d) whether the *person* concerned has complied with any requirements or rulings of another regulatory authority relating to the *breach* (for example, where relevant, those of the *Takeover Panel*).
- (9) Disciplinary record and compliance history

The *FSA* may take the previous disciplinary record and general compliance history of the *person* into account. This will include:

- (a) whether the *FSA* (or any *previous regulator*) has taken any previous disciplinary action against the *person*;
- (b) whether the *person* has previously undertaken not to do a particular act or engage in particular *behaviour*;
- (c) whether the *FSA* (or any *previous regulator*) has previously taken protective action in respect of a *firm* using its own initiative powers, by means of a variation of a *firm*'s *Part IV permission*, or has previously requested the *firm* to take remedial action and the extent to which that action has been taken.
- (d) the general compliance history of the *person*, including whether the *FSA* (or any *previous regulator*) has previously brought to the *person*'s attention, including by way of a private warning, issues similar or related to the conduct that constitutes the *breach* in respect of which the penalty is imposed.

A *person*'s disciplinary record could lead to the *FSA* imposing a higher penalty, for example where the *person* has committed similar *breaches* in the past.

In assessing the relevance of a *person's* disciplinary record and compliance history, the age of a particular matter will be taken into account, although a long-standing matter may still be relevant.

(10) Other action taken by the *FSA* (or a *previous regulator*)

Action that the *FSA* (or a *previous regulator*) has taken in relation to similar *breaches* by other *persons* may be taken into account. This includes previous actions in which the *FSA* (whether acting by the *RDC* or the *settlement decision makers*) and a *person* on whom a penalty is to be imposed have reached agreement as to the amount of the penalty. As stated at *DEPP* 6.5.1G(2), the *FSA* does not operate a tariff system. However, the *FSA* will seek to apply a consistent approach to determining the appropriate level of penalty.

(11) Action taken by other domestic or international regulatory authorities

Considerations could include, for example:

- (a) action taken or to be taken against a *person* by other regulatory authorities which may be relevant where that action relates to the *breach* in question;
- (b) the degree to which any remedial or compensatory steps required by other regulatory authorities have been taken (and whether taken promptly).

(12) *FSA guidance* and other published materials

- (a) A *person* does not commit a *breach* by not following *FSA guidance* or other published examples of compliant *behaviour*. However, where a *breach* has otherwise been established, the fact that *guidance* or other published materials had raised relevant concerns may inform the seriousness with which the *breach* is to be regarded by the *FSA* when determining the level of penalty.
- (b) The *FSA* will consider the nature and accessibility of the *guidance* or other published materials when deciding whether they are relevant to the level of penalty and, if they are, what weight to give them in relation to other relevant factors.

(13) The timing of any agreement as to the amount of the penalty

The *FSA* and the *person* on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, *DEPP* 6.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the *FSA* and the *person* concerned reach an agreement.

- 6.5.3 G Part III (Penalties and fees) of Schedule 1 to the *Act* specifically provides that the *FSA* may not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

6.6 Financial penalties for late and incomplete submission of reports

- 6.6.1 G (1) The *FSA* attaches considerable importance to the timely submission by *firms* of reports. This is because the information that they contain is essential to the *FSA's* assessment of whether a *firm* is complying with the requirements and standards of the *regulatory system* and to the *FSA's* understanding of that *firm's* business.
- (2) *DEPP* 6.6.1G to 6.6.5G set out the *FSA's* policy in relation to financial penalties for late submission of reports and is in addition to the *FSA's* policy relating to financial penalties including the factors relevant to determining their appropriate level (see *DEPP* 6.5.2 G).
- 6.6.2 G In addition to the factors relevant to determining the appropriate level of financial penalty (see *DEPP* 6.5.2 G), the following considerations are relevant.
- (1) In general, the *FSA's* approach to disciplinary action arising from the late submission of a report will depend upon the length of time after the due date that the report in question is submitted.
- (2) If the *person* concerned is an individual, it is open to him to make representations to the *FSA* as to why he should not be the subject of a financial penalty, or why a lower penalty should be imposed. If he does so, the matters to which the *FSA* will have regard will include the matters set out in *DEPP* 6.5.2G(4) and (5). It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute a relevant circumstance for this purpose.
- (3) The *FSA* will have regard to repeated failures to submit reports on time. In the majority of cases involving such repeated failure, the *FSA* considers that it will be appropriate to seek more serious disciplinary sanctions or other enforcement action, including seeking to apply for the cancellation of the *firm's* permission.
- (4) The *FSA* will also have regard to the submission frequency of the late report when assessing the seriousness of the contravention. For example, a short delay in submitting a weekly or monthly report can have serious implications for the supervision of the *firm* in question. Such a delay may therefore be subject to a higher penalty than might otherwise be the case.
- 6.6.3 G In addition, in appropriate cases, the *FSA* may bring disciplinary action against the *approved persons* within the *firm's* management who are

ultimately responsible for ensuring that the *firm's* reports are completed and returned to the *FSA*.

- 6.6.4 G In applying the *guidance* in this section, the *FSA* may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate. For the purposes of the *guidance*, the *FSA* may also treat a report as not received where the method by which it is submitted to the *FSA* does not comply with the prescribed method of submission.
- 6.6.5 G In most late reporting cases, it will not be necessary for the *FSA* to appoint an investigator since the fact of the breach will be clear. It follows that the *FSA* will not usually send the *firm* concerned a preliminary findings letter for late-reporting disciplinary action.

6.7 Discount for early settlement

- 6.7.1 G *Persons* subject to enforcement action may be prepared to agree the amount of any financial penalty and other conditions which the *FSA* seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The *FSA* recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the *FSA* itself in contesting the financial penalty. The penalty that might otherwise be payable in respect of a *breach* by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.
- 6.7.2 G In appropriate cases the *FSA's* approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the factors set out in *DEPP* 6.5.2G. (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the *breach*. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.
- 6.7.3 G (1) *The FSA* has identified four stages of an action for these purposes:
- (a) the period from commencement of an investigation until the *FSA* has:
 - (i) a sufficient understanding of the nature and gravity of the *breach* to make a reasonable assessment of the appropriate penalty; and

- (ii) communicated that assessment to the *person* concerned and allowed a reasonable opportunity to reach agreement as to the amount of the penalty ("stage 1");
 - (b) the period from the end of stage 1 until the expiry of the period for making written representations or, if sooner, the date on which the written representations are sent in response to the giving of a *warning notice* ("stage 2");
 - (c) the period from the end of stage 2 until the giving of a *decision notice* ("stage 3");
 - (d) the period after the end of stage 3, including proceedings before the *Tribunal* and any subsequent appeals ("stage 4").
- (2) The communication of the *FSA's* assessment of the appropriate penalty for the purposes of *DEPP* 6.7.3 G (1)(a) need not be in a prescribed form but will include an indication of the *breaches* alleged by the *FSA*. It may include the provision of a draft *warning notice*.
- (3) The reductions in penalty will be as follows:

Stage at which agreement reached	Percentage reduction
Stage 1	30
Stage 2	20
Stage 3	10
Stage 4	0

- 6.7.4 G
- (1) Any settlement agreement between the *FSA* and the *person* concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.
 - (2) In certain circumstances the *person* concerned may consider that it would have been possible to reach a settlement at an earlier stage in the action, and argue that it should be entitled to a greater percentage reduction in penalty than is suggested by the table at *DEPP* 6.7.3G(3). It may be, for example, that the *FSA* no longer wishes to pursue its action in respect of all of the acts or omissions previously alleged to give rise to the *breach*. In such cases, the *person* concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from the discount which would have been available at that time. Equally, *FSA* staff may consider that greater openness from the *person* concerned could have resulted in an earlier settlement.
 - (3) Arguments of this nature risk compromising the goals of greater clarity and transparency in respect of the benefits of early settlement, and

invite dispute in each case as to when an agreement might have been possible. It will not usually be appropriate therefore to argue for a greater reduction in the amount of penalty on the basis that settlement could have been achieved earlier.

- (4) However, in exceptional cases the *FSA* may accept that there has been a substantial change in the nature or seriousness of the action being taken against the *person* concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the *FSA* and person concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible.

6.7.5 G In cases in which the *settlement discount scheme* is applied, the fact of settlement and the level of the discount to the financial penalty imposed by the *FSA* will be set out in the *final notice*.

7 Statement of policy on section 169(7) interviews

7.1 Application and purpose

Application

- 7.1.1 G *DEPP 7* applies when the *FSA* :
- (1) has appointed an investigator at the request of an *overseas regulator*, under section 169(1)(b) (Assistance to overseas regulators) of the *Act*; and
 - (2) has directed, or is considering directing, the investigator, under section 169(7) of the *Act*, to permit a representative of the *overseas regulator* to attend, and take part in, any interview conducted for the purposes of the investigation.
- 7.1.2 G In *DEPP 7*, a "section 169(7) interview" means any interview conducted for the purposes of an investigation under section 169(1)(b) of the *Act* in relation to which the *FSA* has given a direction under section 169(7) of the *Act*.

Purpose

- 7.1.3 G The purpose of *DEPP 7* is to set out the *FSA*'s statement of policy on the conduct of interviews to which a direction under section 169(7) has been given or the *FSA* is considering giving. The *FSA* is required to prepare and publish this statement of policy by section 169(9) and (11) of the *Act*. As required by section 169(10) of the *Act*, the Treasury has approved the statement of policy.
- 7.1.4 G The *FSA* is keen to promote co-operation with *overseas regulators*. It views provision of assistance to *overseas regulators* as an essential part of the principles set out in section 2(3)(e) of the *Act* to which it must have regard in discharging its general functions.

7.2 Interviews

Appointment of investigator and confidentiality of information

- 7.2.1 G Under section 169(1)(b) of the *Act*, the *FSA* may appoint an investigator to investigate any matter at the request of an *overseas regulator*. The powers of the investigator appointed by the *FSA* (referred to here as the '*FSA*'s investigator') include the power to require *persons* to attend at a specified time and place and answer questions (the compulsory interview power).
- 7.2.2 G Where the *FSA* appoints an investigator in response to a request from an *overseas regulator* it may, under section 169(7) of the *Act*, direct him to permit a representative of that regulator to attend and take part in any

interviews conducted for the purposes of the investigation. The *FSA* may only give a direction under section 169(7) if it is satisfied that any information obtained by an *overseas regulator* as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the *Act*.

- 7.2.3 G Part XXIII of the *Act* contains restrictions on the disclosure of confidential information. The restrictions are subject to exceptions contained in regulations made by the Treasury under section 349.

Policy on use of investigative powers

- 7.2.4 G The *FSA's* policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators*, is set out in the *FSA's* Enforcement Guide (*EG*).

Use of direction powers

- 7.2.5 G The *FSA* may need to consider whether to use its direction power at two stages of an investigation:

- (1) at the same time that it considers the request from the *overseas regulator* to appoint investigators;
- (2) after it has appointed investigators, either at the request of the *overseas regulator* or on the recommendation of the investigators.

- 7.2.6 G Before making a direction under section 169(7) the *FSA* will discuss and determine with the *overseas regulator* how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the *FSA* will at this stage determine the extent to which the representative of the *overseas regulator* will be able to participate in the interview. The *overseas regulator* will be notified of this determination on the issuing of the direction.

- 7.2.7 G The direction will contain the identity of the representative of the *overseas regulator* that is permitted to attend any interview and the role that he will play in the interview. If the *FSA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the overseas representative is allowed to attend.

Conduct of interview

- 7.2.8 G In circumstances where an interview is to be conducted as part of the investigation, the *FSA's* investigator will have conduct of the interview. In general, the *FSA's* investigators will be employees of the *FSA*, but in appropriate cases the *FSA* may appoint *persons* who are not its employees. In those cases, the *FSA* may choose to require that an *FSA* employee is present at the interview and may choose to appoint that *person* as an investigator.

- 7.2.9 G The *FSA's* investigator will act on behalf of the *FSA* and under its control. He may be instructed to permit the representative of the *overseas regulator* to assist in the preparation of the interview. Where the *FSA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in *DEPP 7.2.6G*.
- 7.2.10 G If the direction does permit the representative of an *overseas regulator* to attend the interview and ask the interviewee questions, the *FSA's* investigator will retain control of the interview throughout. Control of the interview means the following will apply:
- (1) The *FSA's* investigator instigates and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. The *FSA's* investigator will always ask preliminary questions, such as those establishing the identity of the interviewee.
 - (2) The *FSA's* investigator determines the duration of the interview and when, if at all, there should be any breaks in the course of it.
 - (3) The *FSA's* investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* was either present or not present.
 - (4) Where the *FSA's* investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* as to the conduct of the interview and the contents of this statement of policy.
- 7.2.11 G The *FSA* will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator*. Whether or not the interviewee is the *person* under investigation, the *FSA's* investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the *FSA* believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.
- 7.2.12 G The interviewee will normally be given a copy of the direction issued under section 169(7) in advance of the interview unless to do so would be likely to

result in the investigation being frustrated. The interviewee will also be provided with a copy of this statement of policy.

- 7.2.13 G The *FSA's* investigator will determine the venue and timing of the interview. The interviewee will be notified of the venue and timing of the interview in advance and in writing.
- 7.2.14 G When the *FSA's* investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator*. It will also state that in criminal proceedings or proceedings for *market abuse* the *FSA* will not use as evidence against the interviewee any information obtained under compulsion during the interview.
- 7.2.15 G The *FSA's* investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the *documents* before the interview takes place. Where the *overseas regulator* wishes to ask questions about *documents* during the interview and the *FSA's* investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the *FSA's* investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.
- 7.2.16 G When the *FSA's* investigator has exercised the compulsory interview power, the *FSA's* investigator will require the *person* attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator*. The interviewee will also be required to answer these questions. The *FSA's* investigator may intervene at any stage during questioning by the representative of the *overseas regulator*.

Language

- 7.2.17 G Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* then the translation costs will normally be met by the *overseas regulator*. Where interviews are being conducted in pursuance of a Community obligation these costs will be met by the *FSA*. In any event, the meeting of costs in relation to translators and, where applicable, the translation of *documents* will always be agreed in advance with the *overseas regulator*.

Tape-recording

- 7.2.18 G All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the *FSA's* investigator. Costs will be

addressed similarly to that set out in the preceding paragraph. The *FSA* will not provide the *overseas regulator* with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

Representation

- 7.2.19 G The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the *FSA*. The presence at the interview of a representative of the *overseas regulator* may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator's jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the *FSA* reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at a suitable venue.
- 7.2.20 G In relation to the publication of investigations by *overseas regulators*, the *FSA* will pursue a policy similar to the policy that relates to its own investigations.

DEPP TP 1 Transitional provisions applying to the Decision Procedure and Penalties Manual

G

1. Table DEPP TP 1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision dates in force:	(6) Handbook provision coming into force
1	<i>DEPP</i>	G	<i>GEN</i> contains some transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at <i>commencement</i> .	From <i>commencement</i>	(Various dates)
2	<i>DEPP</i> 6.7 (Discount for early settlement),	G	These provisions (in summary, relating to the discount scheme) apply only to cases where investigators are appointed on or after 20 October 2005.	From 20 October 2005	20 October 2005
3	<i>DEPP</i>	G	<i>DEPP</i> 1 to <i>DEPP</i> 5 take effect on 28 August 2007, save to the	From 28 August 2007	28 August 2007

			<p>extent described below:</p> <p><i>DEPP 1 to DEPP 5 do not apply to any statutory notice or related notice issued on or after 28 August where a warning notice, first supervisory notice or decision notice was given by the FSA before 28 August in relation to the same matter. The procedure to be followed in respect of such statutory notices or related notices given on or after 28 August will be the same as that described in the Decision making manual (DEC) immediately before DEPP comes into effect.</i></p>		
4	<i>DEPP</i>	G	<p><i>DEPP 6 takes effect on 28 August 2007, save to the extent described below.</i></p> <p><i>The FSA's policy in respect of the imposition and amount of penalty will continue to be as described in the Enforcement manual (ENF) in relation to any statutory notice or related notice given on or after 28 August where a warning notice, first supervisory notice or decision notice was given by the FSA before 28 August in relation to the same matter.</i></p>	From 28 August 2007	28 August 2007

Annex B

Amendment to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underling indicates new text and striking through indicates deleted text

DEPP 2 Annex 1G

Section of the Act	Description	Handbook reference	Decision maker
...			
280(1)/(2)	when the <i>FSA</i> is proposing or deciding to direct that a section 270 <i>recognised scheme</i> is to cease to be recognised or to revoke a section 272 order in respect of a <i>recognised scheme</i> *		<i>RDC</i>
<u>301C(5)/(7)</u>	<u>when the <i>FSA</i> is proposing/deciding to object to a change in control of a <i>UK RIE</i> following receipt of a notice of control.</u>	<u>REC 4.2C</u>	<u><i>Executive procedures</i></u>
<u>301D(1)/(3)/(4)</u>	<u>when the <i>FSA</i> has imposed a requirement on an institution to suspend a <i>financial instrument</i> from trading and it is proposing/deciding to refuse an application by the institution or the issuer for the revocation of the requirement.</u>	<u>REC 4.2C</u>	
<u>313B(9)</u>	<u>when the <i>FSA</i> has required an institution to suspend a financial instrument from trading and it is proposing or deciding to refuse an application by the institution or the issuer for the cancellation of the suspension.</u>	<u>REC 4.2.4</u>	<u><i>Executive procedures</i></u>
321(8)/(9)	when the <i>FSA</i> is proposing or deciding to refuse an application for variation or revocation of a direction or a requirement imposed on a former underwriting member of Lloyd's*		<i>RDC</i>
...			
385(1)/386(1)	when the <i>FSA</i> is proposing/deciding to		<i>RDC</i>

	exercise the power under section 384(5) to require a <i>person</i> to pay restitution*		
<u>412B(2)/(3)</u>	<u>when the FSA is proposing/deciding to refuse to approve a relevant system as defined in section 412A(9) of the Act</u>		<u>Executive procedures</u>
<u>412B(4)/(5)</u>	<u>when the FSA is proposing/deciding to suspend or withdraw its approval in relation to a relevant system as defined in section 412A(9) of the Act*</u>		<u>Executive procedures</u>
<u>412B(8)/(9)</u>	<u>when the FSA is proposing/deciding to refuse an application to cancel the suspension of approval in relation to a relevant system as defined in section 412A(9) of the Act*</u>		<u>Executive procedures</u>
...			

DECISION PROCEDURE AND PENALTIES MANUAL (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the Financial Services and Markets Act 2000:
- (1) section 69(1) (Statement of policy);
 - (2) section 93(1) (Statement of policy);
 - (3) section 124(1) (Statement of policy);
 - (4) section 157(1) (Guidance);
 - (5) section 169(9) (Investigations etc. in support of overseas regulator);
 - (6) section 210(1) (Statements of policy); and
 - (7) section 395(5) (The Authority's procedures).

Commencement

- B. Annexes B, C, D, E, F, G, H, I, J, K, M, N, O, Q, R, S, U, V and W and Part 1 of Annexes A, L and P come into force on 28 August 2007.
- C. Annex T and Part 2 of Annexes A and L come into force on 1 November 2007.
- D. Part 2 of Annex P comes into force 1 January 2008.

Revocation of manuals

- E. The provisions of the Enforcement manual (ENF) are revoked by Annex M to this instrument.
- F. The provisions of the Decision making manual (DEC) are revoked by Annex N to this instrument.

Amendments to the Handbook

- G. The modules of the FSA'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
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex G
Conduct of Business sourcebook (COB)	Annex H
Insurance: Conduct of Business sourcebook (ICOB)	Annex I

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex J
Market Conduct sourcebook (MAR)	Annex K
Supervision manual (SUP)	Annex L
Enforcement manual (ENF)	Annex M
Decision making manual (DEC)	Annex N
Collective Investment Schemes sourcebook (COLL)	Annex O
Credit Unions sourcebook (CRED)	Annex P
Electronic Commerce Directive sourcebook (ECO)	Annex Q
Electronic Money sourcebook (ELM)	Annex R
Professional Firms sourcebook (PROF)	Annex S
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex T
Listing Rules (LR)	Annex U
Prospectus Rules (PR)	Annex V
Disclosure Rules and Transparency Rules (DTR)	Annex W

Citation

- H. This instrument may be cited as the Decision Procedure and Penalties Manual (Consequential Amendments) Instrument 2007.

By order of the Board
26 July 2007

Annex A

Amendments to the Glossary of definitions

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

Part 1 (comes into force on 28 August 2007)

Amend the following as they appear in the Glossary of definitions:

<u>breach</u>	<u>in DEPP:</u> <ol style="list-style-type: none">(1) <u>misconduct in respect of which the FSA is empowered to take action pursuant to section 66 (Disciplinary powers) of the Act;</u> <u>or</u>(2) <u>a contravention in respect of which the FSA is empowered to impose a penalty pursuant to section 91 (Penalties for breach of listing rules) of the Act; or</u>(3) <u>a contravention for the purposes of Part XIV (Disciplinary Measures); or</u>(4) <u>behaviour amounting to market abuse, or to requiring or encouraging market abuse, in respect of which the FSA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the Act.</u>
<i>connected person</i>	<ol style="list-style-type: none">(1) ...(5) (in <i>DTR</i>; <u>and LR</u> and ENF 21 in relation to a <i>person discharging managerial responsibilities</i> within an <i>issuer</i>) (as defined in section 96B(2) of the <i>Act</i>):<ol style="list-style-type: none">(a) ...
<i>consumer</i>	<ol style="list-style-type: none">(1) ...(4) (in <i>ECO</i> and ENF 19 <u>EG 17</u>) an individual who is acting for purposes other than those of his trade, business or profession.(5) (in ENF-UNFCOG and <u>EG 10.12 to 10.19</u>) any natural person who, in contracts covered by the <i>Unfair Terms Regulations</i>, is acting for purposes which are outside his trade, business or profession.
DEC	the Decision Making manual
<u>DEPP</u>	<u>the Decision Procedure and Penalties manual.</u>

- director*
- (1) (except in *COLL*, *DTR*, *LR*, *PR*, ~~*ENF 21*~~ and *CIS*) (in relation to any of the following (whether constituted in the *United Kingdom* or under the law of a country or territory outside it)):
 - ...
 - (2) ...
 - (3) (in *DTR*, *LR*, and *PR* ~~and *ENF 21*~~) (in accordance with section 417(1)(a) of the Act) a *person* occupying in relation to it the position of a director (by whatever name called) and, in relation to an *issuer* which is not a *body corporate*, a *person* with corresponding powers and duties.

EG the Enforcement Guide.

executive procedures the procedures relating to the giving of warning notices, decision notices and *supervisory notices* that ~~the FSA proposes to follow in the circumstances specified in DEC 4.1.6 G (Decisions to be taken by executive procedures), and that are described in DEC 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions)~~ DEPP 4 (Decisions by FSA staff under executive procedures).

- issue* (in relation to *units*):
- (1) (except in ~~*ENFEG 14*~~) the issue of new *units* by the *trustee* of an *AUT* or by an *ICVC*;
 - (2) (in ~~*ENFEG 14*~~):
 - (a) an issue in accordance with (1); and
 - (b) the sale of *units*.

- listed*
- (1) (except in *LR*, ~~*ENF 21*~~ and *INSPRU*) included in an *official list*.
 - (2) (in *INSPRU*):
 - (a) included in an *official list*; or
 - (b) in respect of which facilities for *dealing* on a *regulated market* have been granted.
 - (3) (in ~~*LR*~~ ~~and *ENF 21*~~) admitted to the *official list* maintained by the *FSA* in accordance with section 74 of the *Act*.

<i>listed company</i>	(in <i>LR</i> and <i>DEPP</i>) a <i>company</i> that has any <i>class</i> of its securities listed.
<i>member</i>	<p>(1) (except in <i>PROF</i>, <i>LR</i>, <i>ENF 18</i><i>EG 16</i> and <i>REC</i>) a <i>person</i> admitted to membership of the <i>Society</i> or any <i>person</i> by law entitled or bound to administer his affairs.</p> <p>(2) (in <i>PROF</i>, <i>LR</i> and <i>ENF 18</i><i>EG 16</i>) (as defined in section 325(2) of the <i>Act</i> (Authority's general duty)) (in relation to a profession) a <i>person</i> who is entitled to practise that profession and, in practising it, is subject to the rules of the relevant <i>designated professional body</i>, whether or not he is a member of that body.</p> <p>(3) (in <i>REC</i>) (in relation to a <i>recognised body</i>) a <i>person</i> who is entitled, under an arrangement or agreement between him and that body, to use that body's <i>facilities</i>.</p>
<i>offer</i>	<p>(1) (in <i>MAR 1</i> (Code of market conduct)) an offer as defined in the <i>Takeover Code</i>.</p> <p>(2) (in <i>MAR 2</i> (Buy-backs and Stabilisation)) an offer or invitation to make an offer.</p> <p>(3) (in <i>LR</i>, <i>PR</i> and <i>ENF 21</i>) an <i>offer of transferable securities to the public</i>.</p>
<i>offeror</i>	<p>(1) (in <i>MAR 1</i> (The Code of Market Conduct) and <i>LR 5.2.10R</i>) an offeror as defined in the <i>Takeover Code</i></p> <p>(2) (in <i>MAR 2</i> (Buy-backs and Stabilisation)) (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the prior holders of, or the entity issuing, the <i>relevant securities</i>).</p> <p>(3) (in <i>LR</i>, <i>PR</i>, <i>FEES</i> provisions in relation to <i>PR</i>, and <i>ENF 21</i>) a <i>person</i> who makes an <i>offer of transferable securities to the public</i>.</p>
<i>official list</i>	<p>(1) (in <i>LR</i> and <i>ENF 21</i>) the list maintained by the <i>FSA</i> in accordance with section 74(1) of the <i>Act</i> for the purposes of Part VI of the <i>Act</i>.</p> <p>(2) (except in <i>LR</i> and <i>ENF 21</i>):</p> <p>(a) the list maintained by the <i>FSA</i> in accordance with section 74(1) of the <i>Act</i> (The official list) for the purposes of Part VI of the <i>Act</i> (Official Listing);</p>

	(b) any corresponding list maintained by a <i>competent authority</i> for listing in another <i>EEA State</i> .
<i>operator</i>	<p>(1) (except in ENFEG):</p> <p>(a) ...</p> <p>(2) (in ENFEG) (in accordance with section 237(2) of the <i>Act</i> (Other definitions)):</p> <p>(a) ...</p>
<i>public censure</i>	<p>(1) <u>a statement published under section 205 (Public censure) of the <i>Act</i>;</u></p> <p>(2) <u>a statement of misconduct published under section 66 (Disciplinary powers) of the <i>Act</i>;</u></p> <p>(3) <u>a statement published under section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i>;</u></p> <p>(4) <u>a statement published under section 87M (Public censure of issuer) of the <i>Act</i>, under section 89 (Public censure of sponsor) of the <i>Act</i> or under section 91 (Penalties for breach of listing rules) of the <i>Act</i>.</u></p>
<i>redemption</i>	<p>(1) (except in ENF 17EG 14 (Collective investment schemes)) (in relation to <i>units</i> in an <i>authorised fund</i>) the purchase of them from their <i>holder</i> by the <i>authorised fund</i> manager acting as a <i>principal</i>.</p> <p>(2) (in ENF 17EG 14 (Collective investment schemes)) redemption as in (1) but including their cancellation by the <i>trustee</i> of an <i>AUT</i> or by an <i>ICVC</i>.</p>
<i>Regulatory Decisions Committee</i>	a committee of the Board of the <i>FSA</i> , described in DEC 4.2 (The Regulatory Decisions Committee) <u>DEPP 3.1 (The nature and procedure of the RDC).</u>
<i>security</i>	<p>(1) (except in LR and ENF 21 (in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) any of the following <i>investments</i> specified in that Order:</p> <p>(a) ...</p> <p>...</p> <p>(2) (in LR and ENF 21) (in accordance with section 102A of the <i>Act</i>) anything which has been, or may be admitted to the</p>

official list.

<i>senior staff committee</i>	(in DEC DEPP and EG) a committee consisting of senior FSA staff members that is empowered to make <i>statutory notice decisions</i> and <i>statutory notice associated decisions</i> by <i>executive procedures</i> .
<i>settlement decision makers</i>	(in DEC DEPP and EG) two members of the FSA's executive of at least director of division level with responsibility for deciding whether to give <i>statutory notices</i> in the circumstances described in DEC Appendix 1.2.2A GDEPP 5.
<i>settlement decision procedure</i>	(in DEC DEPP) the procedure for the making of <i>statutory notice decisions</i> in the circumstances described in DEC App 1.2.2A GDEPP 5.
<i>settlement discount scheme</i>	(in ENF DEPP and EG) the scheme described in ENF 13.7 DEPP 6.7 by which the financial penalty that might otherwise be payable in respect of a <i>person's</i> misconduct or contravention may be reduced to reflect the timing of any settlement agreement.
<u>UNFCOG</u>	<u>the Unfair Contract Terms Regulatory Guide.</u>

Part 2 (comes into force on 1 November 2007)

<i>breach</i>	in DEPP
	(1) ...
	(2) ...
	(3) ...
	(4) behaviour amounting to <i>market abuse</i> , or to <i>requiring</i> or <i>encouraging market abuse</i> , in respect of which the FSA takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i> ; <u>or</u>
	(5) <u>a contravention of any directly applicable Community regulation made under MiFID.</u>

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls (SYSC)

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

SYSC App 1.1.1G

- 1.1.1 G The application of SYSC 2.1.3R, SYSC 2.2.3G and SYSC 3 to an *incoming EEA firm* or *incoming Treaty firm* depends on whether responsibility for the matter in question is reserved to the *firm's Home State regulator*. This appendix contains *guidance* designed to assist such *firms* in understanding the application of those provisions. This appendix is not concerned with the *FSA's* rights to take enforcement action against an *incoming EEA firm* or an *incoming Treaty firm*, which are covered in the ~~Enforcement manual~~ (ENF) Enforcement Guide (EG), or with the position of a *firm* with a *top-up permission*.

Annex C

Amendments to the Threshold Conditions (COND)

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

Exercise of the FSA's own-initiative power

- 1.2.3 G (1) If, among other things, a *firm* is failing to satisfy any of the *threshold conditions*, or is likely to fail to do so, section 45 of the *Act* (Variation etc. on the FSA's own initiative) states that the *FSA* may exercise its *own-initiative power*. Use of the *FSA's own-initiative power* is explained in *SUP 7* (Individual requirements), ~~*ENF 3* (Variation of Part IV permission on the FSA's own initiative) and *ENF 5* (Cancellation of Part IV permission on the FSA's own initiative and withdrawal of authorisation)~~ and *EG 8* (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms).

...

Annex D

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

- 3.1.4 G (1) An *approved person* will only be in breach of a *Statement of Principle* where he is personally culpable. Personal culpability arises where an *approved person's* conduct was deliberate or where the *approved person's* standard of conduct was below that which would be reasonable in all the circumstances (see ~~ENF 11.5.3 G (Action against approved persons)~~ DEPP 6.2.4G (Action against approved persons under section 66 of the Act)).

Annex E

Amendments to the General Provisions (GEN)

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

- 1.3.5 G *GEN* 1.3.2R operates on the *FSA's rules*. It does not affect the *FSA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FSA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part IV permission* based on a failure or potential failure to satisfy the *threshold conditions* (see *SUP* 7 (Applying the *FSA's* requirements to individual firms) and ~~*ENF* 4 (Variation of Part IV permission on the *FSA's* own initiative))~~*EG* 8 (Variation and cancellation of permission on the *FSA's* own initiative and intervention against incoming firms)).

Annex F

Amendments to the Fees manual (FEES)

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

Time of payment

- 4.3.6 R ...
- (4) If the *FSA* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission* in the way set out in ~~*ENF 5 (Cancellation of Part IV permission on the FSA's own initiative)*~~*EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.
- 5.4.2 G Failure to submit a statement in accordance with the *rules* in this chapter may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ~~*ENF 13.5 DEPP 6.6 .1 to DEPP 6.6.5G*~~).

Annex G

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

Appendix 1 (Interpretation) Glossary of terms for Chapter 5 (former IMRO firms)

investigation means an investigation authorised pursuant to the Enforcement ~~Manual~~
Guide.

Annex H

Amendments to the Conduct of Business sourcebook (COB)

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

6.12.12 G Other parts of the *Handbook* are also relevant to the fair treatment of *with-profits policy holders*, including:

...

(5) *COB* 6.5 (Content of key features and important information: life policies, schemes, ISA and CTF cash deposit components and stakeholder pension schemes) and *COB* 8 (Reporting to customers); and

(6) *DISP* 1 (Complaint handling procedures for firms) and *DISP* 3.8 (Determination by the Ombudsman); and

(7) ~~ENF 20 (Unfair terms in consumer contracts)~~-~~[deleted]~~

The following Regulatory Guides are also relevant:

(8) *UNFCOG* (Unfair Contract Terms Regulatory Guide).

(9) [intentionally blank]

Annex I

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

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

ICOB 1 Annex 2 G

	Module	Application
...		
Regulatory Processes	...	...
	Enforcement manual, ENF	Applies to an insurance intermediary when doing (1) or (2).
	Decision making manual, DEC <u>Decision, Procedure and Penalties Manual, DEPP</u>	Applies to an <i>insurance intermediary</i> when doing (1) or (2).

...

- 5.3.28 G *Insurers and insurance intermediaries* will need to consider whether mid-term changes are compatible with the original *non-investment insurance contract*, in particular whether that *non-investment insurance contract* included terms reserving the right to vary *premiums*, charges or contract terms and conditions. *Insurers and insurance intermediaries* also need to ensure that any contract terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations*. The *FSA* may, as a qualifying body under the *Unfair Terms Regulations*, issue from time to time case summaries or *guidance* of potential relevance to such variation terms (see UNFCOG ENF 20).

Annex J

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

1.6.5 G ...

- (3) *MCOB* 1.6.3 R and *MCOB* 1.6.4 R do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FSA* will take into account whether the action by the *firm* was reckless or deliberate (see ~~*ENF* 11.4.1 G(1)(a)~~*DEPP* 6.2.1(1)(a)).

Annex K

Amendments to the Market Conduct sourcebook (MAR)

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

1.1.3 G The FSA's statement of policy about the imposition and amount of penalties in cases of *market abuse* (required by section 124 of the Act) is in ~~ENF 14~~DEPP 6.

5.5.3 G Handbook provisions applicable to ATSS

	Part of Handbook	Applicability to ATSS
Regulatory process	...	....
	Supervision manual (<i>SUP</i>)	This applies.
	Enforcement manual (<i>ENF</i>)	This applies.
	Decision making manual (<i>DEC</i>) <u>Decision, Procedure and Penalties Manual (<i>DEPP</i>)</u>	This applies.
...		
<u>Special Handbook guides</u>	Service companies (<i>SERV</i>)	This applies to a <i>service company</i> that operates an <i>ATS</i> .
	Energy market participants (<i>EMPS</i>)	This applies to an <i>energy market participant</i> that operates an <i>ATS</i> .
	Oil market participants (<i>OMPS</i>)	This applies to an <i>oil market participant</i> that operates an <i>ATS</i> .

...

In addition to Handbook modules the following Regulatory Guides are also relevant:

- (1) The Enforcement Guide (*EG*)
- (2) [intentionally blank]

Annex L

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire provision is deleted this is not struck through.

Part 1 (comes into force on 28 August 2007)

- 1.2.1 G (1) The Authorisation manual (*AUTH*), the Supervision manual (*SUP*), ~~the Enforcement manual (*ENF*) and the Decision making manual (*DEC*)~~Decision, Procedure and Penalties manual (*DEPP*) form the regulatory processes part of the *Handbook*.
- (2) ...
- (3) *SUP* sets out the relationship between the *FSA* and *authorised persons* (referred to in the *Handbook* as *firms*). As a general rule, material that is of continuing relevance after *authorisation* is in *SUP*.
- (4) ~~*ENF* describes the *FSA*'s enforcement powers under the *Act* and sets out its policies for using those powers. [deleted]~~
- (5) ~~*DEC* is principally concerned with, and sets out, the *FSA*'s decision making procedures for decisions that involve the giving of *statutory notices*. *DEPP* is principally concerned with and sets out the *FSA*'s decision making procedures that~~involve the giving of *statutory notices*, the *FSA*'s policy in respect to the imposition and amount of penalties, and the conduct of interviews to which a direction under section 169(7) of the *Act* has been given or the *FSA* is considering giving.

2.1 Application and purpose

- 2.1.4 G The *FSA* receives the information in *SUP* 2.1.3G through a variety of means, including notifications by *firms* (see *SUP* 15) and regular reporting by *firms* (see *SUP* 16). This chapter is concerned with the methods of information gathering that the *FSA* may use on its own initiative in the discharge of its functions under the *Act*. This chapter does not deal with the information gathering powers that the *FSA* has under the *Unfair Terms Regulations*. These are dealt with in ~~*ENF* 20.3.5G~~*UNFCOG*.
- 2.1.5 G Part XI of the *Act* (Information Gathering and Investigations) gives the *FSA* statutory powers, including:
- (1) to require the provision of information (see section 165 and

~~ENF 2EG 3~~);

- (2) to require reports from *skilled persons* (see section 166 and *SUP 5*);
- (3) to appoint investigators (see sections 167, 168 and 169 of the *Act* and ~~ENF 2EG 3~~); and
- (4) to apply for a warrant to enter premises (see section 176 of the *Act* and ~~ENF 2EG 4~~).

- 2.3.12 G In complying with *Principle 11*, the *FSA* considers that a *firm* should cooperate with it in providing information for other regulators. Section 169 of the *Act* (Investigations etc. in support of overseas regulator) gives the *FSA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ~~ENF 2DEPP 7~~ and *EG 3*).
- 3.4.6 G If it appears to the *FSA* that an auditor of a *firm* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an auditor is being considered or put into effect, see ~~ENF 17EG 15~~. A list of *persons* who are disqualified by the *FSA* under section 345 of the *Act* may be found on the *FSA* website (www.fsa.gov.uk).
- 4.3.12 G If it appears to the *FSA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17EG 15~~ (Disqualification of auditors and actuaries). A list of *actuaries* who are disqualified by the *FSA* may be found on the *FSA* website (www.fsa.gov.uk).
- 4.4.5 G If it appears to the *FSA* that an *appropriate actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17EG 15~~ (Disqualification of auditors and actuaries). A list of *actuaries* who have been disqualified by the *FSA* may be found on the *FSA* website (www.fsa.gov.uk).
- 4.6.6 G If it appears to the *FSA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17EG 15~~. A list of *actuaries* who are disqualified by the *FSA* may be found on the *FSA* website.

- 4.6.14 G If it appears to the *FSA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may disqualify him under section 345 of the *Act*. For more detail about what happens when the disqualification of an *actuary* is being considered or put into effect, see ~~ENF 17~~EG 15. A list of *actuaries* who are disqualified by the *FSA* may be found on the *FSA* website.

Alternative tools available, including other statutory powers

- 5.3.5 G The *FSA* will have regard to alternative tools that may be available, including for example:
- (1) ...
 - (2) ...
 - (3) appointing investigators to carry out general investigations under section 167 of the *Act* (Appointment of persons to carry out general investigations) (see ~~ENF 2.5~~EG 3 for the *FSA's* policy on the use of this power); and
 - (4) appointing investigators to carry out investigations in particular cases under section 168 of the *Act* (Appointment of persons to carry out investigations in particular cases) (see ~~ENF 2.5~~EG 3 for the *FSA's* policy on the use of this power).
- 6.1.5 G This chapter also outlines the *FSA's* powers to withdraw *authorisation* from a *firm* whose *Part IV permission* has been cancelled at the *firm's* request. It does not, however, cover the *FSA's* use of its *own-initiative powers* to vary or cancel a *firm's Part IV permission* (see *SUP 7* (Individual requirements) and ~~ENF 5 (Cancellation of Part IV permission on the FSA's own initiative and withdrawal of authorisation)~~EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)).
- 6.2.10 G A *firm* which is winding down (running off) its activities should contact its usual supervisory contact at the *FSA* to discuss its circumstances. The *FSA* will discuss the *firm's* winding down plans and the need for the *firm* to vary or cancel its *Part IV permission*. Following these discussions, an application for variation or cancellation of *Part IV permission*, as appropriate, should usually be made by the *firm*, although, in certain circumstances, the *FSA* may use its *own-initiative powers* under section 45 of the *Act* (Variation etc. on the *FSA's* own initiative) (see *SUP 7* and ~~ENF 3 (Variation of Part IV permission on the FSA's own initiative)~~EG 8 (Variation and cancellation of permission on the FSA's own

initiative and intervention against incoming firms)).

- 6.3.40 G *DECDEPP* gives guidance on the FSA's decision making procedures including the procedures it will follow if it proposes to refuse an application for variation of *Part IV permission* either in whole or in part (for example, an application granted by the FSA but subject to *limitations* or *requirements* not applied for).
- 6.3.42 G (1) *Firms* should be aware that the FSA may exercise its *own-initiative power* to vary or cancel their *Part IV permission* if they do not (see *EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms)*):
- (a) ...
- 6.4.23 G If the FSA has granted an application for cancellation of *Part IV permission* and withdrawn a *firm's* status as an *authorised person* (see *SUP 6.5*) it will retain certain investigative and enforcement powers in relation to the *firm* as a former *authorised person*.
- These include:
- (1) information gathering and investigation powers in Part XI of the *Act* (Investigation gathering and investigations) (see ~~*ENF 2 (Information gathering and investigation powers)*~~*EG 3 (Use of information gathering and investigation powers)*);
 - (2) powers to apply to court for injunctions and restitution orders in Part XXV of the *Act* (Injunctions and restitution) (see ~~*ENF 6-EG 10 (Injunctions)*~~ and ~~*ENF 9-EG 11 (Restitution and redress)*~~);
 - (3) powers in Part XXIV of the *Act* (Insolvency) to petition for administration orders or winding up orders against companies or insolvent partnerships, or bankruptcy orders (or in Scotland sequestration awards) against individuals (see ~~*ENF 10 (Insolvency proceedings and orders against debt avoidance)*~~*EG 13 (Insolvency)*);
 - (4) powers in Part XXVII of the *Act* (Offences) to prosecute offences under the *Act* and other specified provisions (see ~~*ENF 15-EG 12 (Prosecution of criminal offences)*~~).
- 6.4.26 G The FSA's use of those powers is outlined in ~~*ENF 11 (Discipline of authorised firms and approved persons: The FSA's general approach)*~~*DEPP 6 (Penalties)*.
- 6.4.29 G See *DECDEPP* for *guidance* on the FSA's decision making procedures, including the procedures it will follow if it proposes to refuse an application for cancellation of *Part IV permission*.

6 Annex 4 G ...

5. If, for example, the *FSA* has *consumer* protection concerns, it may, however, use its *own-initiative power* under section 45 of the *Act* (Variation etc. on the Authority's own initiative) (see SUP 7 (Individual requirements) and ~~ENF 3 (Variation of Part IV permission on the FSA's own initiative)~~ EG 8 (Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms), to vary the *Part IV permission* of a *firm* which is winding down or transferring its *regulated activities*.

Processing an application

10.12.5 G The *Act* allows the *FSA* three *months* from the time it receives a properly completed application to consider it and come to a decision. The *FSA* must either grant the application or, if it proposes not to grant an application, issue a *warning notice* (see ~~DEC 2-DEPP 2~~). ...

10.12.12 G If the *FSA* proposes to refuse an application in relation to one or more *controlled functions*, it must follow the procedures for issuing *warning* and *decision notices* to all *interested parties*. The *requirements* relating to *warning* and *decision notices* ~~and the process for referrals to the *Financial Services and Markets Tribunal*~~ are in ~~DEPP 2-DEC 2 and DEC 5~~ respectively.

10 Ann 1G

	Question	Answer
11	...	The <i>FSA</i> expects <i>firms</i> to perform due and diligent enquiries into their <i>candidates</i> . Note also the requirements of ENF 8.12.2G <u>EG 6</u> and <i>TC 2.2.1R</i>
11a	...	It is for senior management to decide what checks should be made. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the <i>FSA</i> and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about <i>candidates</i> for <i>approved person</i> status (see Question 5.01a of Form A (Application to perform controlled functions under the approved persons

		regime)). Note also the provisions of ENF 8.12.2 G (Publication) <u>EG 6 (Publicity)</u> and <u>TC 2.2.1R (Recruitment)</u> .
23	How are non-routine cases handled?	Refer to DEC 2 Annex 2 <u>DEPP 2</u>

SUP 10 Annex 3 – deleted in its entirety

Warning notices and decision notices

- 11.7.9 G The procedure followed by the *FSA* in relation to the giving of *warning notices* and *decision notices* ~~and the process for referrals to the *Financial Services and Markets Tribunal* are~~ is set out in ~~DEC 2~~ DEPP 2.
- 12.4.10 G ...
- (2) If the *FSA* proposes to use the power in (1), it must give the appointed representative a *warning notice*. If the *FSA* decides to proceed with its proposal, it must give the appointed representative a *decision notice*. The procedures followed by the *FSA* in relation to the giving of *warning notices* and *decision notices* are set out in ~~DEC 2~~ DEPP 2.
- 13.3.7 G ...
- (3) For details of the *FSA*'s procedures for the giving of *warning notices* or *decision notices* ~~and references to the *Tribunal* see *DEC 2* (Statutory notice procedure: Warning notice and decision notice procedure) and *DEC 5* (References to the *Tribunal*, publication and service of notices).~~ see DEPP 2 (Statutory notices and the allocation of decision making).

Issuing a consent notice or notifying the Host State regulator

- 13.4.4 G ...
- (2) (a) ...
- (b) The issue or refusal of a *consent notice* under paragraph 20 (3A) of Part III of Schedule 3 to the *Act* is the consequence of a regulatory decision, and this *consent notice* (unlike the *consent notice* for the establishment of a *branch*) is not a *statutory notice* as set out in section 395 of the *Act*. ~~As such, the *FSA* will follow the decision making procedures set out in *DEC 1* (Application, Purpose and Introduction).~~ A *UK firm*

that receives notice that the *FSA* refuses to give a *consent notice* may refer the matter to the *Tribunal* under paragraph 20 (4A) of Part III of Schedule 3 to the *Act*. ~~For procedures relating to references to the *Tribunal* see DEC 5 (References to the *Tribunal*, publication and service of notices).~~

- 13.6.15 G If the *FSA* refuses to consent to a change, then under Regulations 11(6) and 13 (6):
- (1) ...;
- (2) the *UK firm* may refer the matter to the *Tribunal*; ~~for details of procedures for a reference to the *Tribunal* see DEC 5 (References to the *Tribunal*, publication and service of notices).~~
- 13.7.9 G If the *FSA* refuses to consent to a change it ~~will follow the decision making process set out in DEC 1 (Application, Purpose and Introduction).~~ The *FSA* is required by regulation 16(7) to give notice of the refusal to the *UK firm*, stating its reasons and giving an indication of the *UK firm's* right to refer the matter to the *Tribunal* and the procedures that apply to such a reference. ~~For details of procedures relating to references to the *Tribunal* see DEC 5 (References to the *Tribunal*, publication and service of notices).~~
- 13A.3.2 G ...
- (2) ...
- (c) For details of the *FSA's* procedures for the giving of *warning notices* and ~~references to the *Tribunal*, see DEC 2.2 (Statutory notice procedure: Warning notice and decision notice procedure) and DEC 5 (References to the *Tribunal*, publication and service of notices).~~ see DEPP 2 (Statutory notices and allocation of decision making).

Application of the Handbook to Incoming EEA firms

13A Annex 1 G

<i>ENF</i>	<i>ENF</i> applies and contains guidance on the use of the <i>FSA's</i> enforcement powers (<i>ENF1</i>)	<i>ENF</i> applies and contains guidance on the use of the <i>FSA's</i> enforcement powers (<i>ENF1</i>)
<i>DEC</i>	<i>DEC</i> applies and contains	<i>DEC</i> applies and

<u>DEPP</u>	guidance on the FSA's decision making procedures (DEC1). DEPP applies and contains a description of the FSA's procedures for taking statutory notice decisions, the FSA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FSA is considering giving.	contains guidance on the FSA's decision making procedures (DEC1). DEPP applies and contains a description of the FSA's procedures for taking statutory notice decisions, the FSA's policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FSA is considering giving.
...		
<u>DTR</u>	<i>DTR (Disclosure Rules and Transparency Rules) May apply if the firm is an issuer, any class of whose financial instruments have been admitted to trading on a regulated market, or are the subject of an application for admission to trading on a regulated market, other than issuers who have not requested or approved admission of their financial instruments to trading on a regulated market.</i>	<i>DTR (Disclosure Rules and Transparency Rules) As column (2).</i>

EG describes the FSA's approach to exercising the main enforcement powers given to it by FSMA and by regulation 12 of the *Unfair Terms Regulations*. EG is a Regulatory Guide and as such does not form part of the Handbook.

15.3.22

D ...

(3) ...

(b) withdraw approval from an *approved person* acting for or on behalf of an *underwriting agent*, under section 63 of the Act (Withdrawal of approval) (see EG 9-ENF-7);

(c) prohibit an individual acting for or on behalf of an *underwriting agent* from involvement in *regulated*

activities, under section 56 of the *Act* (Prohibition orders) (see EG 9-ENF 8);

- (d) require an *underwriting agent* to make restitution, under section 384 of the *Act* (Power of Authority to require restitution) (see EG 11-ENF 9);
- (e) discipline an *underwriting agent*, or an *approved person* acting for it or on its behalf, for a breach of a requirement made under the *Act*, including the *Principles, Statements of Principle* and *rules* (see DEPP 6 and EG 7-ENF 11, ENF 12 and ENF 13);
- (f) apply to court for an *injunction*, restitution order or *insolvency order* (see EG 10, EG 11 and EG 13-ENF 6, ENF 9 and ENF 10); and
- (g) prosecute any criminal offence that the *FSA* has power to prosecute under the *Act* (see EG 12-ENF 15).

16.3.14A G Failure to submit a report in accordance with the rules in, or referred to in, this chapter or the provisions of relevant legislation may also lead to the imposition of a financial penalty and other disciplinary sanctions (see DEPP 6.6.1-6.6.5-ENF 13.5) ...

Part 2 (comes into force on 1 November 2007)

SUP 6.3.42 G ...

- (1A) The *FSA* may exercise its *own-initiative power* to cancel an *investment firm's Part IV permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 54(1) of the *Act* is given (see ENF 5.3.2G-EG 8).

Annex M

Amendments to the Enforcement manual (ENF)

ENF is deleted in its entirety.

Annex N

Amendments to the Decision making manual (DEC)

DEC is deleted in its entirety.

Annex O

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

7.1.3 G ...

- (2) This chapter also helps with the *regulatory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs* and *AUTs*. ~~ENF 16~~EG 14 (Collective investment schemes) deals with the *FSA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.

Annex P

Amendments to the Credit Unions sourcebook (CRED)

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

Where an entire chapter, rule or sub-paragraph is deleted, it is not shown struck-through.

Part 1 (comes into force on 28 August 2007)

Rules: R

- 2.4.2 G If a *firm* contravenes such a *rule*, it may be subject to enforcement action(see ~~ENF~~).
- ...
- 2.4.10 G G is also used for the *FSA's* statement of the procedure for giving statutory notices under section 395 of the *Act*, the *FSA's* policy with respect to the imposition and amount of penalties under the *Act* (see *DEPP*)(see *DEC*), ~~for the various statements of policy regarding use of the *FSA's* enforcement powers (see *ENF*)~~, and to indicate the arrangements made by the *FSA* under paragraph 7 of Schedule 1 to the *Act* for the investigation of complaints arising in connection with its exercise of its non-legislative functions (see *COAF*).
- 3.3.2 G ... The full provisions of how the *FSA* will use its powers in support of its enforcement functions under the *Act* are set out in ~~ENF 2~~EG. The *FSA* will be proportionate in the use of its powers.
- 5.1.5 G The *threshold conditions* must be met on a continuing basis by *credit unions*. Failure to meet one of the conditions is sufficient grounds for the exercise by the *FSA* of its powers (see *EG*). ~~ENF 1 provides an overview of the range and purpose of these powers, the *FSA's* approach to enforcement and the structure of the Enforcement manual.~~
- 5.2.3 G Where a *credit union* may no longer meet the *threshold conditions* (see ~~ENF~~ EG) the *FSA* will make further enquiries. ...
- 5.2.4 G The *FSA* has the power to vary a *credit union's Part IV permission* on its own initiative(see ~~ENF 3.2~~), if it appears to the *FSA* that the *credit union* is failing, or is likely to fail, to satisfy the *threshold conditions* (see ~~ENF 3.2~~ EG).
- 6.1.3 G The full provisions are to be found in the following sourcebooks or manuals of the *Handbook*:
- ...

(5) Enforcement manual (ENF) [deleted]

Enforcement procedures

- 6.2.9 G Details of the disciplinary measures which may be taken against *approved persons* are located in ~~ENF 11~~ ~~ENF 13~~ DEPP. ...
- 13.6.8 G ... If the *FSA* consider it appropriate to vary or cancel a *credit union's Part IV permission* (see ~~ENF 3~~ and ~~ENF 5~~ EG), it will discuss the proposed action with the *credit union* and ascertain its reasons for not commencing or carrying out the *regulated activity*, or activities, concerned as described in its application.

Common bond

CRED 13
Annex 1A.2 G ...

Handbook material 4 ~~DEC 1.2.8~~ ~~DEC 1.2.10~~ G provide guidance on who within the *FSA* makes decisions under section 1 of the Credit Unions Act 1979. It is possible for such decisions to be taken to judicial review. ~~CRED 13~~ (Registration and authorisation) is concerned with provides guidance on the registration and authorisation of credit unions.

...

- 14.10.4 G General provisions on reporting
- 14.10.4D G ... Failure to submit a report in accordance with the *rules* in *SUP* 16.7 may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ~~ENF 13.5~~ and ~~CRED 15.5~~ DEPP).

15 Decision procedure, penalties and Enforcement

...

- 15.1.1 G This chapter contains ~~guidance on the investigation and enforcement powers available to the FSA, and its approach to the use of those powers, in respect of~~ applies to credit unions and is intended to draw their attention to:
- (1) ~~{Deleted}~~ the investigation and enforcement powers available to the FSA under Industrial and Provident Societies legislation;
 - (2) ~~credit unions, with respect to their activities of accepting deposits~~ the

Decision Procedure and Penalties manual (DEPP); and

- (3) ~~*approved persons of credit unions, as set out in CRED 6 the Enforcement Guide (EG).*~~

CRED 15.2 Investigation and enforcement powers Industrial and Provident Societies legislation

...

15.2.2 G For ease of reference:

- (1) Annex 1 to this chapter (CRED 15 Annex 1) contains a table of the FSA's investigation and enforcement powers under the Industrial and Provident Societies Act 1965, the Friendly and Industrial and Provident Societies Act 1968 and the Credit Unions Act 1979; and

(2) [deleted]

15.2.3 G [deleted]

15.2.4 G [deleted]

15.2.5 G [deleted]

15.3 ~~The FSA's approach to the use of its investigation and enforcement powers~~
Decision Procedure and Penalties manual

15.3.1 G ~~There are a number of principles underlying the FSA's approach to the exercise of its investigation and enforcement powers in relation to credit unions~~
The Decision Procedure and Penalties manual (DEPP) is relevant to credit unions because it sets out:

- (1) ~~the effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and cooperative relationship between the FSA and the management of credit unions; the FSA's decision making procedure for giving statutory notices (warning notices, decision notices and supervisory notices); and~~
the FSA's decision making procedure for giving statutory notices (warning notices, decision notices and supervisory notices); and
- (2) ~~the FSA will seek to exercise its investigation and enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies; and the FSA's policy with respect to the imposition and amount of penalties under the Act.~~
the FSA will seek to exercise its investigation and enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies; and the FSA's policy with respect to the imposition and amount of penalties under the Act.
- (3) [deleted]

15.3.2 G [deleted]

15.3.3 G [deleted]

15.3.4 G [deleted]

15.4 ~~The FSA's policies and procedures for taking enforcement action~~ Enforcement Guide

15.4.1 G ~~[Deleted]~~ The Enforcement Guide (EG) describes the FSA's approach to exercising the main enforcement powers given to it by the Act and by regulation 12 of the *Unfair Terms Regulations*. EG is a Regulatory Guide and does not form part of the *FSA Handbook*.

15.4.2 G [deleted]

15.4.3 G [deleted]

15.4.4 G [deleted]

15.4.5 G [deleted]

15.5 [deleted]

CRED 15 Annex 2G [is deleted in its entirety]

CRED 15 Annex 3G [is deleted in its entirety]

CRED 16 [is deleted in its entirety]

CRED Appendix 1

Table

	Sourcebook or manual	Reference code
...		
Regulatory Processes	...	...
	Supervision	<i>SUP</i>
	<u>Enforcement Decision Procedure and Penalties</u>	<i>ENFDEPP</i>
	<u>Decision making</u>	<i>DEC</i>

CRED Appendix 2

CRED App 2.1.1

Table

...		
15	Decision procedure, penalties and Enforcement	
	15.1	Application and purpose
	15.2	Investigation and enforcement powers <u>Industrial and Provident Societies legislation</u>
	15.3	The FSA's approach to the use of its investigation and enforcement powers <u>Decision Procedure and Penalties manual</u>
	15.4	The FSA's policies and procedures for taking enforcement action <u>Enforcement Guide</u>
	15.5	[deleted]
	Ann 1	Enforcement Powers [table - powers available under Industrial and Provident Societies legislation and the Credit Unions Act 1979]
	Ann 2	[deleted]
	Ann 3	[deleted]
16	[deleted]	

Part 2 (comes into force on 1 January 2008)

14.10.4D	G	If a <i>credit union</i> fails to submit a complete annual report by the date on which it is due in accordance with the <i>rules</i> under SUP 16.12 and any prescribed submission procedures, the <i>credit union</i> must pay an administrative fee of £250 (see SUP 16.3.14R). Failure to submit the report in accordance with the <i>rules</i> in SUP 16.12 may also lead to the imposition of a financial penalty and other disciplinary sanctions (see ENF 13.5 and CRED 15.5 <u>DEPP</u>).
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Annex Q

Amendments to the Electronic Commerce Directive sourcebook (ECO)

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

- 1.1.5 G The *E-Commerce Directive* also allows the *EEA State* where the recipient is based to restrict the freedom to provide an *electronic commerce activity* from another *EEA State* on a case by case basis, where certain conditions are met. This derogation is implemented in the *United Kingdom* through provisions of the *ECD Regulations*. ~~ENF 19~~EG 19 outlines the derogation power and the *FSA's* policy on its use in relation to *incoming ECA providers*.
- ...
- 1.1.8 G The *FSA* has a range of investigation and enforcement powers available to it where an *incoming ECA provider* appears to be in breach of rules to which it is subject under ECO 1. These include powers to seek *injunctions* ~~(see ENF 6)~~, to apply to a court for restitution ~~(see ENF 9)~~ and, in the case of *authorised persons*, to order restitution ~~(see ENF 9)~~ and take disciplinary action ~~(see ENF 11 to ENF 13)~~ (see EG and DEPP).
- 1.1.9 G The *market abuse regime* and *misleading statements and practices offences* are not affected by the *E-Commerce Directive*. The *FSA's* enforcement powers in this regard are described in EG ~~ENF 14 and ENF 15~~. The *FSA's Code of Market Conduct* (MAR 1) contains *guidance* on whether or not *behaviour* amounts to *market abuse*.
- 1.1.10 R Handbook provisions applicable to, or relevant for, incoming ECA providers. This Table belongs to ECO 1.1.6 R

Provision	Description
<i>ECO 1</i>	E-Commerce Directive sourcebook
<i>MAR 1</i>	The Code of Market Conduct
DEC DEPP (if the <i>incoming ECA provider</i> is authorised)	Decision making by the FSA <u>Decision making, procedures and penalties</u>
...	...
ENF	Enforcement guidance
<i>GEN 2</i>	Interpreting the Handbook
<i>COAF</i>	Complaints against the FSA
<i>SUP 8</i>	Waivers and modification of rules
<i>SUP 9</i>	Individual guidance
<i>SUP 13A.1.1G - SUP 13A.1.2G, SUP 13A.6.5G, SUP 13A Annex 1G</i>	Authorisation guidance
<i>SUP 14</i> (if the	EEA firms change of details

<i>incoming ECA provider is authorised)</i>	
Any reference in <i>SUP 8</i> to a <i>firm</i> should be taken to include a reference to an unauthorised <i>incoming ECA provider</i> .	

In addition to the Handbook modules listed above these Regulatory Guides may also be relevant:

1. The Enforcement Guide (EG)
2. [intentionally blank]

Annex R

Amendments to the Electronic Money sourcebook (ELM)

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

1.5.2 G

Block	Module	Application
Regulatory processes	...	...
	Supervision manual (<i>SUP</i>)	The following chapters of <i>SUP</i> apply to every <i>ELMI</i> : 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16 and 20. The following chapters of <i>SUP</i> do not apply to an <i>ELMI</i> : 4, 12, 14, 17, 18 and 19.
	Enforcement manual (<i>ENF</i>)	Applies to every <i>ELMI</i>.
	Decision making manual (<i>DEC</i>) <u>Decision, Procedure and Penalties Manual (<i>DEPP</i>)</u>	Applies to every <i>ELMI</i> .

- 8.3.9 G The application for a *small e-money issuer certificate* must be determined by the *FSA* within six *months* from when it receives the completed application or, if the application is incomplete, within 12 *months*. The applicant may withdraw his application by written notice. The *FSA* must give the applicant written notice of the grant of the application or a *warning notice* if it proposes to refuse the application. ~~*Guidance on the decision making procedures is given in DEC 2 (Statutory notice procedure: warning notice and decision notice procedure).*~~
- 8.3.10 G An applicant who is aggrieved by the determination of the application may refer the matter to the *Tribunal* (see *EG 2.39 DEC 5.1 (The Tribunal)*).
- 8.3.12 G ~~*ENF 15 EG 12 (Prosecution of criminal offences) and DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences)*~~ contain sets out guidance on the *FSA*'s policy and procedures relating to the exercise of its powers to prosecute criminal offences, including offences under section 24 of the *Act*.

Procedure

- 8.6.5 G If the *FSA* proposes to revoke a *small e-money issuer certificate* otherwise than at the request of the *small e-money issuer*, it must give him a *warning notice* ~~(see DEC 2.2 (Warning notice procedure))~~. Similarly, if it decides to revoke the certificate, it must give him a *decision notice* ~~(see DEC 2.3 (Decision notice procedure))~~. (See *DEPP 2*)
- 8.6.6 G A *small e-money issuer* who is aggrieved at the decision to revoke the *small e-money issuer certificate* may refer the matter to the *Tribunal* (see *EG 2.39* ~~DEC 5.1 (The Tribunal)~~).
- 8.7.11 G The *FSA* may appoint one or more competent *persons* to carry out an investigation if it appears to it that there are circumstances suggesting that a *small e-money issuer* may not meet any of the conditions referred to in *ELM 8.4*. The *FSA* may also use this power if the *small e-money issuer* may not have met any of these conditions at any time since the *small e-money issuer certificate* was given. ~~ENF 2 (Use of Information gathering and investigation powers) contains~~ See *EG 3* for *guidance* on the *FSA's* policies relating to the use of its investigation powers.

...

Administrative and civil enforcement powers

- 8.7.17 G Where a *small e-money issuer* contravenes a *rule* in *ELM 8.7* (Provision of information), or a requirement imposed under the powers referred to in *ELM 8.7.6 G* to *ELM 8.7.11 G*, the *FSA* may, among its other enforcement powers:
- (1) apply to the courts for an *injunction* (see ~~ENF 6~~ *EG 10* (Injunctions));
 - (2) apply to the courts for a restitution order (see ~~ENF 9~~ *EG 11* (Restitution and redress)); and
 - (3) revoke the *small e-money issuer certificate* (see *ELM 8.6*).

...

- 8.7.20 G ~~ENF 15 (Prosecution of criminal offences) and DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences) contain~~ For *guidance* on the *FSA's* policy and procedures relating to the exercise of its powers to prosecute criminal offences), including offences under section 398 and 400 of the *Act*, see *EG 12*.

Annex S

Amendments to the Professional Firms sourcebook (PROF)

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

Exempt regulated activities

- 2.1.3 G Section 327 of the *Act* (Exemption from the general prohibition) sets out the conditions which must be met for a *person* to be treated as an *exempt professional firm*, and for the *person's regulated activities* to be treated as *exempt regulated activities*. If the exemption in section 327 does not apply to a *person* and the *person* carries on a *regulated activity*, the *person* may contravene the *general prohibition* and be committing a criminal offence. The *FSA's* approach to the use of its powers in respect of alleged contraventions of the *general prohibition* is explained in ~~ENF 15~~EG 12.
- 2.1.4 G If the *FSA* has made a direction under section 328 of the *Act* (Directions in relation to the general prohibition) (see *PROF* 3.2) in relation to classes of *person* (or *regulated activity*), then a *person* within the class (or carrying on the *regulated activity*) specified will not be an *exempt professional firm*. In addition, section 329 of the *Act* (Orders in relation to the general prohibition) gives the *FSA* power to make an order disapplying the Part XX exemption from a *person* named in the Order. The *FSA's* general approach to the use of this power is explained in ~~ENF 18~~EG 16.

Annex T

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

4.2C Control over a UK RIE

...

4.2C.7 G If the *FSA* refuses to approve a change of control or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see *EG 2.39*). ~~More information on the process for referrals to the *Tribunal* is set out in *DEC 5.1*.~~

...

4.2D.2 G The procedure the *FSA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a financial instrument from trading is set out in section 313B of the *Act*. The *FSA*'s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FSA* exercises this power, the *UK RIE* concerned and the issuer (if any) of the relevant *financial instrument* may refer the matter to the *Tribunal* (see *EG 2.39*). ~~More information on the process for referrals to the *Tribunal* is set out in *DEC 5.1*.~~

Annex U

Amendments to the Listing Rules (LR)

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

Application

- 1.1.1 R LR applies as follows:
- (1) all of LR (other than LR 8.3, LR 8.4, LR 8.6 and LR 8.7) applies to an *issuer*; and
 - (2) LR 1, LR 8.1, LR 8.3, LR 8.4, LR 8.6 and LR 8.7 apply to a *sponsor* and a *person* applying for approval as a *sponsor*.

FSA performing functions as competent authority

Note: In relation to the *listing rules*, the *FSA* is performing functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Note: when exercising functions as the competent authority under Part VI of the *Act*, the *FSA* may use the name: the UK Listing Authority.

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to *issuers* or *sponsors* include *DTR* (the Disclosure Rules and Transparency Rules sourcebook), *PR* (the Prospectus Rules sourcebook), *COB* (the Conduct of Business sourcebook), ~~*DEC* (the Decision Making manual)~~ *DEPP* (Decision Procedure and Penalties Manual), Chapter 9 of *SUP* (the Supervision manual) and ~~Chapter 21 of *ENF* (the Enforcement manual)~~ and *GEN* (General Provisions).

The following Regulatory Guides may also be relevant to *issuers* or *sponsors*:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Decision-making procedures for suspension, cancellation etc

- 5.5.1 G The decision-making procedures that the *FSA* will follow when it cancels, suspends or ~~to~~ refuses a request to restore *listing* are set out in *DEPP* (Decision Procedure and Penalties) ~~*DEC* (the Decision Making manual)~~.
- 7.1.4 G ~~*ENF* 21 (Official listing—investigation powers and discipline)~~ *DEPP* 6 (Penalties) and *EG* 7 sets out *guidance* on the

consequences of breaching the Listing Principles.

- 8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:
- (1) carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;
 - (2) request that the applicant or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application;
 - (3) take into account any information which it considers appropriate in relation to the application.

Note: The decision-making procedures that the *FSA* will follow when it considers whether to refuse an application for approval as a *sponsor* are set out in DEPPDEC.

8.7.20 G ~~*ENF 21 (Official listing—investigation powers and discipline)*~~EG sets out the *FSA's* policy on when and how it will use its disciplinary powers, including in relation to a *sponsor*.

- 8.7.24 G
- (1) The decision-making procedures that the *FSA* will follow when it cancels a *sponsor's* approval at the *sponsor's* request are set out in DEPPDEC.
 - (2) Under the statutory notice procedure set out in DEPPDEC a request for cancellation of approval will take a minimum of 8 weeks to take effect.

LR Appendix 1.1 Relevant definitions

...	
<i>DEC-DEPP</i>	the Decision-making manual <u>the Decision Procedure and Penalties manual</u>
...	
<i>ENF EG</i>	the Enforcement manual <u>the Enforcement Guide</u>
...	

...

Annex V

Amendments to the Prospectus Rules (PR)

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

PR 3.1 Approval of prospectus

Decision-making procedures

PR 3.1.9 R The FSA will follow the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions* if it:

- (1) proposes to refuse to approve a *prospectus*; or
- (2) decides to refuse to approve a *prospectus* after having given the *applicant* a written notice.

Note: ~~DEC 4.3~~DEPP 4 sets out the *executive procedures* for *statutory notice decisions* and *statutory notice associated decisions*.

PR Appendix 1 R Relevant definitions

App 1.1 R **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<i>executive procedures</i>	the procedures relating to the giving of <i>warning notices</i> , <i>decision notices</i> and <i>supervisory notices</i> that the FSA proposes to follow in the circumstances specified in DEC 4.1.6 G (Decisions to be taken by executive procedures), and that are described in DEC 4.3 (Executive procedures for statutory notice decisions and statutory notice associated decisions) <u>DEPP 4 (Decision by FSA staff under executive procedures)</u> .
...	

Annex W

Amendments to the Disclosure Rules and Transparency Rules (DTR)

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

FSA performing functions as competent authority

- 1.1.3 G In relation to the *disclosure rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to persons to whom the *disclosure rules* apply include *DEPP* (Decision Procedure and Penalties Manual) ~~*DEC*~~ (~~the Decision making manual~~), and Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Note: A list of *regulated markets* can be found on the *FSA* website at the following address: www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

FSA performing functions as competent authority

- 1A.1.4 G In relation to the *transparency rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to persons to whom the *transparency rules* apply include *DEPP* (Decision Procedure and Penalties Manual) ~~*DEC*~~ (~~the Decision making manual~~), and Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

Note: A list of *regulated markets* can be found on the *FSA* website at the following address: http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

1.4 Suspension of trading

...

- 1.4.5 G The decision-making procedures to be followed by the *FSA* when it:
- (1) requires the suspension of trading of a *financial instrument*;
or
 - (2) refuses an application by an *issuer* to lift a suspension made under section 96C;
- are set out in *DEPPDEC*.

**COMPLAINTS AGAINST THE FSA SCHEME (AMENDMENT NO 4)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 157 (1) (Guidance); and
 - (2) paragraph 7 of Schedule 1.

Commencement

- B. This instrument comes into force on 6 August 2007.

Amendments to the Handbook

- C. The Complaints against the FSA sourcebook (COAF) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Complaints against the FSA Scheme (Amendment No 4) Instrument 2007.

By order of the Board
26 July 2007

Annex

Amendments to the Complaints against the FSA sourcebook (COAF)

In this Annex, underlining indicates new text.

Complaints against the FSA (COAF 1)

1.5 Procedure

...

1.5.18A. G The *Complaints Commissioner* expects his communications with complainants and the *FSA* during the course of an investigation to remain strictly confidential. Where a complainant breaches this requirement the *Complaints Commissioner* may, after having considered all the circumstances including any explanation from the complainant, decide to bring the investigation to an end without having to report under *COAF* 1.5.19G. Where the *FSA* breaches this requirement, the *Complaints Commissioner* will take account of this when formulating his conclusions and the breach will be recorded in the *Complaints Commissioner's* final report.

Transitional Complaints Scheme (COAF 2)

2.4 Procedure

...

2.4.17A. G The *Complaints Commissioner* expects his communications with complainants and the *FSA* during the course of an investigation to remain strictly confidential. Where a complainant breaches this requirement the *Complaints Commissioner* may, after having considered all the circumstances including any explanation from the complainant, decide to bring the investigation to an end without having to report under *COAF* 2.4.18G. Where the *FSA* breaches this requirement, the *Complaints Commissioner* will take account of this when formulating his conclusions and the breach will be recorded in the *Complaints Commissioner's* final report.

ENFORCEMENT REGULATORY GUIDE INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. Annex A to this instrument comes into force on 28 August 2007.
- C. Annex B to this instrument comes into force on 1 November 2007.

General guidance for providers and distributors

- D. General guidance on the FSA's approach to exercising its main enforcement powers is set out in Annex A to this instrument. This guidance is a Regulatory Guide and does not form part of the Handbook.
- E. The guide in Annex A to this instrument (including its schedules) may be cited as the Enforcement Guide (or EG).

Changes to the Enforcement Guide

- F. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

Citation

- G. This instrument may be cited as the Enforcement Regulatory Guide Instrument 2007.

By order of the Board
26 July 2007

Annex A

Enforcement Guide (EG)

This Annex makes the Enforcement Guide (EG). All the text is new and is therefore not shown underlined. This Annex contains the following sections of EG:

The Enforcement Guide

Contents list

1. Introduction

Overview

2. The FSA's approach to enforcement

3. Use of information gathering and investigation powers

4. Conduct of investigations

5. Settlement

6. Publicity

Specific enforcement powers

7. Penalties and censures

8. Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms

9. Prohibition orders and withdrawal of approval

10. Injunctions

11. Restitution and redress

12. Prosecution of criminal offences

13. Insolvency

14. Collective investment schemes

15. Disqualification of auditors and actuaries

16. Disapplication orders against members of the professions

17. Directions against incoming ECA providers

18. Cancellation of approval as a sponsor

Annex 1: Table of other enforcement powers

Annex 2: Guidelines on the investigation of cases of interest or concern to the FSA and other prosecuting and other investigating authorities

Transitional Provisions

1. Introduction

- 1.1 This guide describes the FSA's approach to exercising the main enforcement powers given to it by the Financial Services and Markets Act 2000 (the *Act*) and by regulation 12 of the *Unfair Terms Regulations*. It is broken down into two parts. The first part provides an overview of enforcement policy and process, with chapters about the FSA's approach to enforcement (chapter 2), the use of its main information gathering and investigation powers under the *Act* (chapter 3), the conduct of investigations (chapter 4), settlement (chapter 5) and publicity (chapter 6). The second part contains an explanation of the FSA's policy concerning specific enforcement powers such as its powers to: vary a *firm's Part IV permission* on its own initiative (chapter 8); make *prohibition orders* (chapter 9); and prosecute criminal offences (chapter 12).
- 1.2 In the areas set out below, the *Act* expressly requires the FSA to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*.
- (1) sections 69 and 210 require the FSA to publish statements of policy on the imposition, and amount, of financial penalties on *firms* and *approved persons*;
 - (2) section 93 requires the FSA to publish a statement of its policy on the imposition, and amount, of financial penalties under section 91 of the *Act* (penalties for breach of Part 6 rules);
 - (3) section 124 requires the FSA to publish a statement of its policy on the imposition, and amount, of financial penalties for *market abuse*;
 - (4) section 169 requires the FSA to publish a statement of its policy on the conduct of certain interviews in response to requests from *overseas regulators*; and
 - (5) section 395 requires the FSA to issue a statement of procedures relating to the giving of *supervisory notices*, *warning notices* and *decision notices*.

These policies are set out in the Decision Procedure and Penalties manual (*DEPP*), a module of the FSA Handbook. References to the policies are made at appropriate places in the guide.

- 1.3 This guide includes material on the investigation, disciplinary and criminal prosecution powers that are available to the FSA when it is performing functions as the competent authority under Part VI of the *Act* (Official listing). The *Act* provides a separate statutory framework within which the FSA must operate when it acts in that capacity. When determining whether to exercise its powers in its capacity as competent authority under Part VI, the FSA will have regard to the matters and objectives which apply to the competent authority function.
- 1.4 The FSA has a range of enforcement powers, and in any particular enforcement situation, the FSA may need to consider which power to use and whether to use one

or more powers. So in any particular case, it may be necessary to refer to a number of chapters of the guide.

- 1.5 Since most of the FSA's enforcement powers are derived from it, this guide contains a large number of references to the *Act*. Users of the guide should therefore refer to the *Act* as well as to the guide where necessary. In the event of a discrepancy between the *Act*, or other relevant legislation, and the description of an enforcement power in the guide, the provisions of the *Act* or the other relevant legislation prevail. Defined terms used in the text are shown in italic type. Where a word or phrase is in italics, its definition will be the one used for that word or phrase in the glossary to the FSA Handbook.
- 1.6 The FSA has further enforcement powers and information gathering and investigation powers, including those listed in annex 1, which are not discussed in this guide. The FSA will use the powers where it considers this is appropriate in all the circumstances.
- 1.7 This guide will be kept under review and amended as appropriate in the light of further experience and developing law and practice.
- 1.8 The material in this guide does not form part of the FSA Handbook and is not guidance on rules, but it is 'general guidance' as defined in section 158 of the *Act*. If you have any doubt about a legal or other provision or your responsibilities under the *Act* or other relevant requirements, you should seek appropriate legal advice from your legal adviser.

2. The FSA's approach to enforcement

- 2.1 The FSA's effective and proportionate use of its enforcement powers plays an important role in the pursuit of its *regulatory objectives* of protecting *consumers*, maintaining confidence in the *financial system*, promoting public awareness and reducing *financial crime*. For example, using enforcement helps to contribute to the protection of *consumers* and to deter future contraventions of FSA and other applicable requirements and *financial crime*. It can also be a particularly effective way, through publication of enforcement outcomes, of raising awareness of regulatory standards.
- 2.2 There are a number of principles underlying the FSA's approach to the exercise of its enforcement powers:
- (1) The effectiveness of the regulatory regime depends to a significant extent on maintaining an open and co-operative relationship between the FSA and those it regulates.
 - (2) The FSA will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies.
 - (3) The FSA will seek to ensure fair treatment when exercising its enforcement powers.
 - (4) The FSA will aim to change the behaviour of the *person* who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 2.3 Enforcement is only one of a number of regulatory tools available to the FSA. As a risk based regulator with limited resources, throughout its work the FSA prioritises its resources in the areas which pose the biggest threat to its *regulatory objectives*. This applies as much to the enforcement tool as it does to any other tool available to it. The next section of this chapter summarises how in practice the FSA takes a risk based approach towards its use of the enforcement tool, and the subsequent sections comment on other aspects of the FSA's approach to enforcement.
- 2.4 Where a *firm* or other *person* has failed to comply with the requirements of the *Act*, the *rules*, or other relevant legislation, it may be appropriate to deal with this without the need for formal disciplinary or other enforcement action. The proactive supervision and monitoring of *firms*, and an open and cooperative relationship between *firms* and their supervisors, will, in some cases where a contravention has taken place, lead the FSA to decide against taking formal disciplinary action. However, in those cases, the FSA will expect the *firm* to act promptly in taking the necessary remedial action agreed with its supervisors to deal with the FSA's concerns. If the *firm* does not do this, the FSA may take disciplinary or other enforcement action in respect of the original contravention.

Case selection: Firms and approved persons, market abuse cases and listing matters

- 2.5 Other than in the area of a *firm's* failure to satisfy the FSA's *Threshold Conditions* for authorisation (as to which, see paragraph 2.11), the selection method for cases involving *firms* and *approved persons*, *market abuse* and listing matters (for example, breaches of the listing, prospectus or disclosure rules) occurs at two main levels:
- (1) strategic planning; and
 - (2) decisions on individual cases.
- 2.6 The FSA does not have a set of enforcement priorities that are distinct from the priorities of the FSA as a whole. Rather, the FSA consciously uses the enforcement tool to deliver its overall strategic priorities. The areas and issues which the FSA as an organisation regards as priorities at any particular time are therefore key in determining at a strategic level how enforcement resource should be allocated. FSA priorities will influence the use of resources in its supervisory work and as such, make it more likely that the FSA will identify possible breaches in these priority areas. Further, should evidence emerge of potential breaches, these areas are more likely to be supported by enforcement action than non-priority areas.
- 2.7 One way in which the FSA focuses on priority areas is through its thematic work. This work involves the FSA looking at a particular issue or set of issues across a sample of *firms*. Themes are, in general, selected to enable the FSA to improve its understanding of particular industry areas or to assess the validity of concerns the FSA has about risks those areas may present to the *regulatory objectives*. Thematic work does not start with the presumption that it will ultimately lead to enforcement outcomes. But if the FSA finds significant issues, these may become the subject of enforcement investigations as they would if the FSA had discovered them in any other circumstance. Also, by definition, the fact they are in areas that are of importance to the FSA means, following the FSA's risk-based approach through, that they are proportionately more likely to result in the FSA determining that an enforcement investigation should be carried out than issues in lower priority areas.
- 2.8 This does not mean that the FSA will only take enforcement action in priority strategic areas. There will always be particularly serious cases where enforcement action is necessary, ad hoc cases of particular significance in a markets, *consumer* protection or *financial crime* context, or cases that the FSA thinks are necessary to achieve effective deterrence.
- 2.9 The combination of the priority given to certain types of misconduct over others and the FSA's risk-based approach to enforcement means that certain cases will be subject to enforcement action and others not, even where they may be similar in nature or impact. The FSA's choice as to the use of the enforcement tool is therefore a question of how the FSA uses its resources effectively and efficiently and how it ensures that it is an effective regulator.
- 2.10 Before it proceeds with an investigation, the FSA will satisfy itself that there are grounds to investigate under the statutory provisions that give the FSA powers to

appoint investigators. If the statutory test is met, it will decide whether to carry out an investigation after considering all the relevant circumstances. To assist its consideration of cases, the FSA has developed a set of assessment criteria. The current criteria (which are published on the Enforcement section of the FSA web site¹) are framed as a set of questions. They take account of the FSA's *regulatory objectives*, its strategic/supervision priorities (see above) and other issues such as the response of the *firm* or individual to the issues being referred. Not all of the criteria will be relevant to every case and there may be other considerations which are not mentioned in the list but which are relevant to a particular case. The FSA's assessment will include considering whether using alternative tools is more appropriate taking into account the overall circumstances of the *person* or *firm* concerned and the wider context. Another consideration will be whether the FSA is under a Community obligation to take action on behalf of, or otherwise to provide assistance to, an authority from another *EU* member state. Paragraph [2.15](#) discusses the position where other authorities may have an interest in a case.

Case selection: Threshold Conditions cases

- 2.11 The FSA often takes a different approach to that described above where *firms* no longer meet the *threshold conditions*. The FSA views the *threshold conditions* as being fundamental requirements for *authorisation* and it will generally take action in all such cases which come to its attention and which cannot be resolved through the use of supervisory tools. The FSA does not generally appoint investigators in such cases. Instead, *firms* are first given an opportunity to correct the failure. If the *firm* does not take the necessary remedial action, the FSA will consider whether its *permission* to carry out regulated business should be varied and/or cancelled. However, there may be cases where the FSA considers that a formal investigation into a *threshold conditions* concern is appropriate.

Case selection: Unauthorised business

- 2.12 Where this poses a significant risk to the *consumer* protection objective or to the FSA's other *regulatory objectives*, *unauthorised* activity will be a matter of serious concern for the FSA. The FSA deals with cases of suspected *unauthorised* activity in a number of ways and it will not use its investigation powers and/or take enforcement action in every single instance.
- 2.13 The FSA's primary aim in using its investigation and enforcement powers in the context of suspected *unauthorised* activities is to protect the interests of *consumers*. The FSA's priority will be to confirm whether or not a *regulated activity* has been carried on in the United Kingdom by someone without *authorisation* or exemption, and, if so, the extent of that activity and whether other related contraventions have occurred. It will seek to assess the risk to *consumers'* assets and interests arising from the activity as soon as possible.

¹ <http://www.fsa.gov.uk/pages/Doing/Regulated/Law/criteria.shtml>

- 2.14 The FSA will assess on a case-by-case basis whether to carry out a formal investigation, after considering all the available information. Factors it will take into account include:
- (1) the elements of the suspected contravention or breach;
 - (2) whether the FSA considers that the *persons* concerned are willing to co-operate with it;
 - (3) whether obligations of confidentiality inhibit individuals from providing information unless the FSA compels them to do so by using its formal powers;
 - (4) whether the *person* concerned has offered to undertake or undertaken remedial action.

Cases where other authorities have an interest

- 2.15 Action before or following an investigation may include, for example, referring some issues or information to other authorities for consideration, including where another authority appears to be better placed to take action. For example, when considering whether to use its powers to conduct formal investigations into market misconduct, the FSA will take into account whether another regulatory authority is in a position to investigate and deal with the matters of concern (as far as a *recognised investment exchange* or *recognised clearing house* is concerned, the FSA will consider the extent to which the relevant exchange or clearing house has adequate and appropriate powers to investigate and deal with a matter itself). Equally, in some cases, the FSA may investigate and/or take action in parallel with another domestic or international authority. This topic is discussed further in *DEPP* 6.2.19 G to *DEPP* 6.2.28 G, [paragraph 3.16](#) of this guide and in the case of action concerning criminal offences, [paragraph 12.11](#).

Assisting overseas regulators

- 2.16 The FSA views co-operation with its overseas counterparts as an essential part of its regulatory functions. Section 354 of the *Act* imposes a duty on the FSA to take such steps as it considers appropriate to co-operate with others who exercise functions similar to its own. This duty extends to authorities in the UK and overseas. In fulfilling this duty the FSA may share information which it is not prevented from disclosing, including information obtained in the course of the FSA's own investigations, or exercise certain of its powers under Part XI of the *Act*. Further details of the FSA's powers to assist overseas regulators are provided at [EG 3.12 – 3.15](#) (Investigations to assist overseas authorities), [EG 4.8](#) (Use of statutory powers to require the production of documents, the provision of information or the answering of questions), [EG 4.25 – 4.27](#) (Interviews in response to a request from an overseas regulator), and [EG 8.18 – 8.25](#) (Exercising the power under section 47 to vary or cancel a firm's part IV permission in support of an overseas regulator). The FSA's statement of policy in relation to interviews which representatives of overseas regulators attend and participate in is set out in *DEPP* 7.

Sources of cases

- 2.17 The FSA may be alerted to possible contraventions or breaches by complaints from the public or *firms*, by referrals from other authorities or through its own enquiries and supervisory activities. *Firms* may also bring their own contraventions to the FSA's attention, as they are obliged to do under Principle 11 of the *Principles for Businesses* and *rules* in the FSA's Supervision manual.

Enforcement and the FSA's Principles for Businesses ('the Principles')

- 2.18 The FSA's approach to regulation involves a combination of high-level principles and detailed rules and guidance. While this broad structure is both necessary and desirable, the FSA is moving towards a more principles-based approach. This is because the FSA believes an approach that is based less on detailed rules and that focuses more on outcomes will allow it to achieve its *regulatory objectives* in a more efficient and effective way. The FSA regards the increased emphasis on the *Principles* as a development of its current approach rather than a fundamental change of direction.
- 2.19 This policy approach is leading to increased focus on principles-based enforcement action. The use of the *Principles* in enforcement cases is far from new. They have been used regularly in an enforcement context over many years. However, as part of its overall strategy in this area, the FSA will be giving more prominence to the *Principles* including, in appropriate cases, taking enforcement action on the basis of the *Principles* alone (see also DEPP 6.2.14 G). This will have the benefit of providing further clear examples of how the *Principles* work in practice.
- 2.20 The FSA wishes to encourage firms to exercise judgement about, and take responsibility for, what the *Principles* mean for them in terms of how they conduct their business. But we also recognise the importance of an environment in which *firms* understand what is expected of them. So we have indicated that *firms* must be able reasonably to predict, at the time of the action concerned, whether the conduct would breach the *Principles*. This has sometimes been described as the "reasonable predictability test" or "condition of predictability", but it would be wrong to think of this as a legal test to be met in deciding whether there has been a breach of FSA rules. Rather, our intention has been to acknowledge that firms may comply with the *Principles* in different ways; and to indicate that the FSA will not take enforcement action unless it was possible to determine at the time that the relevant conduct fell short of our requirements.
- 2.21 To determine whether there has been a failure to comply with a *Principle*, the standards we will apply are those required by the *Principles* at the time the conduct took place. The FSA will not apply later, higher standards to behaviour when deciding whether to take enforcement action for a breach of the *Principles*. Importantly, however, where conduct falls below expected standards the FSA considers that it is legitimate for consequences to follow, even if the conduct is widespread within the industry or the *Principle* is expressed in general terms.

FSA guidance and supporting materials

- 2.22 The FSA uses *guidance* and other materials to supplement the *Principles* where it considers this would help *firms* to decide what action they need to take to meet the necessary standard.
- 2.23 *Guidance* is not binding on those to whom the FSA's *rules* apply. Nor are the variety of materials (such as case studies showing good or bad practice, FSA speeches, and generic letters written by the FSA to Chief Executives in particular sectors) published to support the rules and *guidance* in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules.
- 2.24 *DEPP* 6.2.1(4) G explains that the FSA will not take action against someone where we consider that they have acted in accordance with what we have said. However, *guidance* does not set out the minimum standard of conduct needed to comply with a rule, nor is there any presumption that departing from *guidance* indicates a breach of a rule. If a *firm* has complied with the *Principles* and other rules, then it does not matter whether it has also complied with other material the FSA has issued.
- 2.25 *Guidance* and supporting materials are, however, potentially relevant to an enforcement case and a decision maker may take them into account in considering the matter. Examples of the ways in which the FSA may seek to use *guidance* and supporting materials in an enforcement context include:
- (1) To help assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by the *Principles*.
 - (2) To explain the regulatory context.
 - (3) To inform a view of the overall seriousness of the breaches e.g. the decision maker could decide that the breach warranted a higher penalty in circumstances where the FSA had written to chief executives in the sector in question to reiterate the importance of ensuring a particular aspect of its business complied with relevant regulatory standards.
 - (4) To inform the consideration of a *firm's* defence that the FSA was judging the *firm* on the basis of retrospective standards.
 - (5) To be considered as part of expert or supervisory statements in relation to the relevant standards at the time.
- 2.26 The extent to which *guidance* and supporting materials are relevant will depend on all the circumstances of the case, including the type and accessibility of the statement and the nature of the *firm's* defence. It is for the decision maker (see [paragraphs 2.37 to 2.39](#)) - whether the *RDC*, *Tribunal* or an executive decision maker - to determine this on a case-by-case basis.

- 2.27 The FSA may take action in areas in which it has not issued *guidance* or supporting materials.

Industry guidance

- 2.28 The FSA recognises that Industry Guidance has an important part to play in a principles-based regulatory environment, and that firms may choose to follow such guidance as a means of seeking to meet the FSA's requirements. This will be true especially where Industry Guidance has been 'confirmed' by the FSA. *DEPP* 6.2.1(4) G confirms that, as with FSA *guidance* and supporting materials, the FSA will not take action against a firm for behaviour that we consider is in line with FSA-confirmed Industry Guidance that was current when the conduct took place.
- 2.29 Equally, however, FSA-confirmed Industry Guidance is not mandatory. The FSA does not regard adherence to Industry Guidance as the only means of complying with FSA rules and *Principles*. Rather, it provides examples of behaviour which meets the FSA's requirements; and non-compliance with confirmed Industry Guidance creates no presumption of a breach of those requirements.
- 2.30 Industry Guidance may be relevant to an enforcement case in ways similar to those described at [paragraph 2.25](#). But the FSA is aware of the concern that firms must have scope to exercise their own judgement about what FSA rules require, and that Industry Guidance should not become a new prescriptive regime in place of detailed FSA rules. This, and the specific status of FSA-confirmed Industry Guidance, will be taken into account when the FSA makes judgements about the relevance of Industry Guidance in enforcement cases.

Senior management responsibility

- 2.31 The FSA is committed to ensuring that senior managers of *firms* fulfil their responsibilities. The FSA expects senior management to take responsibility for ensuring *firms* identify risks, develop appropriate systems and controls to manage those risks, and ensure that the systems and controls are effective in practice. The FSA will not pursue senior managers where there is no personal culpability. However, where senior managers are themselves responsible for misconduct, the FSA will, where appropriate, bring cases against individuals as well as *firms*. The FSA believes that deterrence will most effectively be achieved by bringing home to such individuals the consequences of their actions. The FSA's policy on disciplinary action against senior management and against other *approved persons* under section 66 of the *Act* is set out in *DEPP* 6.2.4 G to *DEPP* 6.2.9 G. The FSA's policy on prohibition and withdrawal of approval is set out in chapter 9 of this guide.
- 2.32 The FSA recognises that cases against individuals are very different in their nature from cases against corporate entities and the FSA is mindful that an individual will generally face greater risks from enforcement action, in terms of financial implications, reputation and livelihood than would a corporate entity. As such, cases against individuals tend to be more strongly contested, and at many practical levels are harder to prove. They also take longer to resolve. However, taking action against individuals sends an important message about the FSA's *regulatory objectives* and priorities and the FSA considers that such cases have important deterrent values. The

FSA is therefore committed to pursuing appropriate cases robustly, and will dedicate sufficient resources to them to achieve effective outcomes.

Co-operation

- 2.33 An important consideration before an enforcement investigation and/or enforcement action is taken forward is the nature of a *firm's* overall relationship with the FSA and whether, against that background, the use of enforcement tools is likely to further the FSA's aims and objectives. So, for any similar set of facts, using enforcement tools will be less likely if a *firm* has built up over time a strong track record of taking its senior management responsibilities seriously and been open and communicative with the FSA. In addition, a *firm's* conduct in response to the specific issue which has given rise to the question of whether enforcement tools should be used will also be relevant. In this respect, relevant matters may include whether the *person* has self-reported, helped the FSA establish the facts and/or taken remedial action such as addressing any systems and controls issues and compensating any consumers who have lost out. Such matters will not, however, necessarily mean that enforcement tools will not be used. The FSA has to consider each case on its merits and in the wider regulatory context, and any such steps cannot automatically lead to no enforcement sanction. However, they may in any event be factors which will mitigate the penalty.
- 2.34 On its web site, the FSA has given anonymous examples of where it has decided not to investigate or take enforcement action in relation to a possible *rule* breach because of the way in which the *firm* has conducted itself when putting the matter right. This is part of an article entitled 'The benefits to firms and individuals of co-operating with the FSA'². However, in those cases where enforcement action is not taken and/or a formal investigation is not commenced, the FSA will expect the *firm* to act promptly to take the necessary remedial action agreed with its supervisors to deal with the FSA's concerns. If the *firm* does not do this, the FSA may take disciplinary or other enforcement action in respect of the original contravention.

Late reporting or non-submission of reports to the FSA

- 2.35 The FSA attaches considerable importance to the timely submission by *firms* of reports required under FSA rules. This is because the information contained in such reports is essential to the FSA's assessment of whether a *firm* is complying with the requirements and standards of the regulatory system and to the FSA's understanding of that *firm's* business. So, in the majority of cases involving non-submission of reports or repeated failure to submit complete reports on time, the FSA considers that it will be appropriate to seek to cancel the *firm's permission*. Where the FSA does not cancel a *permission*, it may take action for a financial penalty against a *firm* that submits a report after the due date (see *DEPP* 6.6.1 G to *DEPP* 6.6.5 G).

Legal review

- 2.36 Before a case is referred to the *RDC*, it will be subject to a legal review by a lawyer who has not been a part of the investigation team. This will help to ensure that there

² <http://www.fsa.gov.uk/Pages/doing/regulated/law/focus/co-operating.shtml>

is consistency in the way in which our cases are put and that they are supported by sufficient evidence. A lawyer who has not been a part of the investigation team will also review *warning notices* before they are submitted to the *settlement decision makers*.

Decision making in the context of regulatory enforcement action

- 2.37 When the FSA is proposing to exercise its regulatory enforcement powers, the *Act* generally requires the FSA to give *statutory notices* (depending on the nature of the action, a *warning notice* and *decision notice* or *supervisory notice*) to the subject of the action. The person to whom a *warning notice* or *supervisory notice* is given has a right to make representations on the FSA's proposed decision.
- 2.38 The procedures the FSA will follow when giving *supervisory notices*, *warning notices* and *decision notices* are set out in *DEPP* 1 to 5. Under these procedures, the decisions to issue such notices in contested enforcement cases are generally taken by the *RDC*, an FSA Board committee that is appointed by, and accountable to, the FSA Board for its decisions generally. Further details about the *RDC* can be found in *DEPP* 3 and on the pages of the FSA web site relating to the *RDC*.³ However, decisions on settlements and *statutory notices* arising from them are taken by two members of FSA senior management of at least director level, under a special settlement decision procedure (see [chapter 5](#)).
- 2.39 A *person* who receives a *decision notice* or *supervisory notice* has a right to refer the matter to the *Tribunal* within prescribed time limits. The *Tribunal* is independent of the FSA and members of the *Tribunal* are appointed by the Lord Chancellors Department. Where a matter has been referred to it, the *Tribunal* will determine what action, if any, it is appropriate for the FSA to take in relation to that matter. Further details about the *Tribunal* can be found in an item on the *Tribunal* on the Enforcement pages of the FSA web site⁴ and on the *Tribunal's* own web site⁵.

³ <http://www.fsa.gov.uk/Pages/About/Who/board/committees/RDC/index.shtml>

⁴ <http://www.fsa.gov.uk/pages/doing/regulated/law/focus/tribunal.shtml>

⁵ <http://www.financeandtaxtribunals.gov.uk/>

3 Use of information gathering and investigation powers

- 3.1 The FSA has various powers under sections 97, 165 to 169 and 284 of the *Act* to gather information and appoint investigators, and to require the production of a report by a *skilled person*. In any particular case, the FSA will decide which powers, or combination of powers, are most appropriate to use having regard to all the circumstances. Further comments on the use of these powers are set out below.

Information requests (section 165)

- 3.2 The FSA may use its section 165 power to require information and documents from *firms* to support both its supervisory and its enforcement functions.
- 3.3 An officer with authorisation from the FSA may exercise the section 165 power to require information and documents from *firms*. This includes an FSA employee or an agent of the FSA.

Reports by skilled persons (section 166)

- 3.4 Under section 166 of the *Act*, the FSA has a power to require a *firm* and certain other persons to provide a report by a *skilled person*. The FSA may use its section 166 power to require reports by *skilled persons* to support both its supervision and enforcement functions.
- 3.5 The factors the FSA will consider when deciding whether to use the section 166 power include:
- (1) If the FSA's objectives for making further enquiries are predominantly for the purposes of fact finding i.e. gathering historic information or evidence for determining whether enforcement action may be appropriate, the FSA's information gathering and investigation powers under sections 167 and 168 of the *Act* are likely to be more effective and more appropriate than the power under section 166.
 - (2) If the FSA's objectives include obtaining expert analysis or recommendations (or both) for, say, the purposes of seeking remedial action, it may be appropriate to use the power under section 166 instead of, or in conjunction with, the FSA's other available powers.
- 3.6 Where it exercises this power, the FSA will make clear both to the *firm* and to the *skilled person* the nature of the concerns that led the FSA to decide to appoint a *skilled person* and the possible uses of the results of the report. But a report the FSA commissions for purely diagnostic purposes could identify issues which could lead to the appointment of an investigator and/or enforcement action.
- 3.7 Chapter 5 of the FSA's Supervision manual (Reports by skilled persons) contains *rules* and guidance that will apply whenever the FSA uses the section 166 power.

Investigations into general and specific concerns (sections 167 and 168)

- 3.8 Where the FSA has decided that an investigation is appropriate (see chapter 2) and it appears to it that there are circumstances suggesting that contraventions or offences set out in section 168 may have happened, the FSA will normally appoint investigators pursuant to section 168. Where the circumstances do not suggest any specific breach or contravention covered by section 168, but, the FSA still has concerns about a *firm*, an *appointed representative* or an *unauthorised incoming ECA provider*, such that it considers there is good reason to conduct an investigation into the nature, conduct or state of the *person's* business or a particular aspect of that business, or into the ownership or control of an *authorised person*, the FSA may appoint investigators under section 167.
- 3.9 In some cases involving both general and specific concerns, the FSA may consider it appropriate to appoint investigators under both section 167 and section 168 at the outset. Also, where, for example, it has appointed investigators under section 167, it may subsequently decide that it is appropriate to extend the appointment to cover matters under section 168 as well.

Official listing investigations (section 97)

- 3.10 If the FSA has decided to carry out an investigation where there are circumstances suggesting that contraventions set out in section 97 may have happened, it will normally appoint investigators pursuant to that section. An investigator appointed under section 97 is treated under the *Act* as if they were appointed under section 167(1).

Investigations into collective investment schemes (section 284)

- 3.11 The FSA may appoint investigators under section 284 to conduct an investigation into the affairs of a *collective investment scheme* if it appears to it that it is in the interests of the participants or general participants to do so or that the matter is of public concern.

Investigations to assist overseas authorities (section 169)

- 3.12 The FSA's power to conduct investigations to assist overseas authorities is contained in section 169 of the *Act*. The section provides that at the request of an *overseas regulator*, the FSA may use its power under section 165 to require the production of documents or the provision of information under section 165 or to appoint a person to investigate any matter.
- 3.13 If the *overseas regulator* is a *competent authority* and makes a request in pursuance of any Community obligation, section 169(3) states that the FSA must, in deciding whether or not to exercise its investigative power, consider whether the exercise of that power is necessary to comply with that obligation.
- 3.14 Section 169(4) and (5) set out factors that the FSA may take into account when deciding whether to use its investigative powers. However, these provisions do not apply if the FSA considers that the use of its investigative powers is necessary to comply with a Community obligation.

- 3.15 When it considers whether to use its investigative power, and whether section 169(4) applies, the FSA will first consider whether it is able to assist without using its formal powers, for example by obtaining the information voluntarily. Where that is not possible, the FSA may take into account all of the factors in section 169(4), but may give particular weight to the seriousness of the case and its importance to persons in the United Kingdom, and to the public interest.

Liaison where other authorities have an interest

- 3.16 The FSA has agreed guidelines that establish a framework for liaison and cooperation in cases where certain other UK authorities have an interest in investigating or prosecuting any aspect of a matter that the FSA is considering for investigation, is investigating or is considering prosecuting. These guidelines are set out in Annex 2 to this guide.

4 Conduct of investigations

Notifying the person under investigation where notice is a requirement under section 170

- 4.1 The FSA will always give written notice of the appointment of investigators to the *person* under investigation if it is required to give such notice under section 170 of the *Act*. In such cases, if there is a subsequent change in the scope or conduct of the investigation and, in the FSA's opinion, the *person* under investigation is likely to be significantly prejudiced if not made aware of this, that *person* will be given written notice of the change. It is impossible to give a definitive list of the circumstances in which a *person* is likely to be significantly prejudiced by not being made aware of a change in the scope or conduct of an investigation. However, this may include situations where there may be unnecessary costs from dealing with an aspect of an investigation which the FSA no longer intends to pursue.

Notifying the person under investigation where notice is not required under the Act

- 4.2 The *Act* does not always require the FSA to give written notice of the appointment of investigators, for example, where investigators are appointed as a result of section 168(1) or (4) of the *Act* and the FSA believes that the provision of notice would be likely to result in the investigation being frustrated, or where investigators are appointed as a result of section 168(2) of the *Act*.
- 4.3 Although the FSA is not required to give written notice of the appointment of investigators appointed as a result of section 168(2), when it becomes clear who the *person* under investigation is, the FSA will, nevertheless, normally notify them that they are under investigation when it exercises its statutory powers to require information from them, providing such notification will not, in the FSA's view, prejudice the FSA's ability to conduct the investigation effectively.

Notification where a particular person is not yet under investigation

- 4.4 In investigations into possible *insider dealing, market abuse, misleading statements and practices offences*, breaches of the *general prohibition*, the restriction on *financial promotion*, or the prohibition on promoting *collective investment schemes*, the investigator may not know the identity of the perpetrator or may be looking into market circumstances at the outset of the investigation rather than investigating a particular *person*. In those circumstances, the FSA will give an indication of the nature and subject matter of its investigation to those who are required to provide information to assist with the investigation. As soon as a *person* becomes the focus of the FSA's enquiries, the FSA will consider whether it is appropriate to notify that *person* that they are under investigation. The FSA will usually notify them when it exercises its statutory powers to require information from them unless doing so would prejudice the FSA's ability to conduct the investigation effectively.

Appointment of additional investigators

- 4.5 In some cases, the FSA will appoint an additional investigator or additional investigators during the course of an investigation. If this occurs and the FSA has

previously told the subject it has appointed investigators, then the FSA will normally give the person written notice of the appointment(s).

Notice of termination of investigations

- 4.6 Except where the FSA has issued a *warning notice*, and the FSA has subsequently discontinued the proceedings, the *Act* does not require the FSA to provide notification of the termination of an investigation or subsequent enforcement action. However, where the FSA has given a *person* written notice that it has appointed an investigator and later decides to discontinue the investigation without any present intention to take further action, it will confirm this to the *person* concerned as soon as it considers it is appropriate to do so, bearing in mind the circumstances of the case.

What a subject of investigation can say to third parties

- 4.7 As is explained in the chapter of this guide on publicity (chapter 6), the FSA will not normally make public the fact that it is or is not investigating a matter and its expectation is that the *person* under investigation will also treat the matter as confidential. However, subject to the restrictions on disclosure of confidential information in section 348 of the *Act*, this does not stop the *person* under investigation from seeking professional advice or making their own enquiries into the matter, from giving their auditors appropriate details of the matter or from making notifications required by law or contract.

Use of statutory powers to require the production of documents, the provision of information or the answering of questions

- 4.8 The FSA's standard practice is generally to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice, for example:
- (1) For suspects or possible suspects in criminal or *market abuse* investigations, the FSA may prefer to question that *person* on a voluntary basis, possibly under caution. In such a case, the interviewee does not have to answer but if they do, those answers may be used against them in subsequent proceedings, including criminal or *market abuse* proceedings.
 - (2) In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the FSA will usually seek information voluntarily.
 - (3) In some cases, the FSA is asked by *overseas regulators* to obtain documents or conduct interviews on their behalf. In these cases, the FSA will not necessarily adopt its standard approach as it will consider with the *overseas regulator* the most appropriate method for obtaining evidence for use in their country.
- 4.9 *Firms* and *approved persons* have an obligation to be open and co-operative with the FSA (as a result of Principle 11 for Businesses and Statement of Principle 4 for Approved Persons respectively). The FSA will make it clear to the *person* concerned whether it requires them to produce information or answer questions under the *Act* or

whether the provision of answers is purely voluntary. The fact that the *person* concerned may be a regulated person does not affect this.

- 4.10 The FSA will not bring disciplinary proceedings against a *person* under the above *Principles* simply because, during an investigation, they choose not to attend or answer questions at a purely voluntary interview. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of a *person* (whether or not they are a *firm* or *approved person*) to participate in a voluntary interview.
- 4.11 If a *person* does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The FSA may also choose to bring proceedings for breach of *Principle 11* or *Statement of Principle 4* as this is a serious form of non-cooperation.

Scoping discussions

- 4.12 For cases involving *firms* or *approved persons*, the FSA will generally hold scoping discussions with the *firm* or individuals concerned close to the start of the investigation (and may do so in other cases). The purpose of these discussions is to give the *firm* or individuals concerned in the investigation an indication of: why the FSA has appointed investigators (including the nature of and reasons for the FSA's concerns); the scope of the investigation; how the process is likely to unfold; the individuals and documents the team will need access to initially and so on. There is a limit, however, as to how specific the FSA can be about the nature of its concerns in the early stages of an investigation. The FSA team for the purposes of the scoping discussions will normally include the supervisor if the subject is a *firm* which is relationship-managed.
- 4.13 In addition to the initial scoping discussions, there will be an ongoing dialogue with the *firm* or individuals throughout the investigative process. Where the nature of the FSA's concerns changes significantly from that notified to the person under investigation and the FSA, having reconsidered the case, is satisfied that it is appropriate in the circumstances to continue the investigation, the FSA will notify the person of the change in scope.

Involvement of FSA supervisors during the investigation phase

- 4.14 As a general rule, the FSA supervisors of a *firm* are not directly involved in an enforcement investigation. This approach has its advantages in that it maintains a clear division between the conduct of the investigation on the one hand and the need to maintain the supervisory relationship with the *firm* on the other. However, this division of responsibility may mean that the investigation does not benefit as much as it might otherwise do from the knowledge of the *firm* or individuals that the supervisors will have built up, or from their general understanding of the *firm's* business or sector. Accordingly, the FSA takes the following general considerations into account in relation to the potential role of a supervisor in an investigation.
- (1) While it is clearly essential for the day-to-day supervisory relationship to continue during the course of any enforcement action, this need not, of itself, preclude a *firm's* supervisor from assisting in an investigation.

- (2) Such assistance will include: making the case team aware of the *firm's* history and compliance track record; the current supervisory approach to the area concerned; current issues with the *firm*; and acting as a sounding board on questions that emerge from the investigation about industry practices and standards.
- (3) Equally, there may be circumstances where someone in the FSA other than the *firm's* supervisor can more effectively and efficiently provide information on the current supervisory approach to the area under investigation or current market standards. In this case it makes good sense for the FSA to draw on that other source of expertise.
- (4) In the event that a *firm's* supervisor becomes part of the investigation team, the FSA will notify the firm of this in the normal way.

The timeframe for responding to information and document requirements

- 4.15 As delays in the provision of information and/or documents can have a significant impact on the efficient progression of an investigation, the FSA expects *persons* to respond to information and document requests in a timely manner to appropriate deadlines. When an investigation is complex (and the timetable allows), the FSA may decide to issue an information or document requirement in draft, allowing a specified period (of usually no more than three working days) for the *person* to comment on the practicality of providing the information or documentation by the proposed deadline. After considering any comments, the FSA will then confirm or amend the request. The FSA will not, however, send such a draft request where the request is straightforward and the FSA considers that it is reasonable to expect the information or documents to be made available within the FSA's specified timeframe.
- 4.16 Once it has formally issued a requirement (whether or not this has been preceded by a draft), the FSA will not usually agree to an extension of time for complying with the requirement unless compelling reasons are provided to support an extension request.

Approach to interviews and interview procedures

- 4.17 [Paragraph 4.8](#) explains the FSA's approach to the use of its statutory powers to require, amongst other matters, individuals to be interviewed. The type of interview is a decision for the FSA.
- 4.18 A *person* required to attend an interview by the use of statutory powers has no entitlement to insist that the interview takes place voluntarily. If someone does not attend an interview required under the *Act*, then he can be dealt with by the court as if he were in contempt (where the penalties can be a fine, imprisonment or both).
- 4.19 Similarly, a *person* asked to attend an interview on a purely voluntary basis is not entitled to insist that he be served with a requirement. A *person* is not obliged to attend a voluntary interview or to answer questions put to them at that time. But they should be aware that in an appropriate case, an adverse inference may be drawn from the failure to attend a voluntary interview, or a refusal to answer any questions at such an interview.

Interviews generally

- 4.20 Where the FSA interviews a *person*, it will allow the *person* to be accompanied by a legal adviser, if they wish. The FSA will also, where appropriate, explain what use can be made of the answers in proceedings against them. Where the interview is tape-recorded, the *person* will be given a copy of the audio tape of the interview and, where a transcript is made, a copy of the transcript.

Interviews under caution

- 4.21 Individuals suspected of a criminal offence may be interviewed under caution. These interviews will be subject to all the safeguards of the relevant Police and Criminal Evidence Act Codes and are voluntary on the part of the suspect. The FSA will warn the suspect at the start of the interview of their right to remain silent (and the consequences of remaining silent) and will inform the suspect that they are entitled to have a legal adviser present. The FSA will also give a cautionary warning in similar terms to interviewees who are the subject of *market abuse* investigations.

Subsequent interviews

- 4.22 If a suspect has been interviewed by the FSA using statutory powers, before they are re-interviewed on a voluntary basis (under caution or otherwise), the FSA will explain the difference between the two types of interview. The FSA will also tell the individual about the limited use that can be made of their previous answers in criminal proceedings or in proceedings in which the FSA seeks a penalty for *market abuse* under Part VIII of the *Act*.
- 4.23 Conversely, where a suspect has been interviewed under caution, and the FSA later wishes to conduct a compulsory interview with them, the FSA will explain the difference between the two types of interview, and will notify the individual of the limited use that can be made of his answers in the compulsory interview.

Interviews under arrest

- 4.24 On occasion, where the police have a power of arrest, the FSA may make a request to the police for assistance to arrest the individual for questioning by the FSA (FSA investigators do not have powers of arrest), for example:
- (1) where it appears likely that inviting an individual to attend on a voluntary basis would prejudice an ongoing investigation or risk the destruction of evidence or the dissipation of assets; or
 - (2) where a suspect declines an invitation to attend a voluntary interview.

The procedure the FSA may follow on such occasions in seeking assistance from the police is set out in a Memorandum of Understanding with the Association of Chief Police Officers of England, Wales and Northern Ireland dated 3 August 2005.⁶

Interviews in response to a request from an overseas regulator

⁶ <http://www.fsa.gov.uk/pubs/mou/fsacolp.pdf>

- 4.25 Where the FSA has appointed an investigator in response to a request from an *overseas regulator*, it may, under section 169(7) of the *Act*, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation. However, the FSA may only use this power if it is satisfied that any information obtained by an *overseas regulator* as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the *Act* (section 169(8)).
- 4.26 The factors that the FSA may take into account when deciding whether to make a direction under section 169(7) include the following:
- (1) the complexity of the case;
 - (2) the nature and sensitivity of the information sought;
 - (3) the FSA's own interest in the case;
 - (4) costs, where no Community obligation is involved, and the availability of resources; and
 - (5) the availability of similar assistance to UK authorities in similar circumstances.
- 4.27 Under section 169(9), the FSA is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators*. The statement is set out in *DEPP 7*.

Search and seizure powers

- 4.28 Under section 176 of the *Act*, the FSA has the power to apply to a justice of the peace for a warrant to enter premises where documents or information is held. The circumstances under which the FSA may apply for a search warrant include:
- (1) where a *person* on whom an information requirement has been imposed fails (wholly or in part) to comply with it; or
 - (2) where there are reasonable grounds for believing that if an information requirement were to be imposed, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.
- 4.29 A warrant obtained pursuant to section 176 of the *Act* authorises a police constable or an FSA investigator in the company, and under the supervision of, a police constable, to do the following, amongst other things: to enter and search the premises specified in the warrant and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them.

Preliminary findings letters and preliminary investigation reports

- 4.30 In cases where the FSA proposes to submit an investigation report to the *RDC* with a recommendation for regulatory action, the FSA's usual practice is to send a

preliminary findings letter to the subject of an investigation before the matter is referred to the *RDC*. The letter will normally annex the investigators' preliminary investigation report. Comment will be invited on the contents of the preliminary findings letter and the preliminary investigation report.

- 4.31 The FSA recognises that preliminary findings letters serve a very useful purpose in focussing decision making on the contentious issues in the case. This in turn makes for better quality and more efficient decision making. However, there are exceptional circumstances in which the FSA may decide it is not appropriate to send out a preliminary findings letter. This includes:
- (1) where the subject consents to not receiving a preliminary findings letter; or
 - (2) where it is not practicable to send a preliminary findings letter, for example where there is a need for urgent action in the interests of consumer protection, restoring market confidence or reducing *financial crime* or if the whereabouts of the subject are unknown; or
 - (3) where the FSA believes that no useful purpose would be achieved in sending a preliminary findings letter, for example where it has otherwise already substantially disclosed its case to the subject and the subject has had an opportunity to respond to that case.
- 4.32 In cases where it is sent, the preliminary findings letter will set out the facts which the investigators consider relevant to the matters under investigation (normally, as indicated above, by means of an annexed preliminary investigation report). And it will invite the *person* concerned to confirm that those facts are complete and accurate, or to provide further comment. FSA staff will allow a reasonable period (normally 28 days) for a response to this letter, and will take into account any response received within the period stated in the letter. They are not obliged to take into account any response received outside that period.
- 4.33 Where the FSA has sent a preliminary findings letter and it then decides not to take any further action, the FSA will communicate this decision promptly to the person concerned.

5 Settlement

Settlement and the FSA – an overview

- 5.1 The FSA resolves many enforcement cases by settlement. Early settlement has many potential advantages as it can result, for example, in *consumers* obtaining compensation earlier than would otherwise be the case, the saving of FSA and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. The FSA therefore considers it is in the public interest for matters to settle, and settle early, if possible.
- 5.2 The possibility of settlement does not, however, change the fact that enforcement action is one of the tools available to the FSA to secure our *regulatory objectives*. The FSA seeks to change the behaviour not only of those subject to the immediate action, but also of others who will be alerted to our concerns in a particular area. There is no distinction here between action taken following agreement with the subject of the enforcement action and action resisted by a firm before the *RDC*. In each case, the FSA must be satisfied that its decision is the right one, both in terms of the immediate impact on the subject of the enforcement action but also in respect of any broader message conveyed by the action taken.
- 5.3 Settlements in the FSA context are not the same as ‘out of court’ settlements in the commercial context. An FSA settlement is a regulatory decision, taken by the FSA, the terms of which are accepted by the *firm* or individual concerned. So, when agreeing the terms of a settlement, the FSA will carefully consider its *regulatory objectives* and other relevant matters such as the importance of sending clear, consistent messages through enforcement action, and will only settle in appropriate cases where the agreed terms of the decision result in acceptable regulatory outcomes. Redress to *consumers* who may have been disadvantaged by a *firm’s* misconduct may be particularly important in this respect. Other than in exceptional circumstances, FSA settlements that give rise to the issue of a *final notice* or *supervisory notice* will result in some degree of publicity (see chapter 6), unlike commercial out of court settlements, which are often confidential.
- 5.4 In recognition of the value of early settlement, the FSA operates a scheme to award explicit discounts for early settlement of cases involving financial penalties. Details of the scheme, which applies only to settlement of cases where investigators were appointed on or after 20 October 2005, are set out in *DEPP* 6.7. This chapter provides some commentary on certain practical aspects of the operation of the scheme.
- 5.5 Decisions on settlements and *statutory notices* arising from them are taken by two members of FSA senior management of at least director level, rather than by the *RDC* (*DEPP* refers to these individuals as the ‘*settlement decision makers*’). Full details of the special decision making arrangements for settlements are set out in *DEPP* 5.

When settlement discussions may take place

- 5.6 Settlement discussions between FSA staff and the *person* concerned are possible at any stage of the enforcement process if both parties agree.

- 5.7 The FSA considers that in general, the earlier settlement discussions can take place the better this is likely to be from a public interest perspective. However, the FSA will only engage in such discussions once it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. At the other end of the spectrum, the FSA expects that settlement discussions following a *decision notice* or *second supervisory notice* will be rare.
- 5.8 In the interests of efficiency and effectiveness, the FSA will set clear and challenging timetables for settlement discussions to ensure that they result in a prompt outcome and do not divert resources unnecessarily from progressing a case through the formal process. To this end, the FSA will aim to organise its resources so that the preparation for the formal process continues in parallel with any settlement discussions. The FSA will expect *firms* and others to give it all reasonable assistance in this regard.

The basis of settlement discussions

- 5.9 As described above, the FSA operates special decision-making arrangements under which members of FSA senior management take decisions on FSA settlements. This means that settlement discussions will take place without involving the *RDC*. The FSA would expect to hold any settlement discussions on the basis that neither FSA staff nor the *person* concerned would seek to rely against the other on any admissions or statements made if the matter is considered subsequently by the *RDC* or the *Tribunal*. This will not, however, prevent the FSA from following up, through other means, on any new issues of regulatory concern which come to light during settlement discussions. The *RDC* may be made aware of the fact negotiations are taking place if this is relevant, for example, to an application for an extension of the period for making representations.
- 5.10 If the settlement negotiations result in a proposed settlement of the dispute, FSA staff will put the terms of the proposed settlement in writing and agree them with the *person* concerned. The *settlement decision makers* will then consider the settlement under the procedures set out in *DEPP 5*. A settlement is also likely to result in the giving of *statutory notices* (see [paragraphs 2.37 to 2.39](#)).

Multiple parties and third party rights in enforcement action involving warning and decision notices

- 5.11 Enforcement cases often involve multiple parties, for example a *firm* and individuals in the *firm*. Enforcement action may be appropriate against just the *firm*, just the individuals or both. In some cases, it will not be possible to reach an acceptable settlement unless all parties are able to reach agreement.
- 5.12 Even where action is not taken against connected parties, these parties may have what the *Act* calls ‘third party rights’. Broadly, if any of the reasons contained in a *warning notice* or *decision notice* identifies a *person* (the third party) other than the *person* to whom the notice is given, and in the opinion of the FSA is prejudicial to the third party, a copy of the notice must be given to the third party unless that *person* receives a separate *warning notice* or *decision notice* at the same time. The third party has the right to make representations and ultimately can refer the matter to the *Tribunal*. Any representations made by the third party in response to a *warning notice* or *decision*

notice will be considered by the *settlement decision makers*, who will also decide whether to give the *decision notice* or *final notice*.

- 5.13 In practice, third party rights do not frequently cause undue difficulty for settlement, either because they do not arise at all or because the third party agrees not to exercise such rights.

The settlement discount scheme

- 5.14 The *settlement discount scheme* allows a reduction in a financial penalty that would otherwise be imposed on a *person* according to the stage at which the agreement is reached. Full details of the scheme are set out in *DEPP* 6.7.
- 5.15 Normally, where the outcome is potentially a financial penalty, the FSA will send a letter at an early point in the enforcement process to the subject of the investigation. This is what the FSA refers to as a stage 1 letter.
- 5.16 The scheme does not apply to civil or criminal proceedings brought in the courts, or to *public censure*, *prohibition orders*, withdrawal of *authorisation* or approval or the payment of compensation or redress.
- 5.17 There is no set form for a stage 1 letter though it will always explain the nature of the misconduct, the FSA's view on penalty, and the period within which the FSA expects any settlement discussions to be concluded. In some cases, a draft *statutory notice* setting out the alleged *rule* breaches and the proposed penalty may form part of the letter, to convey the substance of the case team's concerns and reasons for arriving at a particular penalty figure.
- 5.18 The timing of the stage 1 letter will vary from case to case. Sufficient investigative work must have taken place for the FSA to be able to satisfy itself that the settlement is the right regulatory outcome. In many cases, the FSA can send out the stage 1 letter substantially before the *person* concerned is provided with the FSA's preliminary investigation report (see paragraphs 4.30 to 4.33). The latest point the FSA will send a stage 1 letter is when the *person* is provided with the preliminary investigation report.
- 5.19 The FSA considers that 28 days following a stage 1 letter will normally be the 'reasonable opportunity to reach agreement as to the amount of penalty' before the expiry of stage 1 contemplated by *DEPP* 6.7.3. Extensions to this period will be granted in exceptional circumstances only.

Mediation

- 5.20 The FSA is committed to mediating appropriate cases; mediation and the involvement of a neutral mediator may help the FSA to reach an agreement with the *person* subject to enforcement action in circumstances where settlement might not otherwise be achieved or may not be achieved so efficiently and effectively.

- 5.21 Further information about the FSA’s approach to mediation and the mediation process are set out on our web site.⁷

The relevance of settled cases to subsequent action

- 5.22 Decisions recorded in FSA *final notices* or *supervisory notices* will be taken into account in any subsequent case if the later case raises the same or similar issues to those considered by the FSA when it reached its earlier decision. Not to do so would expose the FSA to accusations of arbitrary and inconsistent decision-making. The need to look at earlier cases applies irrespective of whether the decisions were reached following settlement or consideration by the *RDC* or the *Tribunal*. This reflects the fact that a person’s agreement to the action proposed by the FSA in the earlier case would not have relieved the FSA of the obligation to ensure that the final decision was the right regulatory outcome, both for the person concerned and more generally.
- 5.23 The FSA recognises the importance of consistency in its decision-making and that it must consider the approach previously taken to, say, the application of a particular rule or *Principle* in a given context. This applies equally to consideration by the *RDC* or by the *settlement decision makers* when they look at action taken by the FSA in earlier, similar, cases. This is not to say that the FSA cannot take a different view to that taken in the earlier case: the facts of two enforcement cases are very seldom identical, and it is also important that the FSA is able to respond to the demands of a changing and principles-based regulatory environment. But any decision to depart from the earlier approach will be made only after careful consideration of the reasons for doing so.

⁷ <http://www.fsa.gov.uk/pages/doing/regulated/law/focus/mediation.shtml>

6 Publicity

Publicity during FSA investigations

- 6.1 The FSA will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except as described in other sections of this chapter. The following paragraphs deal with the exceptional circumstances in which the FSA may make a public announcement that it is or is not investigating a particular matter.
- 6.2 Where the matter in question has occurred in the context of a *takeover bid*, and the following circumstances apply, the FSA may make a public announcement that it is not investigating, and does not propose to investigate, the matter. Those circumstances are where the FSA:
- (1) has not appointed, and does not propose to appoint, investigators; and
 - (2) considers (following discussion with the *Takeover Panel*) that such an announcement is appropriate in the interests of preventing or eliminating public uncertainty, speculation or rumour.
- 6.3 Where it is investigating any matter, the FSA will, in exceptional circumstances, make a public announcement that it is doing so if it considers such an announcement is desirable to:
- (1) maintain public confidence in the *financial system* or the market; or
 - (2) protect *consumers* or investors; or
 - (3) prevent widespread malpractice; or
 - (4) help the investigation itself, for example by bringing forward witnesses; or
 - (5) maintain the smooth operation of the market.
- In deciding whether to make an announcement, the FSA will consider the potential prejudice that it believes may be caused to any *persons* who are, or who are likely to be, a subject of the investigation.
- 6.4 The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for the FSA to make public the fact of its investigation in order to allay concern, or contain the speculation or rumour. Where the matter in question relates to a *takeover bid*, the FSA will discuss any announcement beforehand with the *Takeover Panel*. Any announcement will be subject to the restriction on disclosure of *confidential information* in section 348 of the *Act*.
- 6.5 There will also be cases where publicity is unavoidable. For example, investigations into suspected criminal offences may often lead the FSA into making enquiries amongst the general public which might attract publicity.

- 6.6 The FSA will not normally publish details of the information found or conclusions reached during its investigations. In many cases, statutory restrictions on the disclosure of information obtained by the FSA in the course of exercising its functions are likely to prevent publication (see section 348 of the *Act*). In exceptional circumstances, and where it is not prevented from doing so, the FSA may publish details. Circumstances in which it may do so include those where the fact that the FSA is investigating has been made public, by the FSA or otherwise, and the FSA subsequently concludes that the concerns that prompted the investigation were unwarranted. This is particularly so if the *firm* under investigation wishes the FSA to clarify the matter.

Publicity during, or upon the conclusion of regulatory action

- 6.7 For both *supervisory notices* (as defined in section 395(13)) which have taken effect⁸ and *final notices*, section 391 of the *Act* requires the FSA to publish, in such manner as it considers appropriate, such information about the matter to which the notice relates as it considers appropriate. However, section 391 provides that the FSA cannot publish information if publication of it would, in its opinion, be unfair to the *person* with respect to whom the action was taken or prejudicial to *consumers*.

Final notices

- 6.8 The FSA will consider the circumstances of each case, but will ordinarily publicise enforcement action where this has led to the issue of a *final notice*. Publication will generally include placing the notice on the FSA web site and this will often be accompanied by a press release. The FSA will also consider what information about the matter should be included on the *FSA Register*. Additional guidance on the FSA's approach to the publication of information on the *FSA Register* in certain specific types of cases is set out at the end of this chapter.
- 6.9 However, as required by the *Act* (see paragraph 6.7 above), the FSA will not publish information if publication of it would, in its opinion, be unfair to the *person* in respect of whom the action is taken or prejudicial to the interests of *consumers*. It may make that decision where, for example, publication could damage market confidence or undermine market integrity in a way that could be damaging to the interests of *consumers*.
- 6.10 Publishing *final notices* is important to ensure the transparency of FSA decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. The FSA will review *final notices* and related press releases that are published on the FSA's web site after a period of six years. The FSA will determine at that time whether continued publication is appropriate, or whether notices and publicity should be removed or amended.

⁸ Section 53(2) and section 391(8) of the *Act* define when a variation of permission under a supervisory notice takes effect

Supervisory notices varying a firm's Part IV permission on the FSA's own initiative (see chapter 8 of this guide)

- 6.11 Where the FSA is using its *own-initiative power* to vary a *firm's Part IV permission* in support of its supervisory function, and the variation does not bring about a fundamental change in the *firm's Part IV permission* (see *DEPP 2.5.8G*), the FSA will not normally publish the *supervisory notice* where this would disclose confidential information about the individual *firm* or would prejudice *consumers'* interests. However, the FSA will amend the *FSA Register* to reflect a *firm's* actual *Part IV permission* following any variation.
- 6.12 However, publishing fundamental variations of *Part IV permission* (and interventions), and maintaining an accurate public record, are important elements of the FSA's approach to its *consumer* protection objective. The FSA will always aim to balance both the interests of *consumers* and the possibility of unfairness to the *person* subject to the FSA's action. The FSA will publish relevant details of fundamental variations of *Part IV permission* and interventions imposed on *firms*. But it will use its discretion not to do so if it considers this would best serve the interests of the *firm's* existing customers. Publication will generally include placing the notice on the FSA web site and this may be accompanied by a press release. As with *final notices*, *supervisory notices* and related press releases that are published on the FSA's web site will be reviewed after a period of six years. The FSA will determine at that time whether continued publication is appropriate, or whether notices and related press releases should be removed or amended.

Directions against ECA providers

- 6.13 This is discussed in chapter 17 of this guide.

Publicity in RDC cases

- 6.14 The Chairman of the *RDC*, or his relevant Deputy, will approve the contents of press releases to be published by the FSA in cases in which the decision to take action was made by the *RDC*, unless the *RDC's* decision is superseded by a decision of the *Tribunal*.

Publicity during, or upon the conclusion of civil action

- 6.15 Civil court proceedings nearly always take place in public from the time they begin. Therefore, civil proceedings for an *injunction* (see chapter 10) or a restitution order (see chapter 11), for example, will often be public as soon as they start.
- 6.16 The FSA considers it generally appropriate to publish details of its successful applications to the court for civil remedies including *injunctions* or restitution orders. For example, where the court has ordered an *injunction* to prohibit further illegal *regulated activity*, the FSA thinks it is appropriate to publicise this to tell *consumers* of the position and help them avoid dealing with the *person* who is the subject of the *injunction*. Similarly, a restitution order may be publicised to protect and inform *consumers* and maintain market confidence. However, there may be circumstances when the FSA decides not to publicise, or not to do this immediately. These circumstances might, for example, be where publication could damage confidence in

the *financial system* or undermine market integrity in a way that would be prejudicial to the interests of *consumers*.

Publicity during, or upon the conclusion of criminal action (see chapter 12)

- 6.17 Like civil proceedings, criminal court proceedings nearly always take place in public from the time they begin. However, the FSA will always be very careful to ensure that any FSA publicity does not prejudice the fairness of any subsequent trial. The FSA will normally publicise the outcome of public hearings in criminal prosecutions.

Behaviour in the context of takeover bid

- 6.18 Where the behaviour to which a *final notice*, civil action, or criminal action relates has occurred in the context of a *takeover bid*, the FSA will consult the *Takeover Panel* over the timing of publication if the FSA believes that publication may affect the timetable or outcome of that bid, and will give due weight to the *Takeover Panel's* views.

The FSA register: publication of prohibitions of individuals (see chapter 9)

- 6.19 Once the decision to make a *prohibition order* is no longer open to review, the FSA will consider what additional information about the circumstances of the *prohibition order* to include on the *FSA Register*. The FSA will balance any possible prejudice to the individual concerned against the interests of *consumer* protection. The FSA's normal approach to maintaining information about a *prohibition order* on the *FSA Register* is as follows:

- (1) The FSA will maintain an entry on the *FSA Register* while a *prohibition order* is in effect. If the FSA grants an application to vary the order, it will make a note of the variation on the *FSA Register*.
- (2) Where the FSA grants an application to revoke a *prohibition order*, it will make a note on the *FSA Register* that the order has been revoked giving reasons for the revocation. The availability to *firms* and *consumers* of a full record of FSA action taken in relation to an individual's fitness and propriety will help it in furthering its *regulatory objectives*. In particular, it will help with protecting *consumers* and the maintaining of confidence in the *financial system*.
- (3) The FSA will maintain an annotated record of revoked *prohibition orders* for six years from the date of the revocation after which time it will remove the record from the *FSA Register*.

The FSA register: publication of disqualifications of auditors and actuaries (see chapter 15)

- 6.20 To help it fulfil its *regulatory objectives* of protecting *consumers* and promoting public awareness, the FSA will keep on the *FSA Register* a record of *firms* or individual auditors or actuaries who have been the subject of disqualification orders.

The FSA register: publication of disapplication orders against members of the professions (see chapter 16)

- 6.21 In general, the FSA considers that publishing relevant information about orders to disapply an exemption in respect of a member of a *designated professional body* will be in the interests of clients and *consumers*. The FSA will consider what additional information about the circumstances of the order to include on the record maintained on the *FSA Register* taking into account any prejudice to the *person* concerned and the interests of *consumer* protection.
- 6.22 The FSA's normal approach to maintaining information about a disapplication order on the *FSA Register* is as follows.
- (1) While a disapplication order is in effect, the FSA will maintain a record of the order on the *FSA Register*. If the FSA grants an application to vary the order, a note of the variation will be made against the relevant entry on the *FSA Register*.
 - (2) The FSA's policy in relation to section 347(4) of the *Act* is that where an application to revoke an order is granted, it will make a note on the *FSA Register* saying that the order has been revoked giving reasons for its revocation. Having a full record of action the FSA has taken against *persons* granted an exemption under section 327 of the *Act* available will help the FSA to fulfil its *regulatory objectives* of protecting *consumers* and maintaining confidence in the *financial system*.
 - (3) This is why the FSA will maintain the annotated record of the disapplication order for a period of six years from the date of the revocation of the order, after which period the record will be removed from the record on the *FSA Register*.

7 Financial penalties and public censures

The FSA's use of sanctions

- 7.1 Financial penalties and *public censures* are important regulatory tools. However, they are not the only tools available to the FSA, and there will be many instances of non-compliance which the FSA considers it appropriate to address without the use of financial penalties or *public censures*. Having said that, the effective and proportionate use of the FSA's powers to enforce the requirements of the *Act*, the *rules* and the Statements of Principle for Approved Persons will play an important role in the FSA's pursuit of its *regulatory objectives*. Imposing financial penalties and *public censures* shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter *financial crime*. An increased public awareness of regulatory standards also contributes to the protection of *consumers*.
- 7.2 The FSA has the following powers to impose a financial penalty and to publish a *public censure*.
- (1) It may publish a statement:
 - (a) against an *approved person* under section 66 of the *Act*;
 - (b) against an *issuer* under section 87M of the *Act*;
 - (c) against a *sponsor* under section 89 of the *Act*;
 - (d) where there has been a contravention of the Part VI rules, under section 91 of the *Act*;
 - (e) where there has been *market abuse*, against a *person* under section 123 of the *Act*; and
 - (f) against a *firm* under section 205 of the *Act*.
 - (2) It may impose a financial penalty:
 - (a) on an *approved person*, under section 66 of the *Act*;
 - (b) where there has been a contravention of the Part 6 rules, under section 91 of the *Act*;
 - (c) where there has been *market abuse*, on any *person*, under section 123 of the *Act*; and
 - (d) on a *firm*, under section 206 of the *Act*.

Alternatives to financial penalties and public censures

- 7.3 The FSA also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:

- (1) where a *firm's* continuing ability to meet the *threshold conditions* or where an *approved person's* fitness and propriety to perform the *controlled functions* to which his approval relates are called into question:
 - (a) varying and/or cancelling of *permission* and the withdrawal of a *firm's* authorisation (see chapter 8); and
 - (b) the withdrawal of an individual's status as an *approved person* and/or the prohibition of an individual from performing a specified function in relation to a *regulated activity* (see chapter 9).
- (2) where the smooth operation of the market is, or may be, temporarily jeopardised or where protecting investors so requires, the FSA may suspend, with effect from such time as it may determine, the *listing* of any *securities* at any time and in such circumstances as it thinks fit (whether or not at the request of the *issuer* or its *sponsor* on its behalf);
- (3) when the FSA is satisfied there are special circumstances which preclude normal regular dealings in any *listed securities*, it may cancel the *listing* of any *security*;
- (4) where there are reasonable grounds to suspect non compliance with the *disclosure rules*, the FSA may require the suspension of trading of a financial instrument with effect from such time as it may determine; and
- (5) where there are reasonable grounds for suspecting that a provision of Part VI of the *Act*, a provision contained in the *prospectus rules*, or any other provision made in accordance with the *Prospectus Directive* has been infringed, the FSA may:
 - (a) suspend or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
 - (b) suspend or prohibit admission of transferable securities to trading on a regulated market as set out in section 87L of the *Act*.

FSA's statements of policy

- 7.4 The FSA's statement of policy in relation to the imposition of financial penalties is set out in *DEPP* 6.2 (Deciding whether to take action), *DEPP* 6.3 (Penalties for market abuse) and *DEPP* 6.4 (Financial penalty or public censure). The FSA's statement of policy in relation to the amount of a financial penalty is set out in *DEPP* 6.5.

Apportionment of financial penalties

- 7.5 In a case where the FSA is proposing to impose a financial penalty on a *person* for two or more separate and distinct areas of misconduct, the FSA will consider whether it is appropriate to identify in the *final notice* how the penalty is apportioned between those separate and distinct areas. Apportionment will not however generally be appropriate in other cases.

Payment of financial penalties

- 7.6 Financial penalties must be paid within the period (usually 14 days) that is stated on the FSA's *final notice*.
- 7.7 A *person* may ask the FSA to allow them to pay a financial penalty by instalments. However, the FSA will consider agreeing to payment of a financial penalty by instalments only where there is verifiable evidence of serious financial hardship or financial difficulties if the *person* was required to pay the full payment in a single instalment. This reflects the fact that the purpose of a penalty is not to render a *person* insolvent or to threaten solvency. The FSA will determine the appropriate level and number of instalments having regard to the overall circumstances of the case. However, in such cases, the full payment of the penalty will generally have to be made within one year from the date of the *final notice*.
- 7.8 Chapter 6 of the General Provisions module of the FSA Handbook contains rules prohibiting a *firm* or *member* from entering into, arranging, claiming on or making a payment under a *contract of insurance* that is intended to have, or has, the effect of indemnifying any *person* against a financial penalty.
- 7.9 Rule 1.5.33 in the FSA's Prudential Sourcebook for Insurers prohibits a *long-term insurer* (including a *firm* qualifying for *authorisation* under Schedule 3 or 4 to the *Act*), which is not a mutual, from paying a financial penalty from a long-term insurance fund.

Private warnings

- 7.10 In certain cases, despite concerns about a *person's* behaviour or evidence of a *rule* breach, the FSA may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial penalty or *public censure*. This is consistent with the FSA's risk-based approach to enforcement. In such cases, the FSA may give a private warning to make the *person* aware that they came close to being subject to formal action.
- 7.11 Private warnings are a non-statutory tool. Fundamentally they are no different to any other FSA communication which criticises or expresses concern about a *person's* conduct. But private warnings are a more serious form of reprimand than would usually be made in the course of ongoing supervisory correspondence. A private warning requires that the FSA identifies and explains its concerns about a *person's* conduct and/or procedures, and tells the subject of the warning that the FSA has seriously considered formal steps to impose a penalty or censure. They are primarily used by the FSA as an enforcement tool, but they may also be used by other parts of the FSA.
- 7.12 Typically, the FSA might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the person has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to lead to a private warning rather than more serious action. The FSA will take into account all the circumstances of the case before deciding whether a private warning is appropriate. Many of the criteria

identified in *DEPP 6* for determining whether the FSA should take formal action for a financial penalty or *public censure* will also be relevant to a decision about whether to give a private warning.

- 7.13 Generally, the FSA would expect to use private warnings in the context of *firms* and *approved persons*. However, the FSA may also issue private warnings in circumstances where the *persons* involved may not necessarily be authorised or approved. For example, private warnings may be issued in potential cases of *market abuse*; cases where the FSA has considered making a *prohibition order* or a disapplication order; or cases involving breaches of provisions imposed by or under Part VI of the *Act* (Official Listing).
- 7.14 In each case, the FSA will consider the likely impact of a private warning on the recipient and whether any risk that *person* poses to the *regulatory objectives* requires the FSA to take more serious action. Equally, where the FSA gives a private warning to an *approved person*, the FSA will consider whether it would be desirable and appropriate to inform the *approved person's firm* (or employer, if different) of the conduct giving rise to the warning and the FSA's response.
- 7.15 A private warning is not intended to be a determination by the FSA as to whether the recipient has breached the FSA's rules. However, private warnings, together with any comments received in response, will form part of the *person's* compliance history. In this sense they are no different to other FSA correspondence, but the weight the FSA attaches to a private warning is likely to be greater. They may therefore influence the FSA's decision whether to commence action for a penalty or censure in relation to future breaches. Where action is commenced in those circumstances, earlier private warnings will not be relied upon in determining whether a breach has taken place. However, if a *person* has previously been told about the FSA's concerns in relation to an issue, either by means of a private warning or in supervisory correspondence, then this can be an aggravating factor for the level of a penalty imposed in respect of a similar issue that is the subject of later FSA action.
- 7.16 Where the FSA is assessing the relevance of private warnings in determining whether to commence action for a financial penalty or a *public censure*, the age of a private warning will be taken into consideration. However, a long-standing private warning may still be relevant.
- 7.17 Private warnings may be considered cumulatively, although they relate to separate areas of a *firm's* or other *person's* business, where the concerns which gave rise to those warnings are considered to be indicative of a *person's* compliance culture. Similarly, private warnings issued to different subsidiaries of the same parent company may be considered cumulatively where the concerns which gave rise to those warnings relate to a common management team.

How a person will know they are receiving a private warning

- 7.18 It will be obvious from the terms of any letter written by the FSA whether it is intended to constitute a private warning. In particular, a warning letter will describe itself as a private warning and will refer to this chapter to explain the consequences of receiving it for the person.

The procedure for giving a private warning

- 7.19 The FSA's normal practice is to follow a "minded-to" procedure before deciding whether to give a private warning. This means that it will notify in writing the intended recipient of the warning that it has concerns about their conduct and inform them that the FSA proposes to give a private warning. The recipient will then have an opportunity to comment on our understanding of the circumstances giving rise to the FSA's concerns and whether a private warning is appropriate. The FSA will carefully consider any response to its initial letter before it decides whether to give the private warning. The decision will be taken by an FSA head of department or a more senior member of FSA staff.

8 Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms

The FSA's general approach to exercising the own-initiative power under section 45 of the Act to vary a firm's Part IV permission: the FSA's policy

- 8.1 When it considers how it should deal with a concern about a *firm*, the FSA will have regard to its *regulatory objectives* and the range of regulatory tools that are available to it. It will also have regard to:
- (1) the responsibilities of a *firm's* management to deal with concerns about the *firm* or about the way its business is being or has been run; and
 - (2) the principle that a restriction imposed on a *firm* should be proportionate to the objectives the FSA is seeking to achieve.
- 8.2 The FSA will proceed on the basis that a *firm* (together with its directors and senior management) is primarily responsible for ensuring the *firm* conducts its business in compliance with the *Act*, the *Principles* and other *rules*. In the context of its enforcement activities, the FSA will take formal action affecting the conduct of a *firm's* commercial business only if that business is being or has been conducted in such a way that the FSA judges it necessary to act in order to secure compliance with those requirements and/or address the consequences of non-compliance. In the context of its supervision activities, the FSA may take formal action in the circumstances described in *SUP 7.3*.
- 8.3 In the course of its supervision and monitoring of a *firm*, the FSA may make it clear that it expects the *firm* to take certain steps to ensure it continues to meet regulatory requirements. These steps might include the correction of financial, conduct of business or control weaknesses. The FSA envisages that *firms* will normally take these steps without the need for it to use its *own-initiative powers*. In the vast majority of cases the FSA will seek to agree with a *firm* those steps the *firm* must take to address the FSA's concerns.
- 8.4 Where the FSA considers that it cannot rely on a *firm* taking effective action, or if the *firm* fails to comply with the FSA's reasonable request for it to take remedial steps, the FSA will consider exercising its formal powers under section 45 of the *Act* to vary a *firm's* permission. This may include instances where the FSA is concerned that the consequences of a *firm* not taking the desired steps may be serious and:
- (1) the *firm* appears unwilling or unable to take adequate and timely steps to address the FSA's concerns; or
 - (2) the imposition of a formal statutory requirement may assist the *firm* to take steps which would otherwise be difficult because of legal obligations owed to third parties.
- 8.5 Circumstances in which the FSA will consider varying a *firm's Part IV permission* in support of its enforcement function include those where it has serious concerns about

a *firm*, or about the way its business is being or has been conducted. Examples of these circumstances are where:

- (1) in relation to the grounds for exercising the power under section 45(1)(a) of the *Act*, the firm appears to be failing, or appears likely to fail, to satisfy the *threshold conditions* relating to one or more, or all, of its *regulated activities*, because for instance:
 - (a) the *firm's* material and financial resources appear inadequate for the scale or type of *regulated activity* it is carrying on, for example, where it has failed to maintain professional indemnity insurance; or
 - (b) the *firm* appears not to be a fit and proper *person* to carry on a *regulated activity* because:
 - (i) it has not conducted its business in compliance with high standards which may include putting itself at risk of being used for the purposes of *financial crime* or being otherwise involved in such crime;
 - (ii) it has not been managed competently and prudently and has not exercised due skill, care, and diligence in carrying on one or more, or all, of its *regulated activities*;
 - (iii) it has breached requirements imposed on it by or under the *Act* (including the *Principles* and the *rules*), for example in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;
- (2) in relation to the grounds for exercising the power under section 45(1)(c), it appears that the interests of *consumers* are at risk because the *firm* appears to have breached any of *Principles* 6 to 10 of the FSA's *Principles* (see *PRIN* 2.1.1R) to such an extent that it is desirable that *limitations*, restrictions, or prohibitions are placed on the *firm's regulated activity*.

Use of the own-initiative power in urgent cases

- 8.6 The FSA may impose a variation of permission so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its *own-initiative power*.
- 8.7 The FSA will consider exercising its *own-initiative power* as a matter of urgency where:
- (1) the information available to it indicates serious concerns about the *firm* or its business that need to be addressed immediately; and

- (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *firm* in order to ensure the *firm* addresses these concerns.

8.8 It is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of the following characteristics:

- (1) information indicating significant loss, risk of loss or other adverse effects for *consumers*, where action is necessary to protect their interests;
- (2) information indicating that a *firm's* conduct has put it at risk of being used for the purposes of *financial crime*, or of being otherwise involved in crime;
- (3) evidence that the *firm* has submitted to the FSA inaccurate or misleading information so that the FSA becomes seriously concerned about the *firm's* ability to meet its regulatory obligations;
- (4) circumstances suggesting a serious problem within a *firm* or with a *firm's* *controllers* that calls into question the *firm's* ability to continue to meet the *threshold conditions*.

8.9 The FSA will consider the full circumstances of each case when it decides whether an urgent variation of *Part IV permission* is appropriate. The following is a non-exhaustive list of factors the FSA may consider.

- (1) The extent of any loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the FSA's urgent exercise of *own-initiative powers* will be appropriate, to protect the *consumers'* interests.
- (2) The extent to which *customer* assets appear to be at risk. Urgent exercise of the FSA's *own-initiative power* may be appropriate where the information available to the FSA suggests that *customer* assets held by, or to the order of, the *firm* may be at risk.
- (3) The nature and extent of any false or inaccurate information provided by the *firm*. Whether false or inaccurate information warrants the FSA's urgent exercise of its *own-initiative powers* will depend on matters such as:
 - (a) the impact of the information on the FSA's view of the *firm's* compliance with the regulatory requirements to which it is subject, the *firm's* suitability to conduct *regulated activities*, or the likelihood that the *firm's* business may be being used in connection with *financial crime*;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the FSA, rather than through inadvertence;

- (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *firm's* actual or potential *customers*.
- (4) The seriousness of any suspected breach of the requirements of the legislation or the *rules* and the steps that need to be taken to correct that breach.
 - (5) The financial resources of the *firm*. Serious concerns may arise where it appears the *firm* may be required to pay significant amounts of compensation to *consumers*. In those cases, the extent to which the *firm* has the financial resources to do so will affect the FSA's decision about whether exercise of the FSA's *own-initiative power* is appropriate to preserve the *firm's* assets, in the interests of the *consumers*. The FSA will take account of any insurance cover held by the *firm*. It will also consider the likelihood of the *firm's* assets being dissipated without the FSA's intervention, and whether the exercise of the FSA's power to petition for the winding up of the *firm* is more appropriate than the use of its *own-initiative power* (see [chapter 13](#) of this guide).
 - (6) The risk that the *firm's* business may be used or has been used to facilitate *financial crime*, including *money laundering*. The information available to the FSA, including information supplied by other law enforcement agencies, may suggest the *firm* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, and the *firm* appears to be failing to meet the *threshold conditions* or has put its *customers'* interests at risk, the FSA's urgent use of its *own-initiative powers* may well be appropriate.
 - (7) The risk that the *firm's* conduct or business presents to the *financial system* and to confidence in the *financial system*.
 - (8) The *firm's* conduct. The FSA will take into account:
 - (a) whether the *firm* identified the issue (and if so whether this was by chance or as a result of the *firm's* normal *controls* and monitoring);
 - (b) whether the *firm* brought the issue promptly to the FSA's attention;
 - (c) the *firm's* past history, management ethos and compliance culture;
 - (d) steps that the *firm* has taken or is taking to address the issue.
 - (9) The impact that use of the FSA's *own-initiative powers* will have on the *firm's* business and on its *customers*. The FSA will take into account the (sometimes significant) impact that a variation of *permission* may have on a *firm's* business and on its *customers'* interests, including the effect of variation on the *firm's* reputation and on market confidence. The FSA will need to be satisfied that the impact of any use of the *own-initiative power* is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its *regulatory objectives*.

Limitations and requirements that the FSA may impose when exercising its section 45 power

- 8.10 When varying *Part IV permission* at its own-initiative under its section 45 power (or section 47 power), the FSA may include in the *Part IV permission* as varied any *limitation* or restriction which it could have imposed if a fresh *permission* were being given in response to an application under section 40 of the *Act*.
- 8.11 Examples of the *limitations* that the FSA may impose when exercising its *own-initiative power* in support of its enforcement function include *limitations* on: the number, or category, of *customers* that a *firm* can deal with; the number of specified investments that a *firm* can deal in; and the activities of the *firm* so that they fall within specific regulatory regimes (for example, so that *oil market participants*, *locals*, *corporate finance advisory firms* and service providers are permitted only to carry on those types of activities).
- 8.12 Examples of *requirements* that the FSA may consider including in a *firm's Part IV permission* when exercising its *own-initiative power* in support of its enforcement function are: a *requirement* not to take on new business; a *requirement* not to hold or control *client money*; a *requirement* not to trade in certain categories of *specified investment*; a *requirement* that prohibits the disposal of, or other dealing with, any of the *firm's* assets (whether in the United Kingdom or elsewhere) or restricts those disposals or dealings; and a *requirement* that all or any of the *firm's* assets, or all or any assets belonging to investors but held by the *firm* to its order, must be transferred to a *trustee* approved by the FSA.

Exercising the power to cancel Part IV permission on its own initiative under section 45 of the Act: the FSA's policy

- 8.13 The FSA will consider cancelling a *firm's Part IV permission* using its *own-initiative powers* contained in sections 45 and 47 respectively of the *Act* in two main circumstances:
- (1) where the FSA has very serious concerns about a *firm*, or the way its business is or has been conducted;
 - (2) where the *firm's regulated activities* have come to an end and it has not applied for *cancellation* of its *Part IV permission*.
- 8.14 The grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the *Act* are set out in section 45(1). Examples of the types of circumstances in which the FSA may cancel a *firm's Part IV permission* include:
- (1) non-compliance with a *Financial Ombudsman Service* award against the *firm*;
 - (2) material non-disclosure in an application for authorisation or approval or material non-notification after authorisation or approval has been granted. The information which is the subject of the non-disclosure or non-notification may also be grounds for cancellation;

- (3) failure to have or maintain professional indemnity insurance, or other adequate financial resources, or a failure to comply with regulatory capital requirements;
- (4) non-submission of regulatory returns, or repeated failure to submit such returns in a timely fashion;
- (5) non-payment of FSA fees or repeated failure to pay FSA fees except under threat of enforcement action; and
- (6) failure to provide the FSA with valid contact details or failure to maintain the details provided, such that the FSA is unable to communicate with the *firm*.

8.15 Depending on the circumstances, the FSA may need to consider whether it should first use its *own-initiative powers* to vary a *firm's Part IV permission* before going on to cancel it. Amongst other circumstances, the FSA may use this power where it considers it needs to take immediate action against a *firm* because of the urgency and seriousness of the situation.

8.16 Where the situation appears so urgent and serious that the *firm* should immediately cease to carry on all *regulated activities*, the FSA may first vary the *firm's Part IV permission* so that there is no longer any *regulated activity* for which the *firm* has a *Part IV permission*. If it does this, the FSA will then have a duty to cancel the *firm's Part IV permission* - once it is satisfied that it is no longer necessary to keep the *Part IV permission* in force.

8.17 However, where the FSA has cancelled a *firm's Part IV permission*, it is required by section 33 of the *Act* to go on to give a direction withdrawing the *firm's authorisation*. Accordingly, the FSA may decide to keep a *firm's Part IV permission* in force to maintain the *firm's* status as an *authorised person* and enable it (the FSA) to monitor the *firm's* activities. An example is where the FSA needs to supervise an orderly winding down of the *firm's* regulated business (see *SUP* 6.4.22 (When will the FSA grant an application for cancellation of *permission*)). Alternatively, the FSA may decide to keep a *firm's Part IV permission* in force to maintain the *firm's* status as an *authorised person* to use administrative enforcement powers against the *firm*. This may be, for example, where the FSA proposes to impose a financial penalty on the *firm* under section 206 of the *Act*.

Exercising the power under section 47 to vary or cancel a firm's part IV permission in support of an overseas regulator: the FSA's policy

8.18 The FSA has a power under section 47 to vary, or alternatively cancel, a *firm's Part IV permission*, in support of an *overseas regulator*. Section 47(3), (4) and (5) set out matters the FSA may, or must, take into account when it considers whether to exercise these powers. The circumstances in which the FSA may consider varying a *firm's Part IV permission* in support of an *overseas regulator* depend on whether the FSA is required to consider exercising the power in order to comply with a Community obligation. This reflects the fact that under section 47, if a relevant *overseas regulator* acting under prescribed provisions has made a request to the FSA

for the exercise of its *own-initiative power* to vary or cancel a *Part IV permission*, the FSA must consider whether it must exercise the power in order to comply with a Community obligation.

- 8.19 Relevant Community obligations which the FSA may need to consider include those under the Banking Consolidation Directive, the Insurance Directives, the Investment Services Directive/Markets in Financial Instruments Directive; and the Insurance Mediation Directive. Each of these Directives imposes general obligations on the relevant *EEA competent authority* to cooperate and collaborate closely in discharging their functions under the Directives.
- 8.20 The FSA views this cooperation and collaboration as essential to effective regulation of the international market in financial services. It will therefore exercise its *own-initiative power* wherever:
- (1) an *EEA Competent authority* requests it to do so; and
 - (2) it is satisfied that the use of the power is appropriate (having regard to the considerations set out at [paragraphs 8.1 to 8.5](#)) to enforce effectively the regulatory requirements imposed under the *Single Market Directives* or other Community obligations.
- 8.21 The FSA will actively consider any other requests for assistance from relevant *overseas regulators* (that is requests in relation to which it is not obliged to act under a Community obligation). Section 47(4), which sets out matters the FSA may take into account when it decides whether to vary or cancel a *firm's Part IV permission* in support of the *overseas regulator*, applies in these circumstances.
- 8.22 Where section 47(4) applies and the FSA is considering whether to vary a *firm's Part IV permission*, it may take account of all the factors described in [paragraphs 8.18 to 8.25](#) but may give particular weight to:
- (1) the matters set out in paragraphs (c) and (d) of section 47(4) (seriousness, importance to persons in the United Kingdom, and the public interest); and
 - (2) any specific request made to it by the *overseas regulator* to vary, rather than cancel, the *firm's Part IV permission*.
- 8.23 The FSA will give careful consideration to whether the relevant authority's concerns would provide grounds for the FSA to exercise its *own-initiative power* to vary or cancel if they related to a UK *firm*. It is not necessary for the FSA to be satisfied that the overseas provisions being enforced mirror precisely those which apply to UK *firms*. However, the FSA will not assist in the enforcement of regulatory requirements or other provisions that appear to extend significantly beyond the purposes of *UK regulatory provisions*.
- 8.24 Similarly, the FSA will not need to be satisfied that precisely the same assistance would be provided to the United Kingdom in precisely the same situation. However, it will wish to be confident that the relevant authorities in the jurisdiction concerned would have powers available to them to provide broadly similar assistance in aid of

UK authorities, and would be willing properly to consider exercising those powers. The FSA may decide, under section 47(5), not to exercise its *own-initiative power* to vary or cancel in response to a request unless the regulator concerned undertakes to make whatever contribution towards the cost of its exercise the FSA considers appropriate.

- 8.25 [Paragraphs 8.10 and 8.12](#) set out some example of *limitations* and *requirements* the FSA may impose when exercising its section 47 power to vary *a firm's Part IV permission*.

The FSA's policy on exercising its power of intervention against incoming firms under section 196 of the Act

- 8.26 The FSA adopts a similar approach to the exercise of its *power of intervention* under section 196 as it does to its *own-initiative powers* to vary *Part IV permission*, but with suitable modification for the differences in the statutory grounds for exercising the powers. Consequently the factors and considerations set out in paragraphs [8.1 to 8.12](#) and [8.18 to 8.25](#) may also be relevant when the FSA is considering regulatory concerns about *incoming firms*.
- 8.27 Save in urgent cases, the FSA will seek, and take account of, the views of the *firm's Home State regulator* when it is considering action against an *incoming firm*.

9 Prohibition Orders and withdrawal of approval

Introduction

- 9.1 The FSA's power under section 56 of the *Act* to prohibit individuals who are not fit and proper from carrying out functions in relation to *regulated activities* helps the FSA to work towards achieving its *regulatory objectives*. The FSA may exercise this power to make a *prohibition order* where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to *regulated activities*, or to restrict the functions which he may perform.
- 9.2 The FSA's effective use of the power under section 63 of the *Act* to withdraw approval from an *approved person* will also help ensure high standards of regulatory conduct by preventing an *approved person* from continuing to perform the *controlled function* to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an *approved person*, in addition to withdrawing their approval.

The FSA's general policy in this area

- 9.3 In deciding whether to make a *prohibition order* and/or, in the case of an *approved person*, to withdraw its approval, the FSA will consider all the relevant circumstances including whether other enforcement action should be taken or has been taken already against that individual by the FSA. As is noted below, in some cases the FSA may take other enforcement action against the individual in addition to seeking a *prohibition order* and/or withdrawing its approval. The FSA will also consider whether enforcement action has been taken against the individual by other enforcement agencies or *designated professional bodies*.
- 9.4 The FSA has the power to make a range of *prohibition orders* depending on the circumstances of each case and the range of *regulated activities* to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of *regulated activity*, or it may limit the *prohibition order* to specific functions in relation to specific *regulated activities*. The FSA may also make an order prohibiting an individual from being employed by a particular *firm*, type of *firm* or any *firm*.
- 9.5 The scope of a *prohibition order* will depend on the range of functions which the individual concerned performs in relation to *regulated activities*, the reasons why he is not fit and proper and the severity of risk which he poses to *consumers* or the market generally.
- 9.6 Where the FSA issues a *prohibition order*, it may indicate in the *final notice* that it would be minded to revoke the order on the application of the individual in the future, in the absence of new evidence that the individual is not fit and proper. If the FSA gives such an indication, it will specify the number of years after which it would be minded to revoke or vary the prohibition on an application. However, the FSA will only adopt this approach in cases where it considers it appropriate in all the

circumstances. In deciding whether to adopt this approach, the factors the FSA may take into account include, but are not limited to, where appropriate, the factors at [paragraphs 9.9 and at 9.17](#). The FSA would not be obliged to revoke an order after the specified period even where it gave such an indication. Further, if an individual's *prohibition order* is revoked, he would still have to satisfy the FSA as to his fitness for a particular role in relation to any future application for approval to perform a *controlled function*.

- 9.7 [Paragraphs 9.8 to 9.14](#) set out additional guidance on the FSA's approach to making *prohibition orders* against *approved persons* and/or withdrawing such persons' approvals. [Paragraphs 9.17 to 9.18](#) set out additional guidance on the FSA's approach to making *prohibition orders* against other individuals.

Prohibition orders and withdrawal of approval - approved persons

- 9.8 When the FSA has concerns about the fitness and propriety of an *approved person*, it may consider whether it should prohibit that person from performing functions in relation to *regulated activities*, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a *prohibition order*, the FSA will consider in each case whether its *regulatory objectives* can be achieved adequately by imposing disciplinary sanctions, for example, *public censures* or financial penalties, or by issuing a private warning.
- 9.9 When it decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.
- (1) The matters set out in section 61(2) of the *Act*.
 - (2) Whether the individual is fit and proper to perform functions in relation to *regulated activities*. The criteria for assessing the fitness and propriety of *approved persons* are set out in *FIT 2.1* (Honesty, integrity and reputation); *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).
 - (3) Whether, and to what extent, the *approved person* has:
 - (a) failed to comply with the *Statements of Principle* issued by the FSA with respect to the conduct of *approved persons*; or
 - (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other rules).
 - (4) Whether the *approved person* has engaged in *market abuse*.
 - (5) The relevance and materiality of any matters indicating unfitness.
 - (6) The length of time since the occurrence of any matters indicating unfitness.

- (7) The particular *controlled function* the *approved person* is (or was) performing, the nature and activities of the *firm* concerned and the markets in which he operates.
 - (8) The severity of the risk which the individual poses to *consumers* and to confidence in the *financial system*.
 - (9) The previous disciplinary record and general compliance history of the individual including whether the FSA, any *previous regulator*, *designated professional body* or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
- 9.10 The FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a *controlled function* or other function in relation to *regulated activities*. It may also take account of the particular *controlled function* which an *approved person* is performing for a *firm*, the nature and activities of the *firm* concerned and the markets within which it operates.
- 9.11 Due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any, *firm*.
- 9.12 The following are examples of types of behaviour which have previously resulted in the FSA deciding to issue a *prohibition order* or withdraw the approval of an *approved person*:
- (1) Providing false or misleading information to the FSA; including information relating to identity, ability to work in the United Kingdom, and business arrangements;
 - (2) Failure to disclose material considerations on application forms, such as details of County Court Judgments, criminal convictions and dismissal from employment for regulatory or criminal breaches. The nature of the information not disclosed can also be relevant;
 - (3) Severe acts of dishonesty, e.g. which may have resulted in financial crime;
 - (4) Serious lack of competence; and
 - (5) Serious breaches of the *Statements of Principle for approved persons*, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions.
- 9.13 Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the FSA will consider

whether the conduct or matter in question is relevant to the individual's fitness and propriety.

- 9.14 Where it considers it is appropriate to withdraw an individual's approval to perform a *controlled function* within a particular *firm*, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.

Prohibition orders against exempt persons and members of professional firms

- 9.15 In cases where it is considering whether to exercise its power to make a *prohibition order* against an individual performing functions in relation to *exempt regulated activities* by virtue of an exemption from the *general prohibition* under Part XX of the *Act*, the FSA will consider whether the particular unfitness might be more appropriately dealt with by making an order disapplying the exemption using its power under section 329 of the *Act*. In most cases where the FSA is concerned about the fitness and propriety of a specific individual in relation to *exempt regulated activities* by virtue of an exemption under Part XX of the *Act*, it will be more appropriate to make an order prohibiting the individual from performing functions in relation to *exempt regulated activities* than to make a disapplication order.
- 9.16 When considering whether to exercise its power to make a *prohibition order* against an *exempt person*, the FSA will consider all relevant circumstances including, where appropriate, the factors set out in [paragraph 9.9](#).

Prohibition orders against other individuals

- 9.17 Where the FSA is considering making a *prohibition order* against an individual other than an individual referred to in [paragraphs 9.8 to 9.14](#), the FSA will consider the severity of the risk posed by the individual, and may prohibit the individual where it considers this is appropriate to achieve one or more of its *regulatory objectives*.
- 9.18 When considering whether to exercise its power to make a *prohibition order* against such an individual, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, where appropriate, the factors set out in [paragraph 9.9](#).

Applications for variation or revocation of prohibition orders

- 9.19 When considering whether to grant or refuse an application to revoke or vary a *prohibition order*, the FSA will consider all the relevant circumstances of a case. These may include, but are not limited to:
- (1) the seriousness of the misconduct or other unfitness that resulted in the order;
 - (2) the amount of time since the original order was made;
 - (3) any steps taken subsequently by the individual to remedy the misconduct or other unfitness;

- (4) any evidence which, had it been known to the FSA at the time, would have been relevant to the FSA's decision to make the *prohibition order*;
- (5) all available information relating to the individual's honesty, integrity or competence since the order was made, including any repetition of the misconduct which resulted in the prohibition order being made;
- (6) where the FSA's finding of unfitness arose from incompetence rather than from dishonesty or lack of integrity, evidence that this unfitness has been or will be remedied; for example, this may be achieved by the satisfactory completion of relevant training and obtaining relevant qualifications, or by supervision of the individual by his employer;
- (7) the financial soundness of the individual concerned; and
- (8) whether the individual will continue to pose the level of risk to *consumers* or confidence in the *financial system* which resulted in the original prohibition if it is lifted.

9.20 When considering whether to grant or refuse an application to revoke or vary a *prohibition order*, the FSA will take into account any indication given by the FSA in the *final notice* that it is minded to revoke or vary the *prohibition order* on application after a certain number of years (see [paragraph 9.6](#)).

9.21 If the individual applying for a revocation or variation of a *prohibition order* proposes to take up an offer of employment to perform a *controlled function*, the *approved persons* regime will also apply to him. In these cases, the *firm* concerned will be required to apply to the FSA for approval of that individual's employment in that capacity. The FSA will assess the individual's fitness and propriety to perform *controlled functions* on the basis of the criteria set out in *FIT 2.1* (Honesty, integrity and reputation); *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).

9.22 The FSA will not generally grant an application to vary or revoke a *prohibition order* unless it is satisfied that: the proposed variation will not result in a reoccurrence of the risk to *consumers* or confidence in the *financial system* that resulted in the order being made; and the individual is fit to perform functions in relation to *regulated activities* generally, or to those specific *regulated activities* in relation to which the individual has been prohibited.

Other powers that may be relevant when the FSA is considering whether to exercise its power to make a prohibition order

9.23 In appropriate cases, the FSA may take other action against an individual in addition to making a *prohibition order* and/or withdrawing its approval, including the use of its powers to: impose a financial penalty or issue a *public censure*; apply for an *injunction* to prevent dissipation of assets; stop any continuing misconduct; order restitution; apply for an insolvency order or an order against debt avoidance; and/or prosecute certain criminal offences.

The effect of the FSA's decision to make a prohibition order

- 9.24 The FSA may consider taking disciplinary action against a *firm* that has not taken reasonable care, as required by section 56(6) of the *Act*, to ensure that none of that *firm's* functions in relation to carrying on of a *regulated activity* is performed by a *person* who is prohibited from performing the function by a *prohibition order*. The FSA considers that a search by a *firm* of the *FSA Register* is an essential part of the statutory duty to take reasonable care to ensure that *firms* do not employ or otherwise permit prohibited individuals to perform functions in relation to *regulated activities*. In addition, the FSA expects firms to check the *FSA Register* when making applications for approval under section 59 of the *Act*. More generally, if a *firm's* search of the *FSA Register* reveals no record of a *prohibition order*, the FSA will consider taking action for breach of section 56(6) only where the *firm* had access to other information indicating that a *prohibition order* had been made.

The effect of the FSA's decision to withdraw approval

- 9.25 When the FSA's decision to withdraw an approval has become effective, the position of the *firm* which applied for that approval depends on whether it directly employs the *person* concerned, or whether the *person* is employed by one of its contractors.
- 9.26 Section 59(1) is relevant where the *firm* directly employs the *person* concerned. Under the provision, a firm ('A') must take reasonable care to ensure that no *person* performs a *controlled function* under an *arrangement* entered into by A in relation to the carrying on by it of a *regulated activity*, unless the FSA approves the performance by that *person* of the *controlled function* to which the approval relates. Therefore, if the *firm* continues to employ the *person* concerned to carry out a *controlled function*, it will be in breach of section 59(1) and the FSA may take enforcement action against it.
- 9.27 Section 59(2) is relevant where the *person* is employed by a contractor of the *firm*. It requires a *firm* ('A') to take reasonable care to ensure that no *person* performs a *controlled function* under an *arrangement* entered into by a contractor of A in relation to the carrying on by A of a *regulated activity*, unless the FSA approves the performance by that *person* of the *controlled function* to which the approval relates. Therefore, if a contractor of the *firm* employs the *person* concerned, and the contractor continues to employ the *person* to carry out a *controlled function*, the *firm* itself will be in breach of section 59(2) unless it has taken reasonable care to ensure that this does not happen. The FSA may take enforcement action against a *firm* that breaches this requirement.
- 9.28 *Firms* should be aware of the potential effect that these provisions may have on their contractual relationships with *approved persons* employed by them and with contractors engaged by them, and their obligations under those contracts.

10 Injunctions

- 10.1 The orders the court may make following an application by the FSA under the powers referred to in this chapter are generally known in England and Wales as *injunctions*, and in Scotland as *interdicts*. In the chapter, the word '*injunction*' and the word '*order*' also mean '*interdict*'. The FSA's effective use of these powers will help it work towards its *regulatory objectives*, in particular, those of protecting *consumers*, maintaining confidence in the *financial system* and reducing *financial crime*.

Section 380 (injunctions for breaches of relevant requirements⁹) and section 381 (injunctions in cases of market abuse): the FSA's policy

- 10.2 The court may make three types of order under these provisions: to restrain a course of conduct, to take steps to remedy a course of conduct and to secure assets. As is explained below, the court may also make an order freezing assets under its inherent jurisdiction. In certain cases, the FSA may seek only one type of order, although in others it may seek several.
- 10.3 The broad test the FSA will apply when it decides whether to seek an *injunction* is whether the application would be the most effective way to deal with the FSA's concerns. In deciding whether an application for an *injunction* is appropriate in a given case, the FSA will consider all relevant circumstances and may take into account a wide range of factors. The following list of factors is not exhaustive; not all the factors will be relevant in a particular case and there may be other factors that are relevant.
- (1) The nature and seriousness of a contravention or expected contravention of a relevant requirement. The extent of loss, risk of loss, or other adverse effect on *consumers*, including the extent to which *client* assets may be at risk, may be relevant. The seriousness of a contravention or prospective contravention will include considerations of:
 - (a) whether the losses suffered are substantial;
 - (b) whether the numbers of *consumers* who have suffered loss are significant;
 - (c) whether the assets at risk are substantial; and
 - (d) whether the number of *consumers* at risk is significant.
 - (2) In cases of *market abuse*, the nature and seriousness of the misconduct or expected misconduct in question. The following may be relevant:

⁹ Under sections 380(6)(a) and (7)(a), a 'relevant requirement' means a requirement: which is imposed by or under the *Act*; or which is imposed by or under any other Act and whose contravention constitutes an offence which the FSA has power to prosecute under the *Act* (or in the case of Scotland, which is imposed by or under any other Act) and whose contravention constitutes an offence under Part V of the Criminal Justice Act 1993 or under the *Money Laundering Regulations*.

- (a) the impact or potential impact on the *financial system* of the conduct in question. This would include the extent to which it has resulted in distortion or disruption of the markets, or would be likely to do so if it was allowed to take place or to continue;
 - (b) the extent and nature of any losses or other costs imposed, or likely to be imposed, on other users of the *financial system*, as a result of the misconduct.
- (3) Whether the conduct in question has stopped or is likely to stop and whether steps have been taken or will be taken by the *person* concerned to ensure that the interests of *consumers* are adequately protected. For example, an application for an *injunction* may be appropriate where the FSA has grounds for believing that a contravention of a relevant requirement, *market abuse* or both may continue or be repeated. It is likely to have grounds to believe this where, for example, the *Takeover Panel* has requested that a person stop a particular course of conduct and that *person* has not done so.
- (4) Whether there are steps a *person* could take to remedy a contravention of a relevant requirement or *market abuse*. The steps the FSA may require a *person* to take will vary according to the circumstances but may include the withdrawal of a misleading *financial promotion* or publishing a correction, writing to clients or investors to notify them of FSA action, providing financial redress and repatriating funds from an overseas jurisdiction. An application by the FSA to the court under section 380(2) or 381(2) for an order requiring a *person* to take such steps may not be appropriate if, for example, that *person* has already taken or proposes to take appropriate remedial steps at his own initiative or under a ruling imposed by another regulatory authority (such as the *Takeover Panel* or a *recognised investment exchange*). If another authority has identified the relevant steps and the *person* concerned has failed to take them, the FSA will take this into account and (subject to all other relevant factors and circumstances) may consider it is appropriate to apply for an *injunction*. In those cases the FSA may consult with the relevant regulatory authority before applying for an *injunction*.
- (5) Whether there is a danger of assets being dissipated. The main purpose of an application under section 380(3), sections 381(3) and (4) or pursuant to the court's inherent jurisdiction, is likely to be to safeguard funds containing *client* assets (e.g. *client* accounts) and/or funds and other assets from which restitution may be made. The FSA may seek an *injunction* to secure assets while a suspected contravention is being investigated or where it has information suggesting that a contravention is about to take place.
- (6) The costs the FSA would incur in applying for and enforcing an *injunction* and the benefits that would result. There may be other cases which require the FSA's attention and take a higher priority, due to the nature and seriousness of the breaches concerned. There may, therefore, be occasions on which the FSA considers that time and resources should not be diverted from other cases in order to make an application for an *injunction*. These factors reflect the FSA's

duty under the *Act* to have regard to the need to use its resources in the most efficient and economic way.

- (7) The disciplinary record and general compliance history of the *person* who is the subject of the possible application. This includes whether the FSA (or a *previous regulator*) has taken any previous disciplinary, remedial or protective action against the *person*. It may also be relevant, for example, whether the *person* has previously given any undertakings to the FSA (or any *previous regulator*) not to do a particular act or engage in particular behaviour and is in breach of those undertakings.
- (8) Whether the conduct in question can be adequately addressed by other disciplinary powers, for example *public censure* or financial penalties.
- (9) The extent to which another regulatory authority can adequately address the matter. Certain circumstances may give rise not only to possible enforcement action by the FSA, but also to action by other regulatory authorities. The FSA will examine the circumstances of each case, and consider whether it is appropriate for the FSA to take action to address the relevant concern. In most cases the FSA will consult with other relevant regulatory authorities before making an application for an order.
- (10) Whether there is information to suggest that the *person* who is the subject of the possible application is involved in *financial crime*.
- (11) In any case where the FSA is of the opinion that any potential exercise of its powers under section 381 may affect the timetable or the outcome of a *takeover bid*, the FSA will consult the *Takeover Panel* before taking any steps to exercise these powers and will give due weight to its views.

Asset-freezing injunctions

- 10.4 Where the FSA applies to the court under section 380(3) or sections 381(3) and (4) of the *Act*, the FSA may ask the court to exercise its inherent jurisdiction to make orders on an interim basis, restraining a *person* from disposing of, or otherwise dealing with, assets. To succeed in an application for such interim relief, the FSA will have to show a good arguable case for the granting of the *injunction*. The FSA will not have to show that a contravention has already occurred or may have already occurred.
- 10.5 The FSA may request the court to exercise its inherent jurisdiction in cases, for example, where it has evidence showing that there is a reasonable likelihood that a *person* will contravene a requirement of the *Act* and that the contravention will result in the dissipation of assets belonging to investors.

Other relevant powers

- 10.6 The FSA has a range of powers it can use to take remedial, protective and disciplinary action against a *person* who has contravened a relevant requirement or engaged in *market abuse*, as well as its powers to seek *injunctions* under sections 380 and 381 of the *Act* and under the courts' inherent jurisdiction. Where appropriate, the FSA may

exercise these other powers before, at the same time as, or after it applies for an *injunction* against a *person*.

- 10.7 When, in relation to *firms*, the FSA applies the broad test outlined in paragraph 10.3, it will consider the relative effectiveness of the other powers available to it, compared with injunctive relief. For example, where the FSA has concerns about whether a *firm* will comply with restrictions that the FSA could impose by exercising its *own-initiative powers*, it may decide it would be more appropriate to seek an *injunction*. This is because breaching any requirement imposed by the court could be punishable for contempt. Alternatively, where, for example, the FSA has already imposed requirements on a *firm* by exercising its *own-initiative powers* and these requirements have not been met, the FSA may seek an *injunction* to enforce those requirements.
- 10.8 The FSA's *own-initiative powers* do not apply to *unauthorised persons*. This means that an application for an *injunction* is the only power by which the FSA may seek directly to prevent *unauthorised persons* from actual or threatened breaches or *market abuse*. The FSA will decide whether an application against an *unauthorised person* is appropriate, in accordance with the approach discussed in paragraph 10.3. The FSA may also seek an *injunction* to secure assets where it intends to use its insolvency powers against an *unauthorised person*.
- 10.9 In certain cases, conduct that may be the subject of an *injunction* application will also be an offence which the FSA has power to prosecute under the *Act*. In those cases, the FSA will consider whether it is appropriate to prosecute the offence in question, as well as applying for *injunctions* under section 380, section 381, or both.
- 10.10 Where the FSA exercises its powers under section 380, section 381 and/or invokes the court's inherent jurisdiction to obtain an order restraining the disposal of assets, it may also apply to the court for a restitution order for the distribution of those assets.

Section 198: the FSA's policy

- 10.11 Under section 198 of the *Act* the FSA has power to apply to court on behalf of the *Home State regulator* of certain *incoming EEA firms* for an *injunction* restraining the *incoming EEA firm* from disposing of, or otherwise dealing with, any of its assets. The FSA will consider exercising this power only where a request from a *Home State regulator* satisfies the requirements of section 198(1).

Applications for injunctions under regulation 12 of the Unfair Terms Regulations: the FSA's policy

- 10.12 If the FSA decides to address issues using its powers under the *Unfair Terms Regulations*, and the contract is within its scope as described in the FSA's Regulatory Guide on these powers,¹⁰ it will, unless the case is urgent, generally first write to the *person* expressing its concerns about the potential unfairness within the meaning of the *Unfair Terms Regulations* of a term or terms in the *person's* contract and inviting the *person's* comments on those concerns. If the FSA remains of the view that the term is unfair within the meaning of the *Unfair Terms Regulations*, it will normally

¹⁰ [link to UNFCOG]

ask the *person* to undertake to stop including the term in new contracts and stop relying on it in contracts which have been concluded.

- 10.13 If the *person* either declines to give an undertaking, or gives such an undertaking and fails to follow it, the FSA will consider the need to apply to court for an *injunction* under regulation 12 of the *Unfair Terms Regulations*.
- 10.14 In determining whether to seek an *injunction* against a *person*, the FSA will consider the full circumstances of each case. A number of factors may be relevant for this purpose. The following list is not exhaustive; not all of the factors may be relevant in a particular case, and there may be other factors that are relevant.
- (1) whether the FSA is satisfied that the contract term which is the subject of the complaint may properly be regarded as unfair within the meaning of the *Unfair Terms Regulations*;
 - (2) the extent and nature of the detriment to *consumers* resulting from the term or the potential detriment which could result from the term;
 - (3) whether the *person* has fully cooperated with the FSA in resolving the FSA's concerns about the fairness of the particular contract term;
 - (4) the likelihood of success of an application for an *injunction*;
 - (5) the costs the FSA would incur in applying for and enforcing an *injunction* and the benefits that would result from that action; the FSA is more likely to be satisfied that an application is appropriate where an *injunction* would not only prevent the continued use of the particular contract term, but would also be likely to prevent the use or continued use of similar terms, or terms having the same effect, used or recommended by other *firms* concluding contracts with *consumers*.
- 10.15 In an urgent case, the FSA may seek a temporary *injunction*, to prevent the continued use of the term until the fairness of the term could be fully considered by the court. An urgent case is one in which the FSA considers that the actual or potential detriment is so serious that urgent action is necessary. In deciding whether to apply for a temporary *injunction*, the FSA may take into account a number of factors, including one or more of the factors set out in paragraph 10.14. In such an urgent case, the FSA may seek a temporary injunction without first consulting with the *person*.
- 10.16 In deciding whether to grant an *injunction*, the court will decide whether the term in question is unfair within the meaning of the *Unfair Terms Regulations* (see *UNFCOG* 1.3.2G). The court may grant an *injunction* on such terms as it sees fit. For example, it may require the *person* to stop including the unfair term in contracts with *consumers* from the date of the *injunction* and to stop relying on the unfair term in contracts which have been concluded. If the *person* fails to comply with the *injunction*, it will be in contempt of court.
- 10.17 Regulation 8 of the *Unfair Terms Regulations* provides that an unfair term is not binding on the *consumer*. This means that if the court finds that the term in question is unfair, the *person* would be unable to rely on the unfair term in existing contracts

governed by the *Unfair Terms Regulations*. To the extent that it is possible, the existing contract would continue in effect without the unfair term.

- 10.18 When the FSA considers that a case requires enforcement action under the *Unfair Terms Regulations*, it will take the enforcement action itself if the *person* is a *firm* or an *appointed representative*.
- 10.19 Where the *person* is not a *firm* or an *appointed representative*, the FSA will generally pass the case to the Office of Fair Trading, with a recommendation that it take the enforcement action. The Office of Fair Trading may then decide whether or not to take enforcement action.

FSA costs

- 10.20 When it seeks an *injunction* under a power discussed in this chapter, the FSA may ask the court to order that the *person* who is the subject of the application should pay the FSA's costs.

11 Restitution and redress

Restitution orders under sections 382, 383 and 384 of the Act: the FSA's general approach

- 11.1 The FSA has power to apply to the court for a restitution order under section 382 of the *Act* and (in the case of *market abuse*) under section 383 of the *Act*. It also has an administrative power to require restitution under section 384 of the *Act*. When deciding whether to exercise these powers, the FSA will consider whether this would be the best use of the FSA's limited resources taking into account, for example, the likely amount of any recovery and the costs of achieving and distributing any sums. It will also consider, before exercising its powers: other ways that *persons* might obtain redress, and whether it would be more efficient or cost-effective for them to use these means instead; and any proposals by the *person* concerned to offer redress to any *consumers* or other *persons* who have suffered loss, and the adequacy of those proposals. The FSA expects, therefore, to exercise its formal restitution powers on rare occasions only.
- 11.2 Instances in which the FSA might consider using its powers to obtain restitution for *market counterparties* are likely to be very limited.

Criteria for determining whether to exercise powers to obtain restitution

- 11.3 In deciding whether to exercise its powers to seek or require restitution under sections 382, 383 or 384 of the *Act*, the FSA will consider all the circumstances of the case. The factors which the FSA will consider may include, but are not limited to, those set out below.

- (1) Are the profits quantifiable?

The FSA will consider whether quantifiable profits have been made which are owed to identifiable *persons*. In certain circumstances it may be difficult to prove that the conduct in question has resulted in the *person* concerned making a profit. It may also be difficult to find out how much profit and to whom the profits are owed. In these cases it may not be appropriate for the FSA to use its powers to obtain restitution.

- (2) Are the losses identifiable?

The FSA will consider whether there are identifiable *persons* who can be shown to have suffered quantifiable losses or other adverse effects. In certain circumstances it may be difficult to establish the number and identity of those who have suffered loss as a result of the conduct in question. It may also prove difficult in those cases to establish the amount of that loss and whether the losses have arisen as a result of the conduct in question. In these cases it may not be appropriate for the FSA to use its powers to obtain restitution.

- (3) The number of persons affected

The FSA will consider the number of *persons* who have suffered loss or other adverse effects and the extent of those losses or adverse effects. Where the

breach of a relevant requirement by a *person*, whether *authorised* or not, results in significant losses, or losses to a large number of *persons* which collectively are significant, it may be appropriate for the FSA to use its powers to obtain restitution on their behalf. The FSA anticipates that many individual losses resulting from breaches by *firms* may be more efficiently and effectively redressed by *consumers* pursuing their claims directly with the firm concerned or through the *Financial Ombudsman Service* or the *compensation scheme* where the *firm* has ceased trading. However, where a large number of *persons* have been affected or the losses are substantial it may be more appropriate for the FSA to seek or require restitution from a *firm*. In those cases the FSA may consider combining an action seeking or requiring restitution from a *firm* or *unauthorised person* with disciplinary action or a criminal prosecution.

(4) FSA costs

The FSA will consider the cost of securing redress and whether these are justified by the benefit to *persons* that would result from that action. The FSA will consider the costs of exercising its powers to obtain restitution and, in particular, the costs of any application to the court for an order for restitution, together with the size of any sums that might be recovered as a result. The costs of the action will, to a certain extent, depend on the nature and location of assets from which restitution may be made. In certain circumstances it may be possible for the FSA to recover its costs of applying to the court for an order for restitution, or a proportion of those costs, from the party against whom a restitution order is obtained, though this would have the disadvantage of reducing the amount available to pay redress.

(5) Is redress available elsewhere?

The FSA will consider the availability of redress through the *Financial Ombudsman Service* or the *compensation scheme*. This will be relevant where the loss has resulted from the conduct of a *firm*. It will not be relevant where losses have resulted from the conduct of *unauthorised persons* operating in breach of the *general prohibition*. The *Financial Ombudsman Service* and the *compensation scheme* (where the *firm* has ceased trading) may be a more efficient and effective method of redress in many cases. The *Financial Ombudsman Service* provides a way for some *consumers* to obtain redress. The *compensation scheme* may provide redress for some *consumers* and businesses. The FSA's power to obtain restitution is not intended to duplicate the functions of the *Ombudsman* or *compensation schemes* in those cases. However, in certain cases it will be more appropriate for the FSA to pursue restitution. Further details of these schemes are set out in *COMP*.

(6) Is redress available through another regulator?

The FSA will consider the availability of redress through another regulatory authority. Where another regulatory authority, such as *the Takeover Panel*, is in a position to require appropriate redress, the FSA will not generally exercise its own powers to do so. If the FSA does consider that action is appropriate

and the matters in question have happened in the context of a *takeover bid*, the FSA will only take action during the bid in the circumstances set out in *DEPP 6.2.25G* if the *person* concerned has responsibilities under the *Takeover Code*. If another *regulatory body* has required redress and a *person* has not met that requirement, the FSA will take this into account and (subject to all other relevant factors and circumstances) may consider it appropriate to take action to ensure that such redress is provided.

(7) Can persons bring their own proceedings?

The FSA will consider whether *persons* who have suffered losses are able to bring their own civil proceedings. In certain circumstances it may be appropriate for *persons* to bring their own civil proceedings to recover losses. This might be the case where the *person* who has suffered loss is a *market counterparty* and so may be expected to have a high degree of financial experience and knowledge. When considering whether this might be a more appropriate method of obtaining redress, the FSA will consider the costs to the *person* of bringing that action and the likelihood of success in relation to the size of any sums that may be recovered.

(8) Is the firm solvent?

The FSA will consider the solvency of the *firm* or *unauthorised person* concerned. Where the solvency of the *firm* or *unauthorised person* would be placed at risk by the payment of restitution, the FSA will consider whether it is appropriate to seek restitution. In those cases, the FSA may consider obtaining a compulsory *insolvency order* against the *firm* or *unauthorised person* rather than restitution. When considering these options, the FSA may also take account of the position of other creditors who may be prejudiced if the assets of the *firm* or *unauthorised person* are used to pay restitution payments prior to insolvency.

(9) What other powers are available to the FSA?

The FSA will consider the availability of its power to obtain a compulsory *insolvency order* against the *firm* or *unauthorised person* concerned or to apply to the court for the appointment of a receiver. In certain circumstances it may be appropriate for the FSA to obtain an administration order, winding up order or bankruptcy order against a *firm* or *unauthorised person* carrying out *regulated activities* in breach of the *general prohibition*.

The FSA may decide to exercise its power to obtain a compulsory *insolvency order* or to apply for the appointment of a receiver rather than to exercise its powers to obtain restitution. This could happen if the FSA has particular concerns about a *person's* conduct, or financial position and, in particular, whether it is solvent (though the appointment by the court of a receiver is not conditional on the insolvency of the *person* concerned). The FSA may also consider the cost of seeking compulsory *insolvency orders* which will be paid out of the assets of the *firm*, or of the *unauthorised person* concerned, compared to the cost of seeking restitution. In the case of *unauthorised*

persons operating in breach of the *general prohibition*, a decision to apply for a compulsory *insolvency order* rather than restitution will depend on all the circumstances of the case. In particular, the FSA may consider the significance of the *unauthorised* activities compared to the whole of the business; the nature and conduct of the activities carried on in breach of the *general prohibition*; and the number and nature of the claims against the *person* or *firm* concerned. The FSA's powers to apply for compulsory *insolvency orders* are discussed in [chapter 13](#) of this guide.

(10) The behaviour of the persons suffering loss

The FSA will consider the conduct of the *persons* who have suffered loss. As part of its *regulatory objectives* of increasing consumer awareness of the *financial system* and protecting *consumers*, the FSA is required to publicise information about the *authorised* status of *persons* and is empowered to give information and guidance about the regulation of financial services. This information should help *consumers* avoid suffering losses. When the FSA considers whether to obtain restitution on behalf of *persons*, it will consider the extent to which those *persons* may have contributed to their own loss or failed to take reasonable steps to protect their own interests.

(11) Other factors which may be relevant

The FSA will consider the context of the conduct in question. In any case where the FSA believes that the exercise of its powers under section 383 or 384 of the *Act* may affect the timetable or outcome of a *takeover bid*, it will consult the *Takeover Panel* before taking any steps to exercise such powers, and will give due weight to its views.

Where the FSA is considering applying to court for a restitution order in relation to *market abuse* under section 383 of the *Act*, it will also consider whether the court would be prevented from making that order by section 383(3) of the *Act*. A similar provision to section 383(3) applies where the FSA proposes to exercise its powers to require restitution in relation to market abuse under section 384(2). The conditions set out in section 383(3)(a) and section 384(a) and (b) are the same as those that apply to penalties for *market abuse* and the FSA will take the same factors into account when considering whether the conditions have been met. *DEPP* 6.3 lists those factors.

The FSA's choice of powers

- 11.4 In cases where it is appropriate to exercise its powers to obtain restitution from *firms*, the FSA will first consider using its own administrative powers under section 384 of the *Act* before considering taking court action.
- 11.5 However, there may be circumstances in which the FSA will choose to use the powers under section 382 or section 383 of the *Act* to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the FSA wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement of the *Act*; the FSA's powers to apply for *injunctions* restraining *firms* from breaching relevant requirements of the *Act* are discussed in chapter 10 of this guide;
- (2) the FSA wishes to bring related court proceedings against an *unauthorised person* where the factual basis of those proceedings is likely to be the same as the claim for restitution against the *firm*;
- (3) there is a danger that the assets of the *firm* may be dissipated; in those cases, the FSA may wish to combine an application to the court for an order for restitution with an application for an asset-freezing *injunction* to prevent assets from being dissipated; or
- (4) the FSA suspects that the *firm* may not comply with an administrative requirement to give restitution; in those cases the FSA may consider that the sanction for breach of a court order may be needed to ensure compliance; a *person* who fails to comply with a court order may be in contempt of court and is liable to imprisonment, to a fine and/or to have his assets seized.

Determining the amount of restitution

- 11.6 The FSA may obtain information relating to the amount of profits made and/or losses or other adverse effects resulting from the conduct of *firms* or *unauthorised persons* as a result of the exercise of its powers to appoint investigators under sections 167 or 168 of the *Act*.
- 11.7 As well as obtaining information through the appointment of investigators, the FSA may consider using its power under section 166 of the *Act* to require a *firm* to provide a report prepared by a *skilled person*. That report may be requested to help the FSA to:
- (1) determine the amount of profits which have been made by the *firm*; or
 - (2) establish whether the conduct of the *firm* has caused any losses or other adverse effects to qualifying persons and/or the extent of such losses; or
 - (3) determine how any amounts to be paid by the *firm* are to be distributed between qualifying persons.

Other relevant powers

- 11.8 The FSA may apply to the court for an *injunction* if it appears that a *person*, whether *authorised* or not, is reasonably likely to breach a requirement of the *Act* or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached a requirement of the *Act* or has engaged in *market abuse* and is likely to continue doing so.
- 11.9 The FSA may consider taking action for a financial penalty or *public censure*, as well as seeking restitution, if a *person* has breached a relevant requirement of the *Act* or has engaged in, or *required or encouraged* others to engage in, *market abuse*.

11.10 The FSA may consider exercising its power to prosecute offences under the *Act*, as well as applying to seek restitution if a *person* has breached certain requirements of the *Act*.

12 Prosecution of Criminal Offences

The FSA's general approach

- 12.1 The FSA has powers under sections 401 and 402 of the *Act* to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FSA may also prosecute criminal offences for which it is not the statutory prosecutor, but where the offences form part of the same criminality as the offences it is prosecuting under the *Act*.
- 12.2 The FSA's general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland (see paragraph 12.11), it will apply the basic principles set out in the Code for Crown Prosecutors.¹¹ When considering whether to prosecute a breach of the *Money Laundering Regulations*, the FSA will also have regard to whether the person concerned has followed the *Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group*.
- 12.3 The FSA's approach when deciding whether to commence criminal proceedings for *misleading statements and practices offences* and *insider dealing offences*, where the FSA also has power to impose a sanction for *market abuse*, is discussed further in [paragraphs 12.7 to 12.10](#).
- 12.4 In cases where criminal proceedings have commenced or will be commenced, the FSA may consider whether also to take civil or regulatory action (for example where this is appropriate for the protection of *consumers*) and how such action should be pursued. That action might include: applying to court for an *injunction*; applying to court for a restitution order; variation and/or cancellation of *permission*; and prohibition of individuals. The factors the FSA may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to the following:
- (1) whether, in the FSA's opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences;
 - (2) whether, in the FSA's opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and
 - (3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts.

¹¹ <http://www.cps.gov.uk/publications/docs/code2004english.pdf>

FSA cautions

- 12.5 In some cases, the FSA may decide to issue a formal caution rather than to prosecute an offender. In these cases the FSA will follow the Home Office Guidance on the cautioning of offenders, currently contained in the Home Office Circular 18/1994.
- 12.6 Where the FSA decides to administer a formal caution, a record of the caution will be kept by the FSA and on the Police National Computer. The FSA will not publish the caution, but it will be available to parties with access to the Police National Computer. The issue of a caution may influence the FSA and other prosecutors in their decision whether or not to prosecute the offender if he offends again. If the offender is a *firm* or an *approved person*, a caution given by the FSA will form part of the *firm's* or *approved person's* regulatory record for the purposes of *DEPP* 6.2.1 G (3). If relevant, the FSA will take the caution into account in deciding whether to take disciplinary action for subsequent regulatory misconduct by the *firm* or the *approved person*. The FSA may also take a caution into account when considering a *person's* honesty, integrity and reputation and his fitness or propriety to perform controlled or other functions in relation to *regulated activities* (see *FIT* 2.1.3G).

Criminal prosecutions in cases of market abuse

- 12.7 In some cases there will be instances of market misconduct that may arguably involve a breach of the criminal law as well as *market abuse* as defined in section 118 of the *Act*. When the FSA decides whether to commence criminal proceedings rather than impose a sanction for *market abuse* in relation to that misconduct, it will apply the basic principles set out in the Code for Crown Prosecutors. When deciding whether to prosecute market misconduct which also falls within the definition of *market abuse*, application of these basic principles may involve consideration of some of the factors set out in paragraph 12.8.
- 12.8 The factors which the FSA may consider when deciding whether to commence a criminal prosecution for market misconduct rather than impose a sanction for *market abuse* include, but are not limited to, the following:
- (1) the seriousness of the misconduct: if the misconduct is serious and prosecution is likely to result in a significant sentence, criminal prosecution may be more likely to be appropriate;
 - (2) whether there are victims who have suffered loss as a result of the misconduct: where there are no victims a criminal prosecution is less likely to be appropriate;
 - (3) the extent and nature of the loss suffered: where the misconduct has resulted in substantial loss and/or loss has been suffered by a substantial number of victims, criminal prosecution may be more likely to be appropriate;
 - (4) the effect of the misconduct on the market: where the misconduct has resulted in significant distortion or disruption to the market and/or has significantly damaged market confidence, a criminal prosecution may be more likely to be appropriate;

- (5) the extent of any profits accrued or loss avoided as a result of the misconduct: where substantial profits have accrued or loss avoided as a result of the misconduct, criminal prosecution may be more likely to be appropriate;
- (6) whether there are grounds for believing that the misconduct is likely to be continued or repeated: if it appears that the misconduct may be continued or repeated and the imposition of a financial penalty is unlikely to deter further misconduct, a criminal prosecution may be more appropriate than a financial penalty;
- (7) whether the person has previously been cautioned or convicted in relation to market misconduct or has been subject to civil or regulatory action in respect of market misconduct;
- (8) the extent to which redress has been provided to those who have suffered loss as a result of the misconduct and/or whether steps have been taken to remedy any failures in systems or controls which gave rise to the misconduct: where such steps are taken promptly and voluntarily, criminal prosecution may not be appropriate; however, potential defendants will not avoid prosecution simply because they are able to pay compensation;
- (9) the effect that a criminal prosecution may have on the prospects of securing redress for those who have suffered loss: where a criminal prosecution will have adverse effects on the solvency of a *firm* or individual in circumstances where loss has been suffered by *consumers*, the FSA may decide that criminal proceedings are not appropriate;
- (10) whether the *person* is being or has been voluntarily cooperative with the FSA in taking corrective measures; however, potential defendants will not avoid prosecution merely by fulfilling a statutory duty to take those measures;
- (11) whether an individual's misconduct involves dishonesty or an abuse of a position of authority or trust;
- (12) where the misconduct in question was carried out by a group, and a particular individual has played a leading role in the commission of the misconduct: in these circumstances, criminal prosecution may be appropriate in relation to that individual;
- (13) the personal circumstances of an individual may be relevant to a decision whether to commence a criminal prosecution.

12.9 The importance attached by the FSA to these factors will vary from case to case and the factors are not necessarily cumulative or exhaustive.

12.10 It is the FSA's policy not to impose a sanction for *market abuse* where a *person* is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it is the FSA's policy not to commence a prosecution for market misconduct where the FSA has

brought or is seeking to bring disciplinary proceedings for *market abuse* arising from substantially the same allegations.

Liaison with other prosecuting authorities

- 12.11 The FSA has agreed guidelines that establish a framework for liaison and cooperation in cases where one or more other authority (such as the Crown Prosecution Service or Serious Fraud Office) has an interest in prosecuting any aspect of a matter that the FSA is considering for investigation, investigating or considering prosecuting. These guidelines are set out in [annex 2](#) to this guide.

Prosecution of Friendly Societies

- 12.12 The FSA's power to prosecute friendly societies is discussed in an article on the FSA web-site entitled 'Prosecuting Friendly Societies'.¹²

¹² <http://www.fsa.gov.uk/Pages/doing/regulated/law/focus/friendly.shtml>

13 Insolvency

13.1 This chapter explains the FSA's policies on how it uses its powers under the *Act* to apply to the court for orders under existing insolvency legislation and exercise its rights under the *Act* to be involved in proceedings under that legislation. The FSA's effective use of its powers and rights in insolvency proceedings helps it pursue its *regulatory objectives* of maintaining market confidence, protecting *consumers* and reducing *financial crime* by, amongst other matters, enabling it to apply to court for action to:

- (1) stop *firms* and *unauthorised persons* carrying on insolvent or unlawful business; and
- (2) ensure the orderly realisation and distribution of their assets.

The FSA's general approach to use of its powers and rights in insolvency proceedings

13.2 In using its powers to seek *insolvency orders* the FSA takes full account of: the principle adopted by the courts that recourse to insolvency regimes is a step to be taken for the benefit of creditors as a whole; and the fact that the court will have regard to the public interest when considering whether to wind up a body on the grounds that it is just and equitable to do so.

13.3 The FSA will consider the facts of each particular case when it decides whether to use its powers and exercise its rights. The FSA will also consider the other powers available to it under the *Act* and to *consumers* under the *Act* and other legislation, and the extent to which the use of those other powers meets the needs of *consumers* as a whole and the FSA's *regulatory objectives*. The FSA may use its powers to seek *insolvency orders* in conjunction with its other powers, including its powers to seek *injunctions*.

Petitions for administration orders or compulsory winding up orders: determining whether a company or partnership is unable to pay its debts

13.4 The FSA can petition for an administration order or compulsory winding up order on the grounds that the *company* or *partnership* is unable (or, in the case of administration orders, is likely to become unable) to pay its debts. The FSA does not have to be a creditor to petition on these grounds.

13.5 Under sections 359 (Petitions) and 367 (Winding up Petitions) of the *Act*, a *company* or *partnership* is deemed to be unable to pay its debts if it is in default on an obligation to pay a sum due and payable under an agreement where the making or performance of the agreement constitutes or is part of a *regulated activity* which the *company* or *partnership* is carrying on.

13.6 The FSA would not ordinarily petition for an administration order unless it believes that the *company* or *partnership* is, or is likely to become, insolvent. Similarly, the FSA would not ordinarily petition for a compulsory winding up order solely on the

ground of inability to pay debts (as provided in the *Act*), unless it believes that the *company* or *partnership* is or is likely to be insolvent.

13.7 While a default on a single agreement of the type mentioned in [paragraph 13.5](#) is, under the *Act*, a presumption of an inability to pay debts, the FSA will consider the circumstances surrounding the default. In particular, the FSA will consider whether:

- (1) the default is the subject of continuing discussion between the *company* or *partnership* and the creditor, under the relevant agreement, which is likely to lead to a resolution;
- (2) the default is an isolated incident;
- (3) in other respects the *company* or *partnership* is meeting its obligations under agreements of this kind; and
- (4) the FSA has information to indicate that the *company* or *partnership* is able to pay its debts or, alternatively, that in addition to the specific default the *company* or *partnership* is in fact unable to pay its debts.

**Petitions for administration orders or compulsory winding up orders:
determining whether to seek any insolvency order**

13.8 Where the FSA believes that a *company* or *partnership* to which sections 359(1) and 367(1) of the *Act* applies is, or is likely to become, unable to pay its debts, the FSA will consider whether it is appropriate to seek an administration order or a compulsory winding up order from the court. The FSA's approach will be in two stages: the first is to consider whether it is appropriate to seek any *insolvency order*; the second is to consider which *insolvency order* will meet, or is likely to meet, the needs of *consumers*.

13.9 In determining whether it is appropriate to seek an *insolvency order* on this basis, the FSA will consider the facts of each case including, where relevant:

- (1) whether the *company* or *partnership* has taken or is taking steps to deal with its insolvency, including petitioning for its own administration, placing itself in voluntary winding up or proposing to enter into a company voluntary arrangement, and the effectiveness of those steps;
- (2) whether any consumer or other creditor of the *company* or *partnership* has taken steps to seek an *insolvency order* from the court;
- (3) the effect on the *company* or *partnership* and on the creditors of the *company* or *partnership* if an *insolvency order* is made;
- (4) whether the use of other powers, rights or remedies available to the FSA, *consumers* and creditors under the *Act* and other legislation will achieve the same or a more advantageous result in terms of the protection of *consumers*, and of market confidence and the restraint and remedy of unlawful activity, for example:

- (a) in the case of *authorised persons* and *appointed representatives*, the interests of *consumers* may, in certain circumstances, be met by the use of the FSA's intervention powers and by requiring restitution to *consumers*;
 - (b) in the case of *unauthorised companies* and *partnerships*, the FSA will consider whether the interests of *consumers* can be achieved by seeking an *injunction* to restrain continuation of the carrying on of the *regulated activity* and/or an order for restitution to consumers.
- (5) whether other regulatory authorities or law enforcement agencies propose to take action in respect of the same or a similar issue which would be adequate to address the FSA's concerns or whether it would be appropriate for the FSA to take its own action;
 - (6) the nature and extent of the *company* or *partnership* assets and liabilities, and in particular whether the *company* or *partnership* holds *client* assets and whether its secured and preferred liabilities are likely to exceed available assets;
 - (7) whether there is a significant cross border or international element to the business which the *company* or *partnership* is carrying on and the effect on foreign assets or on the continuation of the business abroad of making an *insolvency order*;
 - (8) whether an *insolvency order* is likely to achieve a fair and orderly realisation and distribution of assets; and
 - (9) whether there is a risk of creditors being preferred and any advantage in securing a moratorium in relation to proceedings against the *company* or *partnership*.

13.10 After the FSA has determined that it is appropriate to seek an *insolvency order*, and there is no moratorium in place under Schedule A1 to the Insolvency Act 1986 (as amended by the Insolvency Act 2000) (hereafter referred to in this chapter as 'the 1986 Act'), it will consider whether this order should be an administration order or a compulsory winding up order.

**Petitions for administration orders or compulsory winding up orders:
determining which insolvency order to seek**

13.11 An administration order can be made only in relation to *companies* and *partnerships* and only where the court believes that making such an order will achieve one or more of the four purposes set out in section 8 of the 1986 Act. The FSA will apply for an administration order only where it considers that doing so will meet or is likely to meet one or more of these purposes.

13.12 Where it has the option of applying for either an administration order or a compulsory winding up order, the FSA will have regard to the purpose to be achieved by the insolvency procedure.

13.13 In addition, the FSA will consider, where relevant, factors including:

- (1) the extent to which the financial difficulties are, or are likely to be attributable to the management of the *company* or *partnership*, or to external factors, for example, market forces;
- (2) the extent to which it appears to the FSA that the *company* or *partnership* may, through an administrator, be able to trade its way out of its financial difficulties;
- (3) the extent to which the *company* or *partnership* can lawfully and viably continue to carry on *regulated activities* through an administrator;
- (4) the extent to which the sale of the business in whole or in part as a going concern is likely to be achievable;
- (5) the complexity of the business of the *company* or *partnership*;
- (6) whether recourse to one regime or another is likely to result in delays in redress to *consumers* or an additional cost;
- (7) whether recourse to one regime or another is likely to result in better redress to *consumers*;
- (8) the adequacy and reliability of the *company* or *partnership's* accounting or administrative records;
- (9) the extent to which the management of the *company* or *partnership* has co-operated with the FSA;
- (10) in the case of an *unauthorised company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the scale and importance of the unauthorised activity in relation to the whole of the *company's* or *partnership's* business;
- (11) the extent to which the management of the *company* or *partnership* is likely to cooperate in determining whether one or more of the purposes of an administration order can be met;
- (12) in the case of an *unauthorised company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the extent to which the *company's* or *partnership's* survival can be anticipated without the continuance of the unauthorised regulated activity;
- (13) where an administrative receiver is in place, whether the *debenture* holder is likely to agree to an application for an administration order;

- (14) where an administrative receiver is in place, whether the FSA has reason to believe that the *debenture* under which the administrative receiver has been appointed is likely to be released, discharged, avoided or challenged.

Petitioning for compulsory winding up on just and equitable grounds

- 13.14 The FSA has power under section 367(3)(b) of the *Act* to petition the court for the compulsory winding up of a *company* or *partnership*, on the ground that it is just and equitable for the body to be wound up, regardless of whether or not the body is able to pay its debts. In some instances the FSA may need to consider whether to petition on this ground alone or in addition to the ground of insolvency.
- 13.15 When deciding whether to petition on this ground the FSA will consider all relevant facts including:
- (1) whether the needs of *consumers* and the public interest require the *company* or *partnership* to cease to operate;
 - (2) the need to protect *consumers'* claims and *client* assets;
 - (3) whether the needs of *consumers* and the public interest can be met by using the FSA's other powers;
 - (4) in the case of an *authorised person*, where the FSA considers that the *authorisation* should be withdrawn or where it has been withdrawn, the extent to which there is other business that the *person* can carry on without *authorisation*;
 - (5) in the case of an *unauthorised company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the scale and importance of the *unauthorised regulated activity* and the extent to which the enterprise is likely to survive the restraint and remedying of that activity by the use of other powers available to the FSA having regard to any continuing risk to *consumers*;
 - (6) whether there is reason to believe that an *injunction* to restrain the carrying on of an *unauthorised regulated activity* would be ineffective;
 - (7) whether the *company* or *partnership* appears to be or to have been involved in *financial crime* or appears to be or to have been used as a vehicle for *financial crime*.
- 13.16 Where appropriate the FSA will also take the following factors into account:
- (1) the complexity of the *company* or *partnership* (as this may have a bearing on the effectiveness of winding up or any alternative action);
 - (2) whether there is a significant cross border or international element to the business being carried on by the *company* or *partnership* and the impact on the business in other jurisdictions;

- (3) the adequacy and reliability of the *company* or *partnership's* accounting or administrative records;
- (4) the extent to which the *company* or *partnership's* management has co-operated with the FSA.

Petitioning for compulsory winding up of a company already in voluntary winding up

- 13.17 Section 365(6) of the *Act* makes it clear that the FSA may petition for the compulsory winding up of a *company* even if it is already in voluntary winding up. This power is already available to creditors and contributories of *companies* in voluntary winding up. For example, the court can be asked to direct the liquidator to investigate a transaction which the *company* undertook before the winding up. In some circumstances, this power may be used in respect of partnerships (section 367 of the *Act*).
- 13.18 Given the powers available to creditors (or contributories), the FSA anticipates that there will only be a limited number of cases where it will exercise the right under section 365(6) to petition for the compulsory winding up of a company already in voluntary winding up. The FSA will only be able to exercise this right where one or both of the grounds on which it can seek compulsory winding up are met.
- 13.19 Factors which the FSA will consider when it decides whether to use this power (in addition to the factors identified in paragraphs 13.11 to 13.16 in relation to the FSA's decisions to seek compulsory winding up) include:
- (1) whether the FSA's concerns can properly and effectively be met by seeking a specific direction under section 365(2) of the *Act*;
 - (2) whether the affairs of the *company* require independent investigation of the kind which follows a compulsory winding up order and whether there are or are likely to be funds available for that investigation;
 - (3) the composition of the creditors of the company including the ratio of *consumer* and non-*consumer* creditors and the nature of their claims;
 - (4) the extent to which there are creditors who are or are likely to be connected to the *company* or its directors and management;
 - (5) the extent to which the directors and management are cooperating with the liquidator in voluntary winding up;
 - (6) the need to protect and distribute *consumers'* claims and *assets*;
 - (7) whether a petition by the FSA for compulsory winding up is likely to have the support of the majority or a large proportion of the creditors; and
 - (8) the extent of any resulting delay and additional costs in seeking a compulsory winding up order.

- 13.20 Where the FSA is requested by a *Home State regulator* of an *EEA firm* or a *Treaty firm* to present a petition for the compulsory winding up of that firm, the FSA will first need to consider whether the presentation of the petition is necessary in order to comply with a Community obligation.

Power to apply to court for a provisional liquidator

- 13.21 Where a petition has been presented for the winding up of a body, the court may appoint a provisional liquidator in the interim period pending the hearing of the petition. An appointment may be sought and made to:
- (1) permit the continuation of the business for the protection of *consumers*; or
 - (2) secure, protect, or realise assets or property in the possession or under the control of the *company* or *partnership* (in particular where there is a risk that the assets will be dissipated) for the benefit of creditors or *consumers*.
- 13.22 In cases where it decides to petition for the compulsory winding up of a body under section 367 of the *Act*, the FSA will also consider whether it should seek the appointment of a provisional liquidator. The FSA will have regard, in particular, to the extent to which there may be a need to protect *consumers'* claims and *consumers'* funds or other assets. Where the FSA decides to petition for the compulsory winding up of a *company* or *partnership* on the just and equitable ground and where the *company* or *partnership* is solvent but may become insolvent, the FSA will also consider whether the appointment of a provisional liquidator would serve to maintain the solvency of the *company* or *partnership*.

The FSA's use of its power to petition for a bankruptcy order or a sequestration award in relation to an individual (section 372 of the Act)

- 13.23 The FSA recognises that the bankruptcy of an individual or the sequestration of an individual's estate are significant measures which may have significant personal and professional implications for the individual involved. In considering whether to present a petition the FSA's principal considerations will be its *regulatory objectives* including the protection of *consumers*.
- 13.24 The FSA is also mindful that whilst the winding up of an *unauthorised company* or *partnership* should bring an end to any unlawful activity, this is not necessarily the effect of bankruptcy or sequestration. The FSA may, in certain cases, consider the use of powers to petition for bankruptcy or sequestration in conjunction with the use of other powers to seek *injunctions* and other relief from the court. In particular, where the individual controls assets belonging to consumers and holds, or appears to hold, those assets on trust for consumers, those assets will not vest in the insolvency practitioner appointed in the bankruptcy or sequestration. The FSA will in those circumstances consider whether separate action is necessary to protect the assets and interests of *consumers*.
- 13.25 If an individual appears to be unable to pay a *regulated activity debt*, or to have no reasonable prospect of doing so, then section 372 of the *Act* permits the FSA to petition for the individual's bankruptcy, or in Scotland, for the sequestration of the

individual's estate. The FSA will petition for bankruptcy or sequestration only if it believes that the individual is, in fact, insolvent. In determining this, as a general rule, the FSA will serve a demand requiring the individual to establish, to the FSA's satisfaction, that there is a reasonable prospect that he will be able to pay the *regulated activity debt*.

- 13.26 The FSA will consider the response of the individual to that demand on its own facts and in the light of information, if any, available to the FSA. Exceptionally, the FSA may not first proceed to serve a demand if:
- (1) the individual is already in default of a *regulated activity debt* which has fallen due and payable; and
 - (2) the FSA is satisfied, either because the individual has confirmed it or on the information already available to the FSA, that the individual is insolvent and has no reasonable prospect of paying another *regulated activity debt* when it falls due.
- 13.27 If the FSA believes that the individual is insolvent, the factors it will consider when it decides whether to seek a bankruptcy order or sequestration award include:
- (1) whether others have taken steps to deal with the individual's insolvency, including a proposal by the individual of a voluntary arrangement, a petition by the individual for his own bankruptcy or sequestration, or a petition by a third party for the individual's bankruptcy or the sequestration of the individual's estate;
 - (2) whether the FSA can adequately deal with the individual using other powers available to it under the *Act*, without the need to seek a bankruptcy order or sequestration award;
 - (3) the extent of the individual's insolvency or apparent insolvency;
 - (4) the number of *consumers* affected and the extent of their claims against the individual;
 - (5) whether the individual has control over assets belonging to *consumers*;
 - (6) the individual's conduct in his dealings with the FSA, including the extent of his cooperation with the FSA;
 - (7) whether the individual appears to be, or to have been, involved in *financial crime*;
 - (8) the adequacy of the individual's accounts and administration records;
 - (9) in the case of an *unauthorised individual* who is carrying on or who has carried on a *regulated activity*, the nature, scale and importance of that activity and the individual's conduct in carrying on that activity;
 - (10) whether there would be an advantage in securing a moratorium in respect of proceedings against the individual; and

- (11) whether there are any special personal or professional implications for that individual if a bankruptcy order or sequestration award is made.

Applications in relation to voluntary arrangements: the FSA's policy

- 13.28 In general terms, the approval of a voluntary arrangement (in relation to *companies*, *partnerships* and *individuals*) requires more than 75% of the creditors to whom notice of a meeting has been sent and who are present in person or by proxy. The arrangement must also not be opposed by more than 50% of creditors given notice of the meeting and who have notified their claim, but excluding secured creditors and creditors who are, in the case of companies or partnerships, connected persons and, in the case of individuals, associates. The FSA will therefore not normally challenge an arrangement approved by a majority of creditors.
- 13.29 Exceptionally, the FSA will consider making such a challenge using its powers in sections 356 and 357 of the *Act* after considering, in particular, the following matters:
- (1) The composition of the creditors of the company including the ratio of *consumer* to *non-consumer* creditors or the nature of their claims;
 - (2) whether the FSA has concerns, or is aware of concerns of creditors, about the regularity of the meeting or the identification of connected or associated creditors and the extent to which creditors with those concerns could themselves make an application to court;
 - (3) whether the *company*, *partnership* or individual has control of consumer assets which might be affected by the voluntary arrangement;
 - (4) the complexity of the arrangement;
 - (5) the nature and complexity of the regulated activity;
 - (6) the *company's*, *partnership's* or individual's previous dealings with the FSA, including the extent of its cooperation with the FSA and its compliance history;
 - (7) whether the FSA is aware of any matters which would materially affect the rights and expectations of creditors under the voluntary arrangement as approved; and
 - (8) the extent to which the debtor has made full and accurate disclosure of assets and liabilities in the proposal to creditors.
- 13.30 Similarly, the FSA will not normally use its powers under section 358 of the *Act* to petition for sequestration of a debtor's estate following the grant of a trust deed, if the trust deed has been, or appears likely to be, acceded to by a majority of creditors.
- 13.31 In considering whether to exercise its powers under Schedule A1 to the 1986 Act to make a challenge in relation to acts, omissions or decisions of a nominee during a moratorium, the FSA will have regard to the following matters in particular:

- (1) whether the FSA is aware of matters indicating that the proposed voluntary arrangement does not have a reasonable prospect of being approved and implemented or that the company is likely to have insufficient funds available to it to carry on its business during the moratorium;
- (2) whether consumer assets held by the company are or may be placed at risk; and
- (3) in the case of an *unauthorised company* whether that *company* is able to carry on its business lawfully during the moratorium without undertaking any *regulated activity* in contravention of the *general prohibition*.

Applications for orders against debt avoidance: the FSA's policy

13.32 When it decides whether to make an application for an order against debt avoidance pursuant to section 375 of the *Act*, the FSA will consider all relevant factors, including the following:

- (1) the extent to which the relevant transactions involved dealings in *consumers'* funds;
- (2) whether it would be appropriate to petition for a winding up order, bankruptcy order, or sequestration award, in relation to the debtor and the extent to which the transaction could properly be dealt with in that winding up, bankruptcy or sequestration;
- (3) the number of *consumers* or other creditors likely to be affected and their ability to make an application of this nature; and
- (4) the size of the transaction.

The FSA's arrangements for notification of petitions and other documents

13.33 [Paragraphs 13.34 to 13.36](#) contain information for insolvency practitioners and others about sending copies of petitions, notices and other documents to the FSA, and about making reports to the FSA. Insolvency practitioners and others have duties to give that information and those documents to the FSA under various sections in Part XXIV of the *Act* (Insolvency). [Paragraph 13.34](#) identifies the relevant sections of the *Act* that explain some of the duties.

Insolvency regime and relevant sections of the *Act*.

Insolvency regime	Relevant sections of the Act
Administration	Sections 361 and 362(3)
Compulsory winding up	Sections 369, 370, and 371(3)
Voluntary liquidation	Section 365(4)
Receivership	Sections 363(4) and 364

Bankruptcy and sequestration	Sections 373 and 374(3)
Company moratoria Individual voluntary arrangements	Paragraph 44 of schedule A1 to the 1986 Act Section 357(3) - relates to notices of the result of the creditors' meetings.
Trust deeds for creditors	Section 358(2)(a) and (b) - relates to copies of trust deeds and copies of certain other documents of information sent to creditors. Section 358(4) - relates to notices of any meeting of creditors held in relation to the trust deed.

- 13.35 Unless [paragraph 13.36](#) applies, the information and documents identified in 13.34 should be sent to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS marked 'Insolvency Information'. If the *person* who is subject to the insolvency regime ('the insolvent person') is an *authorised person*, the information and documents should, in the first instance, be addressed to the insolvent person's supervisory contact at the FSA (if known).
- 13.36 If the insolvent person is an *authorised person* and the sender of the information or documents knows that the insolvent person's supervisory contact operates from Edinburgh, information or documents should, in the first instance, be sent to the Financial Services Authority, Quayside House, 127 Fountainbridge, Edinburgh EH3 8DJ.

Rights on petitions by third parties and involvement in creditors meetings: the FSA's policy

- 13.37 The FSA will exercise its rights under sections 362, 371 and 374 of the *Act* to be heard on a third party's petition or in subsequent hearings only where it believes it has information that it considers relevant to the court's consideration of the petition or application. These circumstances may include:
- (1) where the FSA has relevant information which it believes may not otherwise be drawn to the court's attention; especially where the FSA has been asked to attend for a particular purpose (for example to explain the operation of its rules);
 - (2) where the FSA believes that the *insolvency order* being sought by a third party is inappropriate to meet the needs of *consumers* and the public interest; and
 - (3) where the FSA believes that the making of an *insolvency order* will affect the FSA's exercise of its other powers under the *Act*, and wishes to make the court aware of this.

13.38 The making of an *insolvency order* operates to stay any proceedings already in place against the company, partnership or individual, and prevents proceedings being commenced while the *insolvency order* is in place. Proceedings can continue or be commenced against those *persons* only with the court's permission. This may impact on the effectiveness of the FSA's use of its powers to seek *injunctions* and restitution orders from the court. The FSA will draw the court's attention to this potential effect where the FSA believes it is a relevant consideration, but it is a matter for the court to determine its relevance in a particular case.

13.39 The FSA is given power to receive the same information as creditors are entitled to receive in the winding up, administration, receivership or voluntary arrangement of an *authorised person*, of *appointed representatives* and of *persons* who have carried out a *regulated activity* while *unauthorised*. The FSA is also entitled to attend and make representation at any creditors' meeting or (where relevant) creditors' committee meeting taking place in those regimes. When it decides whether to exercise its power to attend and make representations at meetings the factors which the FSA will take into account include:

- (1) the extent of claims by *consumers* upon the body or individual;
- (2) the extent to which *consumer* assets are held by the body or individual;
- (3) the extent to which the FSA is aware of concerns of *consumers* (or other creditors or contributories) about the way in which the insolvency regime is proceeding;
- (4) whether the circumstances which gave rise to the insolvency regime might have general implications for others carrying on regulated business;
- (5) whether the creditors include *shareholders*, directors, or other *persons* who have a connection with the management or ownership of the body or are associated with the individual;
- (6) the complexity or specialisation of the business of the body or individual; and
- (7) where there is a significant cross border or international element to the business which the *company*, *partnership* or individual is carrying out.

14 Collective Investment Schemes.

Exercise of the powers in respect of Authorised Unit Trust Schemes (AUT): sections 254 (revocation of authorisation), 257 (directions) and 258 (power to apply to court) of the Act

- 14.1 The FSA will consider all the relevant circumstances of each case and may take a number of factors into account when it decides whether to use these powers. The following list is not exhaustive; not all these factors may be relevant in a particular case and there may be other factors that are relevant.
- (1) The seriousness of the breach or likely breach by a *manager* or *trustee* of a requirement imposed by or under the *Act*. The following may be relevant:
 - (a) the extent to which the *breach* was deliberate or reckless;
 - (b) the extent of loss, or risk of loss, caused to existing, past or potential participants in the *AUT* as a result of the *breach*;
 - (c) whether the *breach* highlights serious or systemic weaknesses in the management or control of either the *AUT* or *scheme property*;
 - (d) whether there are grounds for believing a *breach* is likely to be continued or repeated;
 - (e) the length of time over which the *breach* happened; and
 - (f) whether existing and/or past participants in the *AUT* have been misled in a material way, for example about the investment objectives or policy of the *scheme* or the level of investment risk.
 - (2) The consequences of a failure to satisfy a requirement for the making of an order authorising an *AUT*. The FSA will expect the non-compliance to be resolved as soon as possible. Important factors are likely to be whether existing and/or past *participants* have suffered loss due to the non-compliance and whether remedial steps will be taken to satisfy all the requirements of the order.
 - (3) Whether it is necessary to suspend the issue and redemption of units to protect the interests of existing or potential *participants* in the *AUT*. For example, this may be necessary if:
 - (a) information suggests the current price of units under the *AUT* may not accurately reflect the value *scheme property*; or
 - (b) the *scheme property* cannot be valued accurately.
 - (4) The effect on the interests of *participants* within the scheme of the use of either or both of its powers under sections 254 and 257. However, the FSA will also consider the interests of past and potential *participants*.

- (5) Whether the FSA's concerns can be resolved by taking enforcement action against the *manager* and/or *trustee* of the *AUT*. In some instances, the FSA may consider it appropriate to deal with a *breach* by a *manager* or *trustee* by taking direct enforcement action against the *manager* and/or *trustee* without using its powers under sections 254, 257, or 258. In other instances, the FSA may combine direct enforcement action against a *trustee* and/or *manager* with the use of one or more of the powers under sections 254, 257 and 258.
- (6) Whether there is information to suggest that a *trustee* or *manager* has knowingly or recklessly given the FSA false information. Giving false information is likely to cause very serious concerns, particularly if it shows there is a risk of loss to the *scheme property* or that *participants'* interests have been or may be affected in some other way.
- (7) The conduct of the *manager* or *trustee* in relation to, and following the identification of, the issue, for example:
 - (a) whether the *manager* or *trustee* discovered the issue or problem affecting the *AUT* and brought it to the FSA's attention promptly;
 - (b) the degree to which the *manager* or *trustee* is willing to cooperate with the FSA's investigation and to take protective steps, for example by suspending the issue and redemption of units in the *AUT*;
 - (c) whether the *manager* or *trustee* has compensated past and existing *participants* who have suffered loss.
- (8) The compliance history of the *trustee* or *manager*, including whether the FSA has previously taken disciplinary action against the *trustee* or *manager* in relation to the *AUT* or any other *collective investment scheme*.
- (9) Whether there is information to suggest that the *AUT* is being used for criminal purposes and/or that the *manager* or *trustee* is itself involved in *financial crime*.

Choice of powers

- 14.2 The FSA may use its powers under sections 254, 257 and 258 individually, together, and as well as direct enforcement action against a *trustee* or *manager* in their capacity as *firms*.
- 14.3 Where the FSA has a concern about an *AUT* that must be dealt with urgently, it will generally use its power to give directions under section 257 in the first instance.
- 14.4 The following are examples of situations where the FSA may consider it appropriate to seek a court order under section 258 to remove the *manager* or *trustee*:
 - (1) Where there are grounds for concern over the behaviour of the *manager* or *trustee* in respect of the management of the *scheme* or of its assets.
 - (2) Where a *manager* or *trustee* has breached a requirement imposed on him under the *Act* or has knowingly or recklessly given the FSA false information.

- 14.5 The FSA recognises that participants in an *AUT* have a direct financial interest in the *scheme property*. It follows that in cases where it considers it appropriate to use its section 254 power to revoke an authorisation order, the FSA will generally first require the *manager* or *trustee* to wind up the *AUT* (or seek a court order for the appointment of a firm to wind up the *AUT*).

Exercise of the powers in respect of ICVCs: regulations 23 (revocation of authorisation), 25 (directions) and 28 (power to apply to court) of the Open-ended Investment Companies Regulations 2001

- 14.6 The factors the FSA may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in [paragraph 14.1](#) in the context of *AUTs*. However, the relevant conduct will, of course, be that of the *ICVC*, the *director* or *directors* of the *ICVC* and its *depository* (another difference is that the FSA is also able to take disciplinary action against the *ICVC* itself since it will be an *authorised person*). When choosing which powers to use, the FSA will adopt an approach which is broadly similar to that described in [paragraphs 14.2 to 14.5](#).

Exercise of the powers in respect of recognised schemes: section 267 of the Act - power to suspend promotion of a scheme recognised under section 264: the FSA's policy

- 14.7 When it decides whether a suspension order under section 267 is appropriate, the FSA will consider all the relevant circumstances. General factors that the FSA may consider include, but are not limited to:
- (1) the seriousness of the breach of *financial promotion* rules by the *operator* (the matters listed at [paragraph 14.1\(1\)\(a\) to \(f\)](#) may be relevant in this context); and
 - (2) the conduct of the *operator* after the *breach* was discovered including whether the *operator* has compensated past and existing *participants* who have suffered loss.

- 14.8 In addition to or instead of suspending the promotion of a *scheme* recognised under section 264, the FSA may ask the *competent authorities* of the *EEA State* in which the *scheme* is constituted who are responsible for the authorisation of *collective investment schemes*, to take such action in respect of the *scheme* and/or its *operator* as will resolve the FSA's concerns. Also, Schedule 5 to the *Act* states that a *person* who for the time being is an *operator*, *trustee* or *depository* of a *scheme* recognised under section 264 of the *Act* is an *authorised person*. So, it will also be open to the FSA to take direct enforcement action against those *persons*.

Exercise of the powers in respect of recognised schemes: sections 279 and 281 of the Act – powers to revoke recognition of schemes recognised under section 270 or section 272: the FSA's policy

- 14.9 The FSA will consider all the relevant circumstances of each case. The general factors which the FSA may consider include, but are not limited to, those set out in [paragraph 14.1\(1\) to \(9\)](#) (the conduct of the *operator* of the *scheme* and of the *trustee*

or *depository* will also, of course, be taken into account in relation to each of these factors).

- 14.10 As well as or instead of using these powers, the FSA may ask the relevant *regulatory body* of the country or territory in which the *scheme* is authorised to take such action in respect of the *scheme* and/or its *operator*, *trustee* or *depository* as will resolve the FSA's concerns.

15 Disqualification of auditors and actuaries

- 15.1 Auditors and *actuaries* fulfil a vital role in the management and conduct of *firms* and *AUTs*. Provisions of the *Act*, *rules* made under the *Act* and the *OEIC Regulations 2000* impose various duties on auditors and *actuaries*. These duties and the FSA's power to disqualify auditors and *actuaries* if they breach them assist the FSA in pursuing its *regulatory objectives*. The FSA's power to disqualify auditors in breach of duties imposed by *trust scheme rules* also assist the FSA to achieve these *regulatory objectives* by ensuring that auditors fulfil the duties imposed on them by these rules.

Disqualification of auditors and actuaries under its powers contained in section 345 and section 249 of the Act: the FSA's general approach

- 15.2 The FSA recognises that the use of its powers to disqualify auditors and *actuaries* will have serious consequences for the auditors or *actuaries* concerned and their clients; it will therefore exercise its power to impose a disqualification in a way that is proportionate to the particular breach of duty concerned. The FSA will consider the seriousness of the breach of duty when deciding whether to exercise its power to disqualify and the scope of any disqualification.
- 15.3 *Actuaries* appointed by *firms* under rule 4.3.1 of the FSA's Supervision Manual are *approved persons* and as such will be subject to the FSA's *Statements of Principle* and *Code of Practice for Approved Persons*. When deciding whether to exercise its power to disqualify an *actuary* who is an *approved person*, the FSA will consider whether the particular breach of duty can be adequately addressed by the exercise of its disciplinary powers in relation to *approved persons*.
- 15.4 In cases where the nature of the breach of duties imposed on the auditors and *actuaries* under the *Act* (and/or in the case of *actuaries* imposed by *trust scheme rules*) is such that the FSA has concerns about the fitness and propriety of an individual auditor or *actuary*, the FSA will consider whether it is appropriate to make a *prohibition order* instead of, or in addition to, disqualifying the individual.
- 15.5 A disqualification order will be made against the *person* appointed as auditor or *actuary* of the *firm*. In the case of *actuaries*, the disqualification order will be made against the individual appointed by the *firm*. In the case of auditors, the disqualification order will depend on the terms of the appointment. Where the *firm* has appointed a named individual as auditor the disqualification will be made against that individual and this will be the case where the individual concerned is a member of a *firm* of auditors. Where the *firm* has appointed a firm as auditor the disqualification order will be against that firm. Where the *person* appointed is a *limited liability partnership* the disqualification order will be against the *limited liability partnership* rather than its members.

Disqualification under section 345

- 15.6 When it decides whether to exercise its power to disqualify an auditor or *actuary* under section 345(1), and what the scope of any disqualification will be, the FSA will take into account all the circumstances of the case. These may include, but are not limited to, the following factors:

- (1) the nature and seriousness of any breach of rules and the effect of that breach: the rules are set out in *SUP 3* (Auditors) and *SUP 4* (*Actuaries*), and in the case of *firms* which are *ICVCs*, in *COLL 4* (Investor relations) and *COLL 7* (Suspension of dealings and termination of authorised funds). The FSA will regard as particularly serious any breach of *rules* which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (2) the nature and seriousness of any breach of the duties imposed under the *Act*: the FSA will regard as particularly serious any failure to disclose to it information which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (3) action taken by the auditor or *actuary* to remedy the *breach*: this may include whether the auditor or *actuary* brought the *breach* to the attention of the FSA promptly, the degree of cooperation with the FSA in relation to any subsequent investigation, and whether remedial steps have been taken to rectify the breach and whether reasonable steps have been taken to prevent a similar breach from occurring;
- (4) action taken by professional bodies: the FSA will consider whether any disciplinary action has been or will be taken against the auditor or *actuary* by a relevant professional body and whether that action adequately addresses the particular breach of duty;
- (5) The previous compliance record of the auditor or *actuary* concerned: whether the FSA (or a *previous regulator*) or professional body has imposed any previous disciplinary sanctions on the *firm* or individual concerned.

Disqualification under section 249

15.7 When deciding whether or not to disqualify an auditor under section 249(1) of the *Act* (concerning the power to disqualify an auditor for breach of *trust scheme rules*), and in setting the disqualification, the FSA will take into account all the circumstances of the case. These may include, but are not limited to, the following circumstances:

- (1) the effect of the auditor's breach of a duty imposed by *trust scheme rules*: the FSA will regard as particularly serious a breach of a duty imposed by *trust scheme rules* (set out in *COLL 4* (Investor relations) and *COLL 7* (Suspension of dealings and termination of authorised funds)) which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (2) action taken by the auditor to remedy its breach of a duty imposed by *trust scheme rules*: this may include any steps taken by the auditor to bring the

breach to the attention of the FSA promptly, the degree of co-operation with the FSA in relation to any subsequent investigation, and whether any steps have been taken to rectify the breach or prevent a similar breach;

- (3) action taken by a relevant professional body: The FSA will consider whether any disciplinary action has or will be taken against the auditor by a relevant professional body and whether such action adequately addresses the particular breach of a duty imposed by *trust scheme rules*;
- (4) the previous compliance record of the auditor concerned: whether the FSA (or a *previous regulator*) or professional body has imposed any previous disciplinary sanctions on the *firm* or individual concerned.

Removal of a disqualification

15.8 An auditor or *actuary* may ask the FSA to remove the disqualification at any time after it has been imposed. The FSA will remove a disqualification if it is satisfied that the disqualified *person* will in future comply with the duty in question (and other duties under the *Act*). When it considers whether to grant or refuse a request that a disqualification be removed on these grounds, the FSA will take into account all the circumstances of a particular case. These circumstances may include, but are not limited to:

- (1) the seriousness of the breach of duty that resulted in the disqualification;
- (2) the amount of time since the original disqualification; and
- (3) any steps taken by the auditor or *actuary* after the disqualification to remedy the factors which led to the disqualification and any steps taken to prevent a similar breach of duty from happening again.

16 Disapplication orders against members of the professions

The FSA's general approach to making disapplication orders

- 16.1 The FSA's power under section 329 of the *Act* to make an order disapplying an exemption from the *general prohibition* in relation to a *person* who is a *member* of the professions on the grounds that the *member* is not a fit and proper person to conduct *exempt regulated activities*, and to maintain a public record of disapplication orders, will assist the FSA in pursuing its *regulatory objectives*.
- 16.2 The FSA may make a range of disapplication orders depending on the particular circumstances of each case, including the range of *exempt regulated activities* undertaken and the particular *exempt regulated activities* to which the *person's* lack of fitness and propriety in that context is relevant.
- 16.3 The FSA recognises that a decision to make a disapplication order may have serious consequences for a *member* in relation not only to the conduct by the member of *exempt regulated activities*, but also in relation to the other business carried on by the *member*. When it decides whether to exercise its power to make a disapplication order, the FSA will consider all relevant circumstances including whether other action, in particular the making of a *prohibition order* (see chapter 9 of this guide), would be more appropriate. In general, the FSA is likely to exercise its powers to make an order disapplying an exemption where it considers that a *member* of a profession presents such a risk to the FSA's *regulatory objectives* that it is appropriate to prevent the *member* from carrying out the *exempt regulated activities*. The FSA will also have regard to any disciplinary action taken, or to be taken, against the *person* by the relevant *designated professional body*.

Disapplication orders

- 16.4 When the FSA has concerns about the fitness and propriety of a *member* to carry out *exempt regulated activities*, it will consider all the relevant circumstances of the case, including whether those concerns arise from the fitness and propriety of specific individuals engaged to perform the *exempt regulated activities* carried out by the *member* or whether its concerns arise from wider concerns about the *member* itself.
- 16.5 In most cases, where the FSA is concerned about the fitness and propriety of a specific individual, it may be more appropriate for the FSA to consider whether to make an order prohibiting the individual from performing functions in relation to *exempt regulated activities* rather than a disapplication order in relation to the *member* concerned. The criteria which the FSA will apply when determining whether to make a prohibition order against an individual who is not regulated by the FSA are set out in [paragraphs 9.17 to 9.18](#) of this guide (*prohibition orders* against other individuals). In addition to the factors referred to in these paragraphs, the FSA may also take into consideration any disciplinary action that has been, or will be taken against the individual concerned by the relevant *designated professional body*, where that disciplinary action reflects on the fitness and propriety of the individual concerned to perform *exempt regulated activities*.

- 16.6 The FSA will also take into account the potentially more serious consequences that a disapplication of an exemption will have for the *member* concerned compared with the consequences of a prohibition of a particular individual engaged in *exempt regulated activities*. However, the FSA may consider it appropriate in some cases to disapply an exemption where it decides that the *member* concerned is not fit and proper to carry out *exempt regulated activities* in accordance with section 327 of the *Act* (Exemption from the general prohibition).
- 16.7 As an alternative to making an order to disapply an exemption, the FSA may consider issuing a private warning. A private warning may be appropriate where the FSA has concerns in relation to a *member's* fitness and propriety but feels that its concerns in relation to the conduct of *exempt regulated activities* can be more appropriately addressed by a private warning than by a disapplication of the *member's* exemption.
- 16.8 When it decides whether to exercise its power to disapply an exemption from the *general prohibition* in relation to a *member*, the FSA will take into account all relevant circumstances which may include, but are not limited to, the following factors:
- (1) Disciplinary or other action taken by the relevant *designated professional body*, where that action relates to the fitness and propriety of the *member* concerned: where the FSA considers that its concerns in relation to the fitness and propriety of the *member* concerned may be, or have been adequately addressed by disciplinary or other action taken by the relevant *designated professional body* it may consider not making a disapplication order in addition to such action; however, where the FSA considers that its concerns, and in particular, any risks presented to the *member's clients* in respect of its *exempt regulated activities*, are not adequately addressed by that action, the FSA will consider making a disapplication order;
 - (2) The significance of the risk which the *member* presents to its *clients*: if the FSA is satisfied that there is a significant risk to *clients* and *consumers* it may consider making a disapplication order;
 - (3) The extent of the *member's* compliance with rules made by the FSA under section 332(1) of the *Act* (Rules in relation to whom the general prohibition does not apply) or by the relevant *designated professional body* under section 332(3) of the *Act*;
- 16.9 Where the FSA is considering whether to exercise its power to make a disapplication order in relation to a *member*, it will liaise closely with the relevant *designated professional body*.
- 16.10 Where the FSA is considering making a disapplication order against a *member* as a result of a breach of *rules* made by the FSA under section 323(1) of the *Act*, it will take into account any proposed application by the *member* concerned for *authorisation* under the *Act*. The FSA may refrain from making a disapplication order pending its consideration of the application for *authorisation*.

Applications under section 329(3) for variation or revocation of disapplication orders

- 16.11 When considering whether to grant or refuse an application under section 329(3) of the *Act* to vary or revoke a disapplication order, the FSA will take into account all the relevant circumstances. These may include, but are not limited to:
- (1) any steps taken by the *person* to rectify the circumstances which gave rise to the original order;
 - (2) whether the *person* has ceased to present the risk to *clients* and *consumers* or to the FSA's *regulatory objectives* which gave rise to the original order;
 - (3) the circumstances giving rise to the original order and any additional information which, had it been known by the FSA, would have been relevant to the decision to make the order;
 - (4) the amount of time which has elapsed since the order was made.
- 16.12 The FSA will not generally grant an application to vary a disapplication order unless it is satisfied that the proposed variation will not result in the *person* presenting the same degree of risk to *clients* or *consumers* that originally gave rise to the order to disapply the exemption. Similarly, the FSA will not revoke a disapplication order unless and until it is satisfied that the *person* concerned is fit and proper to carry out *exempt regulated activities* generally or those specific *exempt regulated activities* in relation to which the exemption has been disapplied.

The effect of a disapplication order

- 16.13 When the FSA has made a disapplication order, the *member* against which it has been made may not perform the *exempt regulated activities* to which the order relates. If the member contravenes the order, there will be a breach of the *general prohibition* that may be prosecuted under section 23 of the *Act* ([see chapter 12](#)).
- 16.14 A disapplication order in relation to *exempt regulated activities* made against a *member* will be relevant should that *member* subsequently apply for *authorisation* under the *Act*. Whether or not such an application for *authorisation* is successful will depend on many factors, including the FSA's grounds for making the disapplication order. For example, if the order for disapplication of the exemption was made on the grounds of a breach of *rules* made under 332(1) the FSA may accept an application for *authorisation* notwithstanding the disapplication order. If, however, the order was made on grounds of a breach of the rules of a *designated professional body* resulting in a significant risk to *clients* in relation to the provision of *exempt regulated activities*, it is unlikely that an application for approval made by the *member* would be accepted by the FSA before the revocation of the disapplication order.

17 Directions against incoming ECA providers

- 17.1 Under regulation 6 of the *E-Commerce Directive Regulations*, provided certain policy and procedural conditions are met, the FSA may direct that an *incoming ECA provider* may no longer carry on a specified *incoming electronic commerce activity*, or may only carry it on subject to specified requirements.

Electronic commerce activity directions: the FSA's policy

- 17.2 The FSA will exercise the power to make an *electronic commerce activity direction* on a case-by-case basis. When deciding whether to make a direction, the FSA will undertake an assessment of whether the circumstances of the particular case meet the policy conditions set out in regulation 6.
- 17.3 The FSA envisages that its approach to the use of the direction power will be as follows. On obtaining information concerning possible *financial crime* facilitated through or involving an *incoming ECA provider*, or detriment to United Kingdom markets or UK *ECA recipients* caused by the activities of an *incoming ECA provider*, the FSA would contact the relevant *EEA regulator* of the *incoming ECA provider*. The FSA would expect the relevant *EEA regulator* to consider the matter, investigate it where appropriate and keep the FSA informed about what action, if any, was being taken. The FSA may not need to be involved further if the action by the relevant *EEA regulator* addresses the FSA's concerns.
- 17.4 However, there are likely to be circumstances in which the FSA will need to use the *electronic commerce activity direction* power. Examples could include where it was necessary to stop the behaviour complained of, or to make the continued provision of services by the *incoming ECA provider* conditional upon compliance with specified requirements. Overall, the FSA may use the direction power:
- (1) Where:
 - (a) the behaviour complained of was causing, or had the potential to cause, major detriment to *consumers* in the United Kingdom; or
 - (b) the *incoming ECA provider's* activities have been used, or have the potential to be used, to facilitate serious *financial crime* or to launder the proceeds of a crime; or
 - (c) the making of the direction is considered to be necessary for other reasons of public policy relevant to the *regulatory objectives*; and
 - (2) Either:
 - (a) the relevant *EEA regulator* is unable to take action, or has not within a reasonable time taken action which appears to the FSA to be adequate; or
 - (b) the relevant *EEA regulator* and the FSA agree that, having regard to the circumstances of the particular case, action against the wrong-doing would be taken more effectively by the FSA.

- 17.5 The question of whether the FSA decided to prevent or prohibit the *incoming electronic commerce activity*, or to make it subject to certain requirements (for example, compliance with specified rules), will depend on the overall circumstance of the case. A relevant consideration will be whether the FSA is satisfied that its concerns over the *incoming electronic commerce activity* can be adequately addressed through the imposition of a requirement, rather than a complete prohibition on the activity. Set out below is a list of factors the FSA may consider. The list is not exhaustive.
- (1) The extent of any loss, or risk of loss, or other adverse effect on UK *ECA recipients*: The more serious the loss or potential loss or other adverse effect on them, the more likely it is that the FSA's exercise of its powers to prohibit the activity altogether will be appropriate, to protect the interests of UK *ECA recipients*.
 - (2) The extent to which customer assets appear to be at risk.
 - (3) The risk that the *incoming ECA provider's* activities may be used or have been used to facilitate *financial crime* or to launder the proceeds of a crime: Information available to the FSA, including information supplied by other law enforcement agencies, may suggest that the *incoming ECA provider* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, a direction that the *incoming electronic commerce activity* should cease may be appropriate.
 - (4) The risk that the *incoming ECA provider's* activities present to the *financial system* and to confidence in the *financial system*.
 - (5) The impact that a complete prohibition on the activity would have on UK *ECA recipients*.
- 17.6 The FSA may consider that a case is urgent, in particular, where:
- (1) the information available to it indicates serious concerns about the *incoming electronic commerce activity* that need to be addressed immediately; and
 - (2) circumstances indicate that it is appropriate to use the direction power immediately to prohibit the *incoming electronic commerce activity*, or to make the carrying on of the activity subject to specified requirements.
- 17.7 The FSA will consider the full circumstances of the case when deciding whether exercising the direction power without first taking the procedural steps set out in Regulation 6 is an appropriate response to such concerns. The factors the FSA may consider include those listed in [paragraph 17.5 \(1\) to \(5\)](#) of this guide. There may be other relevant factors.
- Decision making**
- 17.8 The FSA's decision to make, revoke or vary an *electronic commerce activity direction* will generally be taken by the RDC Chairman. However, this is subject to two exceptions.

- (1) In an urgent case and if the Chairman is not available, the decision will be taken by an *RDC* Deputy Chairman and where possible, but subject to the need to act swiftly, one other *RDC* member.
 - (2) If a provider who has been notified of the FSA's intention to make a direction or to vary a direction on its own initiative makes representations within the period and in the manner required by the FSA, then those representations will be considered by the *RDC*, rather than by the *RDC* Chairman alone. Having taken into account the provider's representations, the *RDC* will then decide whether to make the direction, or to vary the existing direction.
- 17.9 Where a provider must be given the opportunity to make representations to the FSA in relation to a proposed direction or variation of a direction, the *RDC* Chairman will determine in each case the manner and the period within which those representations should be made.

Publicity

- 17.10 Regulation 10(8) of the *ECD Regulations* provides that if the FSA makes a direction, it may publish, in such manner as it considers appropriate, such information about the matter to which the direction relates as it considers appropriate in furtherance of any of the objectives referred to in [paragraph 17.4\(1\)](#) of this guide. However, under regulation 10(9), the FSA may not publish information relating to a direction if publication would, in the FSA's opinion, be unfair to the provider to whom the direction applies or prejudicial to the interests of *consumers*.
- 17.11 When deciding what information, if any, to publish and the appropriate manner of publication, the FSA will consider the full circumstances of each case. The FSA anticipates that it will generally be appropriate to publish relevant details of a direction, in order to protect and inform *consumers*. However, in accordance with the regulation 10(9) prohibition, it will not publish information if it considers that publication would be unfair to the provider or prejudicial to the interests of *consumers*.

18 Cancellation of approval as sponsor on the FSA's own initiative

- 18.1 The FSA may cancel a *sponsor's* approval under section 88 of the *Act* if it considers that a *sponsor* has failed to meet the criteria for approval as a *sponsor* as set out in *LR 8.6.5R*.
- 18.2 When considering whether to cancel a *sponsor's* approval on its own initiative, the FSA will take into account all relevant factors, including, but not limited to, the following:
- (1) the competence of the *sponsor*;
 - (2) the adequacy of the *sponsor's* systems and controls;
 - (3) the *sponsor's* history of compliance with the *listing rules*;
 - (4) the nature, seriousness and duration of the suspected failure of the *sponsor* to meet (at all times) the criteria for approval as a *sponsor* set out in *LR 8.6.5R*;
 - (5) any matter which the FSA could take into account if it were considering an application for approval as a *sponsor* made under section 88(3)(d) of the *Act*.

**Annex 1 – Table of investigation and enforcement powers not discussed in this guide
(see paragraph 1.6)**

Legislation	Nature of investigation or enforcement power
Friendly Societies Act 1992	Power to present petitions for the winding up by the court of incorporated friendly societies (section 22)
Friendly Societies Act 1974	Powers to carry out inspections of books and to prosecute friendly societies for failure to submit annual return to the FSA (section 98)
Buildings Societies Act 1986	Functions under the <i>Act</i> for example to investigate a firm's business or suspected breaches by a firm, to vary or cancel a firm's permission, to take disciplinary action against a firm, to apply to court for injunctions
Industrial and Provident Societies Act 1965	Functions under the <i>Act</i> (e.g. Power to cancel registration of society (section 16), Inspection of books (section 47), Production of documents and provision of information for certain purposes (section 48); appointment of inspectors and calling of special meetings (section 49), power of registrar a petition for winding up (section 56) power to prosecute IPS for failure to submit annual return to the FSA (section 61)
Enterprise Act and Enterprise Act 2002 (Part 8)	FSA designated as a designated enforcer and a CPC enforcer under Part 8 of this Act
Proceeds of Crime Act 2002	FSA staff may be designated as an accredited financial investigator for purpose of applying for restraining orders and confiscations investigations (Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003) s. 42(2)(c), 68(3)(c), 191(2)(c), 216(3)(c), 378(1)(b), 378(2)(d)
Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004	Power to institute proceedings for an offence under these Regulations 2004 (section 16)
Credit Institutions (Reorganisation and Winding Up) Regulations 2004	Power under section 45 of the <i>Act</i> to vary or cancel the UK credit institution's permission under Part IV of the <i>Act</i> to accept deposits or to issue electronic money as the case may be. (Reg 11(3))
Financial Services (Distance Marketing) Regulations 2004	FSA is an enforcement authority, in respect of 'specified contracts' for the purposes of reg. 18, 19, 22 (power to consider any complaint made to it about a breach (s. 18), power to apply for an injunction (including an interim injunction) against any person who appears to be responsible for a breach (s. 19), power to institute proceedings for an offence under these Regulations (s. 22)).

Financial Conglomerates Directive and Other Financial Groups Regulations 2004 Reg. 15	Extension of power to vary <i>Part IV permission</i>
Regulated Activities Order Art. 95	Power directly to de-register insurance intermediaries if not fit and proper

Annex 2 - Guidelines on investigation of cases of interest or concern to the Financial Services Authority and other prosecuting and investigating agencies

Purpose, status and application of the guidelines

1. These guidelines have been agreed by the following bodies (the agencies):
 - the Financial Services Authority (the FSA);
 - the Serious Fraud Office (the SFO);
 - the Department of Trade and Industry (the DTI);
 - the Crown Prosecution Service (the CPS);
 - the Association of Chief Police Officers in England, Wales and Northern Ireland (ACPO);
 - the Crown Office;
 - the Department of the Director of Public Prosecutions for Northern Ireland (the DPP(NI));
 - the Association of Chief Police Officers in Scotland (ACPO(S)).
2. The guidelines are intended to assist the agencies when considering cases concerning financial crime and/or regulatory misconduct that are, or may be, of mutual interest to the FSA and one or more of the other agencies. Their implementation and wider points arising from them will be kept under review by the agencies who will liaise regularly.
3. The purpose of the guidelines is to set out some broad principles which the agencies agree should be applied by them in order to assist them to:
 - (a) decide which of them should investigate such cases;
 - (b) co-operate with each other, particularly in cases where more than one agency is investigating;
 - (c) prevent undue duplication of effort by reason of the involvement of more than one agency;
 - (d) prevent the subjects of proceedings being treated unfairly by reason of the unwarranted involvement of more than one agency.
4. The guidelines are intended to apply to the relationships between the FSA and the other agencies. They are not intended to apply to the relationships between those other agencies themselves where there is no FSA interest. They are not

legally binding.

5. The guidelines are subject to the restrictions on disclosure of information held by the agencies. They are not intended to override them.
6. The guidelines are relevant to ACPO and ACPO(S) only in so far as they relate to investigations. Similarly, they are relevant to the CPS and the DPP(NI) only in so far as they relate to prosecutions.

Commencing Investigations

7. The agencies recognise that there are areas in which they have an overlapping remit in terms of their functions and powers (the powers and functions of the agencies are set out in the Appendix to this document). The agencies will therefore endeavour to ensure that only the agency or agencies with the most appropriate functions and powers will commence investigations.
8. The agencies further recognise that in certain cases concurrent investigations may be the most quick, effective and efficient way for some cases to be dealt with. However, if an agency is considering commencing an investigation and another agency is already carrying on a related investigation or proceedings or is otherwise likely to have an interest in that investigation, best practice is for the agencies concerned to liaise and discuss which agency or agencies should take action, i.e. investigate, bring proceedings or otherwise deal with the matter.

Indicators for deciding which agency should take action

9. The following are indicators of whether action by the FSA or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

(a) Tending towards action by the FSA

- Where the suspected conduct in question gives rise to concerns regarding market confidence or protection of consumers of services regulated by the FSA.
- Where the suspected conduct in question would be best dealt with by:
 - criminal prosecution of offences which the FSA has powers to prosecute by virtue of the Financial Services and Markets Act 2000 ("the 2000 Act") (See Appendix paragraph 1.4) and other incidental offences;
 - civil proceedings under the 2000 Act (including applications for injunctions, restitution and to wind up firms carrying on

- regulated activities);
 - regulatory action which can be referred to the Financial Services and Markets Tribunal (including proceedings for market abuse); and
 - proceedings for breaches of Part VI of the *Act*, of *Part 6 rules* or the *Prospectus Rules* or a provision otherwise made in accordance with the *Prospectus Directive* .
- Where the likely defendants are FSA authorised or approved persons.
- Where the likely defendants are issuers or sponsors of a security admitted to the official list or in relation to which an application for listing has been made.
- Where there is likely to be a case for the use of FSA powers which may take immediate effect (e.g. powers to vary the permission of an authorised firm or to suspend listing of securities).
- Where it is likely that the investigator will be seeking assistance from overseas regulatory authorities with functions equivalent to those of the FSA.
- Where any possible criminal offences are technical or in a grey area whereas regulatory contraventions are clearly indicated.
- Where the balance of public interest is in achieving reparation for victims and prosecution is likely to damage the prospects of this.
- Where there are distinct parts of the case which are best investigated with regulatory expertise.

(b) Tending towards action by one of the other agencies

- Where serious or complex fraud is the predominant issue in the conduct in question (normally appropriate for the SFO).
- Where the suspected conduct in question would be best dealt with by:
 - criminal proceedings for which the FSA is not the statutory prosecutor;
 - proceedings for disqualification of directors under the Company Directors Disqualification Act 1986 (normally appropriate for DTI)

action);

- winding up proceedings which FSA does not have statutory powers to bring (normally appropriate for DTI action); or
- criminal proceedings in Scotland.

- Where the conduct in question concerns the abuse of limited liability status under the Companies Acts (normally appropriate for DTI action).
- Where powers of arrest are likely to be necessary.
- Where it is likely that the investigator will rely on overseas organisations (such as law enforcement agencies) with which the other agencies have liaison.
- Where action by the FSA is likely to prejudice the public interest in the prosecution of offences for which the FSA is not a statutory prosecutor.
- Where the case falls only partly within the regulated area (or criminal offences for which FSA is a statutory prosecutor) and the prospects of splitting the investigation are not good.

10. It is also best practice for the agencies involved or interested in an investigation to continue to liaise as appropriate throughout in order to keep under review the decisions as to who should investigate or bring proceedings. This is particularly so where there are material developments in the investigation that might cause the agencies to reconsider its general purpose or scope and whether additional investigation by others is called for.

Conduct of concurrent investigations

11. The agencies recognise that where concurrent investigations are taking place, action taken by one agency can prejudice the investigation or subsequent proceedings brought by another agency. Consequently, it is best practice for the agencies involved in concurrent investigations to notify each other of significant developments in their investigations and of any significant steps they propose to take in the case, such as:

- interviewing a key witness;
- requiring provision of significant volumes of documents;
- executing a search warrant; or
- instituting proceedings or otherwise disposing of a matter.

12. If the agencies identify that particular action by one party might prejudice an investigation or future proceedings by another, it is desirable for the parties concerned to discuss and decide what action should be taken and by whom. In reaching these decisions, they will bear in mind how the public interest is best served overall. The examples provided in paragraph 9 above may also be used as indicators of where the overall balance of interest lies.

Deciding to bring proceedings

13. The agencies will consider, as necessary, and keep under review whether an investigation has reached the point where it is appropriate to commence proceedings. Where agencies are deciding whether to institute criminal proceedings, they will have regard to the usual codes or guidance relevant to that decision. For example, agencies other than the DPP(NI) or the Crown Office will have regard to the Code for Crown Prosecutors (Note: Different guidance applies to the DPP(NI) and the Crown Office. All criminal proceedings in Scotland are the responsibility of the Lord Advocate. Separate arrangements have been agreed between the FSA and the Crown Office for the prosecution of offences in Scotland arising out of FSA investigations). Where they are considering whether to bring non-criminal proceedings, they will take into account whatever factors they consider relevant (for example, in the case of market abuse proceedings brought by the FSA, these are set out in paragraph 14.4 of the FSA Enforcement manual).
14. The agencies recognise that in taking a decision whether to commence proceedings, relevant factors will include:
 - whether commencement of proceedings might prejudice ongoing or potential investigations or proceedings brought by other agencies; and
 - whether, in the light of any proceedings being brought by another party, it is appropriate to commence separate proceedings against the person under investigation.
15. Best practice in these circumstances, therefore, is for the parties concerned to liaise before a decision is taken.

Closing Cases

16. It is best practice for the agencies, at the conclusion of any investigation where it is decided that no further action need be taken, or at the conclusion of proceedings, to notify any other agencies concerned of the outcome of the investigation and/or proceedings and to provide any other helpful feedback.

APPENDIX TO THE GUIDELINES ON INVESTIGATION OF CASES OF INTEREST OR CONCERN TO THE FINANCIAL SERVICES AUTHORITY AND OTHER PROSECUTING AND INVESTIGATING AGENCIES

1. The FSA

1.1 The FSA is the single statutory regulator for all financial business in the UK. Its regulatory objectives under the Financial Services and Markets Act 2000 (the 2000 Act) are:

- market confidence;
- public awareness;
- the protection of consumers; and
- the reduction of financial crime.

(**Note:** The 2000 Act repealed and replaced various enactments which conferred powers and functions on the FSA and other regulators whose functions are now carried out by the FSA. Most notable in this context are the Financial Services Act 1986 and the Banking Act 1987. Transitional provisions under the 2000 Act permit the FSA to continue to investigate and bring proceedings for offences under the old legislation. Details of these transitional provisions are not set out in these guidelines)

1.2 The *FSA's regulatory objectives* as the competent authority under Part VI of the *Act* are:

- the protection of investors;
- access to capital; and
- investor confidence.

1.3 Under the 2000 Act the FSA has powers to investigate concerns including:

- regulatory concerns about authorised *firms* and individuals employed by them;
- suspected *market abuse* under s.118 of the 2000 Act;
- suspected misleading statements and practices under s.397 of the 2000 Act;
- suspected *insider dealing* under of Part V of the Criminal Justice Act 1993;
- suspected contraventions of the general prohibition under s.19 of the 2000 Act and related offences;

- suspected offences under various other provisions of the 2000 Act (see below);
- suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules* or a provision otherwise made in accordance with the *Prospectus Directive*.

The FSA's powers of information gathering and investigation are set out in Part XI of the 2000 Act and in s.97 in relation to its Part VI functions.

1.4 The FSA has power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons under s.66 of the 2000 Act;
- impose civil penalties in cases of market abuse under s.123 of the 2000 Act;
- prohibit an individual from being employed in connection with a regulated activity, under s.56 of the 2000 Act;
- apply to Court for *injunctions* (or interdicts) and other orders against persons contravening relevant requirements (under s.380 of the 2000 Act) or engaging in *market abuse* (under s.381 of the 2000 Act);
- petition the court for the winding up or administration of companies, and the bankruptcy of individuals, carrying on *regulated activities*;
- apply to the court under ss.382 and 383 of the 2000 Act for restitution orders against persons contravening relevant requirements or persons engaged in *market abuse*;
- require restitution under s.384 of the 2000 Act of profits which have accrued to authorised persons contravening relevant requirements or persons engaged in *market abuse*, or of losses which have been suffered by others as a result of those *breaches*;
- (in England and Wales) prosecute offences under the Money Laundering Regulations 1993, Part V Criminal Justice Act 1993 (insider dealing) and various offences under the 2000 Act including (**Note:** The FSA may also prosecute any other offences which are incidental to those which it has express statutory power to prosecute):
 - carrying on *regulated activity* without authorisation or exemption, under s.23;
 - making false claims to be authorised or exempt, under s.24;

- promoting investment activity without authorisation, under s.25;
 - breaching a prohibition order, under s.56;
 - failing to co-operate with or giving false information to FSA appointed investigators, under s.177;
 - failing to comply with provisions about influence over authorised persons, under s.191;
 - making misleading statements and engaging in misleading practices, under s.397;
 - misleading the FSA, under s.398;
 - various offences in relation to the *FSA's* Part VI function;
- Fine, issue public censures, suspend or cancel listing for breaches of the Listing Rules by an issuer; and
 - Issue public censures or cancel a sponsor's approval.

2. DTI

- 2.1 The Secretary of State for Trade & Industry exercises concurrently with the FSA those powers and functions marked with an asterisk in paragraphs 1.3 above. The investigation functions are undertaken by Companies Investigation Branch (CIB) and the prosecution functions by the Solicitors Office.
- 2.2 The principal activities of CIB are, however, the investigations into the conduct of companies under the Companies Acts and the Fair Trading Act. These are fact-finding investigations but may lead to follow-up action by CIB such as petitioning for the winding up of a company, disqualification of directors of the company or referring the matter to the Solicitors Office for prosecution. CIB may also disclose information to other prosecution or regulatory authorities to enable them to take appropriate action under their own powers and functions. Such disclosure is, however, strictly controlled under a gateway disclosure regime.
- 2.3 The Solicitors Office advises on investigation work carried out by CIB and undertakes criminal investigations and prosecutions in respect of matters referred to it by CIB, the Insolvency Service or other divisions of the DTI or its agencies.

3. SFO

- 3.1 The aim of the SFO is to contribute to:

- reducing fraud and the cost of fraud;
- the delivery of justice and the rule of law;
- maintaining confidence in the UK's business and financial institutions.

3.2 Under the Criminal Justice Act 1987 the Director of the SFO may investigate any suspected offence which appears on reasonable grounds to involve serious or complex fraud and may also conduct, or take over the conduct of, the prosecution of any such offence. The SFO may investigate in conjunction with any other person with whom the Director thinks it is proper to do so; that includes a police force (or the FSA or any other regulator). The criteria used by the SFO for deciding whether a case is suitable for it to deal with are set out in paragraph 3.3.

3.3 The key criterion should be that the suspected fraud is such that the direction of the investigation should be in the hands of those who would be responsible for any prosecution.

The factors that are taken into account include:

- whether the amount involved is at least £1 million (this is simply an objective and recognisable signpost of seriousness and likely public concern rather than the main indicator of suitability);
- whether the case is likely to give rise to national publicity and widespread public concern. That includes those involving government bodies, public bodies, the governments of other countries and commercial cases of public interest;
- whether the case requires highly specialist knowledge of, for example, stock exchange practices or regulated markets;
- whether there is a significant international dimension;
- whether legal, accountancy and investigative skills need to be brought together; and
- whether the case appears to be complex and one in which the use of Section 2 powers might be appropriate.

4. CPS

4.1 The CPS has responsibility for taking over the conduct of all criminal proceedings instituted by the police in England and Wales. The CPS may advise the police in respect of criminal offences. The CPS prosecutes all kinds of criminal offences, including fraud. Fraud cases may be prosecuted by local CPS offices but the most serious and complex fraud cases will be prosecuted centrally.

5. ACPO and ACPO(S)

- 5.1 ACPO represents the police forces of England, Wales, and Northern Ireland. ACPO(S) represents the police forces of Scotland.

6. The Crown Office

- 6.1 The investigation and prosecution of crime in Scotland is the responsibility of the Lord Advocate, who is the head of the Procurator Fiscal Service, which comprises Procurators Fiscal and their Deputies, who are answerable to the Lord Advocate. The Procurator Fiscal is the sole public prosecutor in Scotland, prosecuting cases reported not only by the police but all regulatory departments and agencies. All prosecutions before a jury, both in the High Court of Justiciary and in the Sheriff Court, run in the name of the Lord Advocate; all other prosecutions run in the name of the local Procurator Fiscal. The Head Office of the Procurator Fiscal Service is the Crown Office and the Unit within the Crown Office which deals with serious and complex fraud cases and with the investigation of cases of interest or concern to the Financial Services Authority is the Fraud and Specialist Services Unit: the remit of this Unit is directly comparable to that of the Serious Fraud Office.

7. The DPP(NI)

- 7.1 The DPP(NI) is responsible for the prosecution of all offences on indictment in Northern Ireland, other than offences prosecuted by the Serious Fraud Office. The DPP(NI) is also responsible for the prosecution of certain summary offences, including offences reported to it by any government department.

Transitional provisions applying to the Enforcement Guide

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision dates in force:	(6) Regulatory Guide provision coming into force
1	<i>EG</i>		<p><i>EG</i> takes effect on 28 August 2007, save to the extent described below.</p> <p>The <i>FSA</i>'s enforcement policy will continue to be as described in the Enforcement manual (ENF) in relation to any <i>statutory notice</i> or related notice given on or after 28 August where a <i>warning notice</i>, first <i>supervisory notice</i> or <i>decision notice</i> was given by the <i>FSA</i> before 28 August in relation to the same matter.</p>	From 28 August 2007	28 August 2007

Annex B

Amendments to the Enforcement Guide (EG)

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

Investigations into general and specific concerns (sections 167 and 168)

- 3.8 Where the FSA has decided that an investigation is appropriate (see chapter 2) and it appears to it that there are circumstances suggesting that contraventions or offences set out in section 168 may have happened, the FSA will normally appoint investigators pursuant to section 168. Where the circumstances do not suggest any specific breach or contravention covered by section 168, but, the FSA still has concerns about a *firm*, an *appointed representative*, a recognised investment exchange or an *unauthorised incoming ECA provider*, such that it considers there is good reason to conduct an investigation into the nature, conduct or state of the *person's* business or a particular aspect of that business, or into the ownership or control of an *authorised person*, the FSA may appoint investigators under section 167.
- 8.14 The grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the *Act* are set out in section 45(1). Examples of the types of circumstances in which the FSA may cancel a *firm's Part IV permission* include:
- (1) non-compliance with a *Financial Ombudsman Service* award against the *firm*;
 - (2) material non-disclosure in an application for authorisation or approval or material non-notification after authorisation or approval has been granted. The information which is the subject of the non-disclosure or non-notification may also be grounds for cancellation;
 - (3) failure to have or maintain professional indemnity insurance, or other adequate financial resources;
 - (4) non-submission of regulatory returns, or repeated failure to submit such returns in a timely fashion;
 - (5) non-payment of FSA fees or repeated failure to pay FSA fees except under threat of enforcement action; and
 - (6) failure to provide the FSA with valid contact details or failure to maintain the details provided, such that the FSA is unable to communicate with the *firm*.

Section 45(2A) of the *Act* sets out further grounds on which the FSA may cancel the permission of *authorised persons* which are *investment firms*.

- 8.27 ~~Save in urgent cases, the FSA will seek, and take account of, the views of the *firm's Home State regulator* when it is considering action against an *incoming firm*. When it~~

is considering action against an *incoming firm*, the FSA will co-operate with the *firm's Home State regulator* as appropriate, including notifying and informing the *firm's Home State regulator* as required by the relevant section of the *Act*.

9.9 When it decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

- (1) The matters set out in section 61(2) of the *Act*.
- (2) Whether the individual is fit and proper to perform functions in relation to *regulated activities*. The criteria for assessing the fitness and propriety of *approved persons* are set out in *FIT 2.1* (Honesty, integrity and reputation); *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).
- (3) Whether, and to what extent, the *approved person* has:
 - (a) failed to comply with the *Statements of Principle* issued by the FSA with respect to the conduct of *approved persons*; or
 - (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*) or failed to comply with any directly applicable Community regulation made under *MiFID*.

...

EG 10.2 footnote

⁹ Under sections 380(6)(a) and (7)(a), a 'relevant requirement' means a requirement: which is imposed by or under the *Act* or by any directly applicable Community regulation made under *MiFID*; or which is imposed by or under any other *Act* and whose contravention constitutes an offence which the FSA has power to prosecute under the *Act* (or in the case of Scotland, which is imposed by or under any other *Act*) and whose contravention constitutes an offence under Part V of the Criminal Justice Act 1993 or under the *Money Laundering Regulations*.

11.5 However, there may be circumstances in which the FSA will choose to use the powers under section 382 or section 383 of the *Act* to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the FSA wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement of the *Act* or any directly applicable Community regulation made under *MiFID*; the FSA's powers to apply for *injunctions* restraining *firms* from breaching relevant requirements of the *Act* or any directly applicable Community regulation under *MiFID* are discussed in chapter 10 of this guide;

...

Other relevant powers

- 11.8 The FSA may apply to the court for an *injunction* if it appears that a *person*, whether *authorised* or not, is reasonably likely to breach a requirement of the *Act* or any directly applicable Community regulation made under *MiFID* or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached a requirement of the *Act* or any directly applicable Community regulation made under *MiFID* or has engaged in *market abuse* and is likely to continue doing so.
- 11.9 The FSA may consider taking action for a financial penalty or *public censure*, as well as seeking restitution, if a *person* has breached a relevant requirement of the *Act* or any directly applicable Community regulation under *MiFID* or has engaged in, or *required or encouraged* others to engage in, *market abuse*.

UNFAIR CONTRACT TERMS REGULATORY GUIDE INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 28 August 2007.

General guidance on Unfair Contract Terms

- C. General guidance on Unfair Contract Terms is made in the form of the Annex to this instrument. This guidance is a Regulatory Guide and does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Unfair Contract Terms Regulatory Guide Instrument 2007.
- E. The Regulatory Guide in the Annex to this instrument may be cited as the Unfair Contract Terms Regulatory Guide (or UNFCOG).

By order of the Board
26 July 2007

Annex

Unfair Contract Terms Regulatory Guide (UNFCOG)

In this Annex, all the text is new and is not underlined.

1.1 Application and purpose

- 1.1.1 G This Guide explains the *FSA's* policy on how it will use its powers under the *Unfair Terms Regulations* (the Regulations)
- 1.1.2 G We have agreed with the Office of Fair Trading ('OFT') that the *FSA* will consider the fairness (within the meaning of the Regulations) of financial services contracts for carrying on any *regulated activity*.
- 1.1.3 G The OFT will consider the fairness of other financial services contracts which involve activities governed by the Consumer Credit Act 1974. This includes second-charge mortgage loans, buy-to-let mortgages, and non-mortgage personal loans (including credit cards). Also, where the firm concerned is not a *firm* or an *appointed representative*, the OFT may take enforcement action under the Regulations in respect of financial services contracts involving the carrying on of *regulated activities* (see *EG* 10.16 and 10.17).
- 1.1.4 G This Guide applies to:
- (1) *firms*;
 - (2) *appointed representatives*; and
 - (3) other *persons*, whether or not a *person* with *permission*, who use, or recommend the use of, contracts to carry on *regulated activities*.
- 1.1.5 G This Guide uses "firm" to refer to all such persons.

1.2 Introduction

- 1.2.1 G This Guide explains the *FSA's* formal powers under the Regulations. It does not contain comprehensive *guidance* on the Regulations themselves, and you should refer to those Regulations for further details.
- 1.2.2 G This Guide also provides *guidance* on the approach we take before considering whether to exercise our formal powers under the Regulations.
- 1.2.3 G The *FSA* has powers as a qualifying body under the Regulations. The Regulations are not made under the *Act*, but, under the Regulations our functions are treated as functions under the *Act*. This:

- (1) makes the *regulatory objectives* relevant to forming policy that governs the discharge of our functions under the Regulations;
- (2) means that any complaints about the *FSA's* activities under the Regulations can be referred to the *Complaints Commissioner*;
- (3) allows the *FSA* to make full use of its information disclosure powers;
- (4) allows the *FSA* to use its power to give *guidance*;
- (5) protects the *FSA* against liability in damages in respect of its activities under the Regulations; and
- (6) allows the *FSA* to raise fees to fund its activities under the Regulations.

- 1.2.4 G
- (1) As such, we publish on our website details of cases that result in a change in the contract terms used by the firm. This may happen through either an undertaking by a firm or injunction obtained from the courts.
 - (2) Under regulation 14 of the Regulations the *FSA* has a duty to pass details of these cases to the OFT.
 - (3) The OFT also publishes details of cases that it, and other qualifying bodies, have dealt with in accordance with the OFT's duties under regulation 15 of the Regulations.

1.3 The Unfair Terms Regulations

Terms to which the Regulations apply

- 1.3.1 G
- (1) The Regulations apply, with certain exceptions, to terms in contracts concluded between a seller or supplier and a *consumer* which have not been individually negotiated.
 - (2) Terms cannot be reviewed for fairness within the meaning of the Regulations if they are terms which reflect:
 - (a) mandatory statutory or regulatory provisions; or
 - (b) the provisions or principles of international conventions to which the *EEA States* or the European Community as a whole are party.
 - (3) Terms written in plain, intelligible language cannot be reviewed for fairness within the meaning of the Regulations if the terms relate to:
 - the definition of the main subject matter of the contract; or
 - the adequacy of the price or remuneration, as against the goods

or services supplied in exchange.

However, we can review terms concerning these matters for fairness within the meaning of the Regulations if they are not written in plain, intelligible language. We do not consider that it is enough that a lawyer could understand the term for it to be excluded from such a review. The term must be plain and intelligible to the *consumer*.

When a term is 'unfair' within the meaning of the Regulations

- 1.3.2 G Terms are regarded as unfair if, contrary to the requirement of good faith, they cause a significant imbalance in the parties' rights and obligations to the detriment of the *consumer*.

The main powers of the courts and qualifying bodies under the Regulations

- 1.3.3 G (1) Under regulation 13 we have the power to request, for certain purposes:
- '(a) a copy of any document which that person has used or recommended for use, [...] as a pre-formulated standard contract in dealings with consumers;
 - (b) information about the use, or recommendation for use, by that person of that document or any other such document in dealings with consumers.'
- 1.3.4 G (1) Unless the case is urgent, we will generally first write to a firm to express our concern about the potential unfairness of a term or terms (within the meaning of the Regulations) and will invite the firm to comment on those concerns. If we still believe that the term is unfair, we will normally ask the firm to stop including the term in new contracts and to stop relying on it in any concluded contracts. If the firm either declines to give an undertaking, or gives an undertaking but fails to follow it, the FSA will consider the need to apply to the courts for an injunction under regulation 12.
- (2) In deciding whether to ask a firm to undertake to stop including a term in new contracts and to stop relying on it in concluded contracts, we will consider the full circumstances of each case. Several factors may be relevant for this purpose and the following list is not exhaustive, but will give some indication of the sorts of things we consider:
- (a) whether we are satisfied that the contract term may properly be regarded as unfair within the meaning of the Regulations;
 - (b) the extent and nature of the detriment to *consumers* resulting from the term or the potential harm which could result from the term;
 - (c) whether the firm has fully cooperated with the FSA in resolving our concerns about the fairness of the particular contract term.

- 1.3.5 G Regulation 12 states that:
- '(1) The [OFT] or [...] any qualifying body may apply for an injunction (including an interim injunction) against any person appearing to them to be using, or recommending the use of, an unfair term drawn up for general use in contracts concluded with consumers'.
 - '(3) The court, on an application under this regulation, may grant an *injunction* on such terms as it thinks fit.'

The *FSA* is a qualifying body for the purposes of regulation 12. Our approach to seeking an injunction under the Regulations is set out in Chapter 10 of *EG*.

- 1.3.6 G Regulation 8 states that an unfair term is not binding on the *consumer* but that the contract will continue to bind the parties if it is capable of continuing in existence without the unfair term. Therefore, if the court finds that the term in question is unfair, the firm would have to stop relying on the unfair term in existing contracts governed by the Regulations.

1.4 The Unfair Terms Regulations: the FSA's role and policy

- 1.4.1 G The *FSA* may consider the fairness of a contract within the meaning of the Regulations following a complaint from a *consumer* or other person or on its own initiative if the contract is within its scope.
- 1.4.2 G There are three main ways in which we might receive a complaint from a *consumer* or other person. These are:
- (1) directly; or
 - (2) from another qualifying body which considers that the *FSA* should deal with the complaint; or
 - (3) from the OFT.
- 1.4.3 G
- (1) The main way in which we would act on our own initiative is to undertake a review of contracts in a particular area of business. This might involve looking at the contract terms used by several firms in a particular sector.
 - (2) We will, for example, consider launching such a review if multiple *consumer* contract complaints or other intelligence lead us to believe that under the Regulations there may be a contractual issue of wider significance to firms and *consumers*.
- 1.4.4 G If, following either a complaint or an own-initiative review, we consider that a term in a contract is unfair, we may challenge firms about their use of that term.

Interaction with the FSA's powers under the Act

- 1.4.5 G (1) The *FSA* will consider using its powers under the Regulations in the context of its wider regulatory powers under the *Act*.
- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the Regulations. The powers available to the *FSA* under the *Act* may vary depending on the *regulated activities* which the firm carries out. For example, the use of the unfair term might involve a breach of a *Principle* or a *rule* in *COB*, *MCOB* or *ICOB*. If so, the *FSA* might also address the issue as a *rule* breach.
- (3) We may, in some circumstances, consider treating the matter under our powers in the *Act* itself and also under the Regulations.
- (4) However, the use of our powers under the *Act* will not be possible in all cases where a firm has used an unfair term. If we consider using an enforcement power under the *Act*, we will do so in accordance with the policy relating to that power as set out in *EG*.

1.5 Risk Management

- 1.5.1 G (1) Where a firm has given an undertaking or a court has ruled the firm's term unfair, then the *FSA* considers it desirable that the firm should promptly notify clients with whom it has already concluded contracts of the effect the undertaking or ruling will have on their contracts.
- (2) The firm should also, as part of its risk management, consider the effect on its own business, including whether there are relevant risks which need mitigation. For example, firms should consider the effect of regulation 8 of the Regulations which provides that an unfair term is not binding on the *consumer*, but that the contract will continue to bind the parties if it is capable of continuing in existence without the unfair term. The mitigation may involve the firm contacting existing customers to ask that they agree to an amended contract, although any such amendment will itself need to avoid unfairness within the meaning of the Regulations and to comply with the law of contract generally.
- (3) As part of their risk management, firms that have not themselves given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other firms, since these will be of potential value in indicating the likely attitude of the courts, the *FSA*, the OFT or other qualifying bodies to similar terms or to terms with similar effects.

1.6 Redress

- 1.6.1 G (1) The *FSA* does not have the power under the Regulations to grant redress to *consumers* who have suffered loss because of an unfair term. *Consumers* may choose to complain to the firm and to seek redress from it. If the firm does not satisfy the *consumer's* complaint, the *consumer* may choose to refer the complaint to the *Financial Ombudsman Service*, if appropriate.
- (2) If the use of an unfair term also amounts to a *rule* breach, and that breach causes loss to *consumers*, the *FSA* can apply to court for restitution or require restitution. The *FSA* will consider whether to use these powers in accordance with the policy in *EG 11*.

2 Statements of Good Practice on fairness of terms in consumer contracts

- 2.1. G In Annexes 1 and 2 you will find 'Statements of Good Practice' where we have set out our views on the likely application of the Regulations in relation to certain types of clause in standard form *consumer* contracts. We will add further Statements of Good Practice relating to the Regulations as and when they are published. Please note that these Statements of Good Practice do not form general *guidance* on rules under the *Act*.

Annex 1

Fairness of terms in consumer contracts: Statement of Good Practice (May 2005)

[link to this Statement on the FSA website]

Annex 2

Fairness of terms in consumer contracts: Statement of Good Practice on mortgage exit administration fees (January 2007)

[link to this Statement on the FSA website]

FEES PROVISIONS (INCOMING EEA AND TREATY FIRMS) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees Provisions (Incoming EEA and Treaty Firms) Instrument 2007.

By order of the Board
27 September 2007

Annex

Amendments to the Fees manual (FEES)

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

1.1.2.R This manual applies in the following way:

(1) FEES 1, 2 and 3 apply to:

...

(b) every *Treaty firm* that wishes to exercise a *Treaty right* to qualify for *authorisation* under Schedule 4 to the *Act* (Treaty rights), ~~except those providing cross border services only~~, in respect of *regulated activities* for which it does not have an *EEA right*;

...

...

3.2.7.R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...
(b) Any <i>Treaty firm</i> that wishes to exercise a <i>Treaty right</i> to qualify for <i>authorisation</i> under Schedule 4 to the <i>Act</i> (Treaty rights) in respect of <i>regulated activities</i> for which it does not have an <i>EEA right</i> , <u>except for a firm providing cross border services only</u>	(1) Where no certificate has been issued under paragraph 3(4) of Schedule 4 to the <i>Act</i> the fee payable is, in respect of a particular exercise, set out in FEES 3 Annex 1R, part 4 (2) Where a certificate in (i) has been issued no fee is payable	On or before the notice of exercise is given
...

4.2.8.R In relation to an *incoming EEA firm* or an *incoming Treaty firm* the modification provisions of FEES 4.2.7.R apply only in relation to the relevant *regulated activities* of the *firm*, which are *passport activities* or *Treaty activities* and which are carried on in the *United Kingdom*, and which are not provided on a cross border services basis.

4.4.5.R For an *incoming EEA firm* or an *incoming Treaty firm*, the information required under FEES 4.4 is limited to the *regulated activities* of the *firm* which

are carried on in the United Kingdom, except those provided on a *cross border services* basis.

FEES 4 Annex 2R

Part 3		
This table shows the modifications to fee tariffs that apply to <i>incoming EEA firms</i> and <i>incoming Treaty firms</i> which have established branches in the UK.		
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the firm	Minimum amount payable
A.1	80% (except for a <i>firm</i> operating on a cross border services basis only)	£100 (except for a <i>firm</i> operating on a cross border services basis only)
	For a <i>firm</i> operating on a cross border services basis only, 100%	For a <i>firm</i> operating on cross border services basis only, nil
A.3	100%	nil
A.4	25%	£100
A.7	5%	£100
A.9	5%	£100
A.10	10%	£100
A.12	10%	£100
A.13	10%	£100
A.19	10%	£100

The modifications to fee tariffs payable by an *incoming EEA firm* or an *incoming Treaty firm* which has established a branch in the UK apply only in relation to the relevant *regulated activities* of the *firm*, which are *passported activities* or *Treaty activities* and which are carried on in the UK.

INTERIM PRUDENTIAL SOURCEBOOKS (LIQUIDITY) INSTRUMENT 2007

Power exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force as follows:
- (1) the amendments in Part 1 of Annex A come into force on 6 October 2007; and
 - (2) the remainder of this instrument comes into force on 1 November 2007.

Amendments to the Handbook

- C. The Interim Prudential sourcebook for Banks (IPRU(BANK)) is amended in accordance with Annex A to this instrument.
- D. The Interim Prudential sourcebook for Building Societies (IPRU(BSOC)) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebooks (Liquidity) Instrument 2007.

By order of the Board
27 September 2007

Annex A

Amendments to the Interim Prudential sourcebook for Banks (IPRU(BANK))

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

Part 1: Amendments taking effect on 6 October 2007

...

Chapter LS STERLING STOCK LIQUIDITY

...

Section 4 THE MEASUREMENT OF STERLING STOCK LIQUIDITY

...

4.4 Definitions relevant to both components

4.4.1 *The stock of sterling liquid assets*

9 The stock of *sterling liquid assets* consists of:

(a) ...

(b) operational balances with the Bank of England;

a) These include reserves that are held with the Bank of England's reserves scheme as part of the Bank of England's framework for its operations in the sterling money markets, of the type set out in Section ~~III~~ V of the Bank of England's paper '~~Reform of the Bank of England's Operations in the Sterling Money Markets: A paper on the new framework by the Bank of England~~', published 4 April 2005 'The framework for the Bank of England's Operations in the Sterling Money Markets' (the 'Red Book'), as periodically updated.

...

...

(d) sterling international bonds ('bulldogs') where they have been issued into (and are held by) the ~~Central Gilts Office~~ CREST settlement system;

...

(g) ...

a) Detailed lists of the bonds described in (d), (e), (f) and (g) above can be found on the Bank of England's website under OMO on the 'Eligible Securities' page

(www.bankofengland.co.uk/markets/money/eligiblesecurities.htm).

...

...

(k) certificates of tax deposit; and

(l) foreign currency debt securities issued by the Bank of England.

...

4.4.2 Wholesale sterling net outflow

13 A sterling stock liquidity bank's *wholesale sterling net outflow* is obtained by subtracting wholesale sterling assets maturing over the next five working days and reserves that are held with the Bank of England's reserves scheme from wholesale sterling liabilities falling due over the same period.

...

Part 2: Amendments taking effect on 1 November 2007

...

Chapter LM Mismatch Liquidity

...

Section 6 STOCK OF MARKETABLE ASSETS

...

6.3.2 The standard "matrix" approach

8 The discount factors applied to the different types of marketable assets in the FSA's mismatch calculations are given in the table below:

...	
Other securities denominated in freely tradable currencies (usually Zone A)	
...	...
Equities which (in the FSA's implementation of the CAD) qualify for a specific risk weight no higher than 42%.	20%

<u>Other marketable assets (usually Zone A)</u>	
<u>Holdings in a <i>qualifying money market fund</i></u>	<u>5%</u>
Zone B central government debt	
...	

(a) ...

(b) ...

(ba) *Qualifying money market fund* has the meaning given to the term in the Glossary of definitions in the Handbook.

...

...

Annex B

Amendments to the Interim Prudential sourcebook for Building Societies (IPRU(BSOC))

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

...

5 Liquidity

...

5.4 Short-term Liquidity

...

5.4.3 G The following liquid assets may be counted as short-term liquidity:

...

(4) CDs (banks and building societies) with 3 months or less to maturity, commercial paper with residual maturity up to 1 month; and

(5) holdings in a qualifying money market fund (the meaning given to the term in the Glossary of definitions in the Handbook applies).

...

5.7 Society-only Approach to Liquidity

5.7.1 G ... Liquid assets which are held offshore or in a subsidiary undertaking (or both) should be excluded from a society's calculation of its prudential liquidity. For the avoidance of doubt, this paragraph refers to liquid assets that are held by an offshore branch or subsidiary of the society. This paragraph does not refer to liquid assets established offshore or with offshore obligors that are held by the society's main treasury function in the UK.

...

Annex 5A Prudential Liquidity

...

	Administered	Matched	Extended	Comprehensive	Trading
...					
1.7 ...					

1.7A <u>Holdings in a qualifying money market fund (the meaning given to the term in the Glossary of definitions in the Handbook applies)</u>	<u>√</u>	<u>√</u>	<u>√</u>	<u>√</u>	<u>√</u>
...					

...

Note 5: A society may still hold a non-qualifying money market fund as prudential liquidity in accordance with 5.5.2G but this holding may not be counted as short-term liquidity.

PERMITTED LINKS (AMENDMENT) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 141 (Insurance business rules);
 - (3) section 150(2) (Actions for damages);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Annex F and Part 2 of Annex A come into force on 1 November 2007;
 - (2) the remainder of this instrument comes into force on 6 October 2007.

Amendments to the Handbook

- D. The modules of the FSA’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	Annex A
Prudential sourcebook for Insurers (INSPRU)	Annex B
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex C
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex D
Conduct of Business sourcebook (COB)	Annex E
New Conduct of Business Sourcebook (COBS)	Annex F
Supervision manual (SUP)	Annex G

Citation

- E. This instrument may be cited as the Permitted Links (Amendment) Instrument 2007.

By order of the Board
27 September 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where new definitions are being inserted, the text is not underlined.

Part 1 (comes into force on 6 October 2007)

Insert the following new definitions in the appropriate alphabetical position.

<i>approved index</i>	<p>in relation to <i>permitted links</i>:</p> <p>(a) an index that is:</p> <ul style="list-style-type: none">(i) calculated independently;(ii) published at least once every week;(iii) based on constituents that are <i>permitted links</i>; and(iv) calculated on a basis that is made available to the public, and that excludes both the rules for including and excluding constituents and the rules for valuation which must use an arithmetic average of the value of the constituents; or <p>(b) a national index of retail prices published by or under the authority of a government of a State belonging to Zone A as defined in the <i>Banking Consolidation Directive</i>; or</p> <p>(c) an index that is:</p> <ul style="list-style-type: none">(i) based on constituents that are <i>permitted links</i>; and(ii) in respect of which a <i>derivative</i> contract is <i>listed</i>.
<i>close matching rules</i>	for the purposes of <i>permitted links</i> , the <i>rules</i> in <i>INSPRU</i> 1.1.34R, <i>INSPRU</i> 3.1.57R, <i>INSPRU</i> 3.1.58R, and <i>INSPRU</i> 3.1.59G.
<i>inception</i>	in relation to <i>permitted links</i> , refers to the time when the liability of the <i>insurer</i> under a <i>linked long-term</i> contract of insurance commenced, and for this purpose, a contract providing continuous cover is deemed to commence on each anniversary date of the contract.
<i>index-linked assets</i>	in relation to <i>permitted links</i> , the assets held by an <i>insurer</i> for the purposes of matching <i>index-linked liabilities</i> .
<i>index-linked contract</i>	a <i>linked long-term</i> contract conferring <i>index-linked benefits</i> .
<i>institutional linked policyholders</i>	in relation to <i>permitted links</i> , <i>linked policyholders</i> who are trustees of a <i>defined benefit occupational pension scheme</i> .

<i>linked assets</i>	<i>index-linked assets</i> or <i>property-linked assets</i> .
<i>linked fund</i>	a real or notional account to which an <i>insurer</i> appropriates <i>linked assets</i> for the purposes of their being <i>permitted links</i> , and which may be subdivided into units, the value of each of which is determined by the <i>insurer</i> by reference to the value of those <i>linked assets</i> .
<i>linked liabilities</i>	<i>property-linked liabilities</i> or <i>index-linked liabilities</i> .
<i>linked policyholders</i>	<i>policyholders</i> under a <i>linked long-term</i> contract.
<i>permitted deposits</i>	in relation to <i>permitted links</i> , <i>deposits</i> with any of the following: <ul style="list-style-type: none"> (a) an <i>approved credit institution</i>; or (b) an <i>approved financial institution</i>; or (c) an <i>approved investment firm</i>.
<i>permitted derivatives contract</i>	in relation to <i>permitted links</i> , a contract involving a <i>derivative</i> or <i>quasi-derivative</i> that satisfies <i>INSPRU 3.2.5R</i> to <i>INSPRU 3.2.35AG</i> with the exception of <i>INSPRU 3.2.18R</i> , as applied in relation to assets covering liabilities in respect of <i>linked long-term</i> contracts of insurance.
<i>permitted land and property</i>	in relation to <i>permitted links</i> , any interest in land (and any buildings situated on it) provided that: <ul style="list-style-type: none"> (a) it is considered by the <i>firm</i> to be located in a territory with a properly functioning market, indicated by the following criteria: <ul style="list-style-type: none"> (i) a lack of artificial barriers, including barriers to foreign ownership and repatriation of capital; (ii) fair and accurate valuation; (iii) suitably qualified and independent surveyors; (iv) accurate financial information; (v) enforceable contractual and other property rights; (vi) clarity of taxation; (vii) availability of reliable economic and property market data; (viii) ethical transaction standards; and (b) it is: <ul style="list-style-type: none"> (i) owned directly by the <i>firm</i>; or (ii) held in a structure, or a series of structures, that do not pose a materially greater risk to <i>linked policyholders</i> than a direct holding; and (c) it is not geared in excess of 10% of the gross asset value of the <i>linked fund</i> excluding any amounts represented by holdings in

property detailed in *permitted scheme interests* (b) (i) to (iv). But this percentage restriction does not apply if the relevant *policyholder* or trustee or operator acting on behalf of an individual beneficiary requests, directly or indirectly, the *firm* to hold those investments based on the risk profile and objectives, stipulated by and specific for that individual under an investment management agreement with that individual.

- permitted links* the property in COB 6.14.13R that an insurer may use for the purposes of determining *property-linked benefits* or *index-linked benefits* under *linked long-term* contracts of insurance.
- permitted loans* in relation to *permitted links*, a loan with any of the following:
- (a) an *approved credit institution*; or
 - (b) an *approved financial institution*; or
 - (c) an *approved investment firm*; or
 - (d) any person, provided that the loan:
 - (i) is documented in a written agreement setting out the rate of interest and the amount of, and due dates for, repayments; and
 - (ii) is fully secured by a mortgage or charge on *permitted land and property* that, if made to someone other than a body corporate, is not used wholly or mainly for domestic purposes.
- permitted stock lending* in relation to *permitted links*, a *stock lending* transaction (including a *repo* transaction) that satisfies *INSPRU 3.2.36AR* to *INSPRU 3.2.42G* (inclusive).
- permitted scheme interests*
- (a) in respect of a firm's business with *institutional linked policyholders* only, any of the following:
 - (i) a *qualified investor scheme* or its *EEA* equivalent;
 - (ii) any *unregulated collective investment scheme* that invests only in *permitted links* and publishes its prices regularly;
 - (iii) any of the interests set out in (b)(i) to (b)(iv);
 - (b) in respect of a firm's business with *linked policyholders* other than those described in (a), any of the following:
 - (i) an *authorised fund*;
 - (ii) a *recognised scheme*;
 - (iii) a *UCITS scheme*;
 - (iv) a *non-UCITS retail scheme*;
 - (v) a *qualified investor scheme* or its *EEA* equivalent or any *unregulated collective investment scheme* that invests only in *permitted links* and publishes its prices regularly, provided that no more than 20% of the gross assets of the *linked fund* are so

invested.

permitted units in relation to *permitted links*, units or beneficial interests in any real or notional fund that invests only in *permitted links* and is managed either:

- (a) wholly by the *insurer*; or
- (b) wholly or partly by:
 - (i) an agent on behalf of the *insurer*; or
 - (ii) a *reinsurer* in relation to a *reinsurance contract* with the *insurer*;

for whom the *insurer* retains all responsibility towards its *linked policyholders*.

permitted unlisted securities in relation to *permitted links*, means any investment (including a *share*, *debt security*, *Treasury Bill*, Tax Reserve Certificate or Certificate of Tax Deposit) that is not a *listed security*, but provided always that it is realisable in the short term.

property-linked assets in relation to an *insurer*, *long-term insurance assets* that are, for the time being, identified in the records of the *insurer* as being assets by reference to the value of which *property-linked benefits* are to be determined.

Amend the following definitions as shown.

- approved security* ...
- (3) (in COB) any of the following:
- (a) any security issued or guaranteed by, or the repayment of the principal of which, or the interest on which is guaranteed by, and any loan to or deposit with, any government, public or local authority or nationalised industry or undertaking that belongs to Zone A as defined in the *Banking Consolidation Directive*; or
 - (b) any loan to, or deposit with, an *approved financial institution*; or
 - (c) debentures issued before 31 December 1994 by the *Agricultural Mortgage Corporation Ltd* or the *Scottish Agricultural Securities Corporation Ltd*.
- linked benefit* (1) (in COB 6.14 (Permitted Links)) *property-linked benefits* or *index-linked benefits*.
- (2) (other than in COB 6.14) a benefit payable under a *life policy* ...
- reinsurance* (in COB, ICOB, CASS 5 and COMP) a *contract of insurance* covering all or

contract part of a risk to which a *person* is exposed under a *contract of insurance*.

Part 2 (comes into force on 1 November 2007)

Amend the following definitions as shown.

- approved security* ...
- (3) (in ~~COB~~ COBS) any of the following:
- (a) any *security* issued or guaranteed by, or the repayment of the principal of which, or the interest on which is guaranteed by, and any loan to or deposit with, any government, public or local authority or nationalised industry or undertaking that belongs to Zone A as defined in the *Banking Consolidation Directive*; or
 - (b) any loan to, or deposit with, an *approved financial institution*; or
 - (c) debentures issued before 31 December 1994 by the Agricultural Mortgage Corporation Ltd or the Scottish Agricultural Securities Corporation Ltd.
- linked benefit* (1) (in ~~COB 6.14 (Permitted Links)~~ COBS 21 (Permitted Links)) *property-linked benefits* or *index-linked benefits*.
- (2) (other than in ~~COB 6.14~~ COBS 21) a benefit payable under a *life policy* ...
- permitted links* the property in ~~COB 6.14.13R~~ COBS 21.3.1R that an insurer may use for the purposes of determining *property-linked benefits* or *index-linked benefits* under *linked long-term* contracts of insurance.
- reinsurance contract* (in ~~COB~~ COBS 21, *ICOB*, *CASS 5* and *COMP*) a *contract of insurance* covering all or part of a risk to which a *person* is exposed under a *contract of insurance*.

Annex B

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

Derivatives and quasi-derivatives

- 3.2.5 R For the purpose of *GENPRU 2 Annex 7* (Admissible assets in insurance), and also in relation to *permitted links*, a derivative or quasi-derivative is approved if:

...

Efficient portfolio management

- 3.2.6 R A *derivative* or *quasi-derivative* is held for the purpose of efficient portfolio management if the *firm* reasonably believes the *derivative* or *quasi-derivative* (either alone or together with any other covered transactions) enables the *firm* to achieve its investment objectives by one of the following (or, in relation to *permitted links*, in a manner which includes but is not limited to):

- (1) generating additional capital or income in one of the ways described in *INSPRU 3.2.7R*; or
- (2) reducing tax or investment cost in relation to *admissible assets* or *permitted links*; or
- (3) acquiring or disposing of rights in relation to *admissible assets* or *permitted links*, or their equivalent, more efficiently or more effectively.

Generation of additional capital or income

- 3.2.7 R The generation of additional capital or income falls within *INSPRU 3.2.6R(1)* where it arises from:
- (1) taking advantage of pricing imperfections in relation to the acquisition and disposal (or disposal and acquisition) of rights in relation to assets the same as, or equivalent to, *admissible assets* or *permitted links*; or
 - (2) receiving a premium for selling a covered call *option* or its equivalent, the underlying of which is an *admissible asset* or *permitted link*, even if that additional capital or income is obtained at the expense of surrendering the chance of greater capital or income.

...

- 3.2.17 R An obligation to pay a monetary amount (whether or not falling in *INSPRU*

3.2.16R) is covered if

- (1) the *firm* holds *admissible assets* or *permitted links* that are sufficient in value so that the *firm* reasonably believes that following reasonably foreseeable adverse variations (relying solely on cashflows from, or from realising, those assets) it could pay the monetary amount in the right currency when it falls due; or

...

Stock lending

...

- 3.2.36A R (1) For the purposes of the rules on *permitted links*, a *stock lending* transaction (including a *repo* transaction) is approved if:
- (a) the assets lent are *permitted links*;
 - (b) the *counterparty* is an *authorised person*, an *approved counterparty*, a *person* registered as a broker-dealer with the Securities and Exchange Commission of the United States of America or a bank, or a branch of a bank, supervised, and authorised to deal in investments as principal, with respect to *OTC derivatives* by at least one of the following federal banking supervisory authorities in the United States of America:
 - (i) the Office of the Comptroller of the Currency;
 - (ii) the Federal Deposit Insurance Corporation;
 - (iii) the Board of Governors of the Federal Reserve System; and
 - (iv) the Office of Thrift Supervision; and
 - (c) adequately and sufficiently immediate *collateral* (INSPRU 3.2.38R to INSPRU 3.2.41R) is obtained to secure the obligation of the *counterparty*; and
 - (d) provided that, for the purposes of *property-linked assets* only:
 - (i) where the *linked policyholder* bears the whole of the risk associated with the *stock lending* transaction, they must receive the whole of the recompense (net of fees and expenses);
 - (ii) the extent of any risk that the *linked policyholder* bears in relation to the *stock lending* transaction must be disclosed to them; and

(iii) where the risk associated with the *stock lending* transaction is borne outside the *linked fund*, the *linked fund* should receive a fair and reasonable recompense for the use of the *linked policyholders' funds*.

(2) *INSPRU 3.2.36R(1)(c)* does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

Annex C

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

In this Annex, text is being deleted. The deleted text is not shown struck through.

The provisions of rules 3.6, 3.7 and Appendix 3.2 of IPRU(INS) are deleted:

IPRU(INS) rule 3.6	[deleted]
IPRU(INS) rule 3.7	[deleted]
IPRU(INS) Appendix 3.2	[deleted]

The following definitions set out in Chapter 11.1 of IPRU(INS) are also deleted in their entirety:

<i>approved index</i>	[deleted]
<i>approved securities</i>	[deleted]
<i>collective investment fund</i>	[deleted]
<i>linked assets</i>	[deleted]
<i>listed</i>	[deleted]
<i>market value</i>	[deleted]
<i>permitted connected property</i>	[deleted]
<i>permitted derivative contract</i>	[deleted]
<i>permitted stock lending transaction</i>	[deleted]
<i>property linked contract</i>	[deleted]
<i>regulated market</i>	[deleted]

Annex D

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

In this Annex, text is being deleted. The deleted text is not shown struck through.

The provisions of rules 4.12(3), 4.12(4), 4.21, 4.22, 4.23 and Appendix 3 of IPRU(FSOC) are deleted:

IPRU(FSOC)) rule 4.12(3)	[deleted]
IPRU(FSOC)) rule 4.12(4)	[deleted]
IPRU(FSOC)) rule 4.21	[deleted]
IPRU(FSOC)) rule 4.22	[deleted]
IPRU(FSOC)) rule 4.23	[deleted]
IPRU(FSOC)) Appendix 3	[deleted]

The following definitions set out in Chapter 7.1 of IPRU(FSOC) are also deleted in their entirety:

<i>approved index</i>	[deleted]
<i>collective investment fund</i>	[deleted]
<i>index linked contract</i>	[deleted]
<i>index linked liabilities</i>	[deleted]
<i>linked assets</i>	[deleted]
<i>permitted connected property</i>	[deleted]
<i>permitted derivative contract</i>	[deleted]
<i>permitted stock lending transaction</i>	[deleted]

Annex E

Amendments to the Conduct of Business sourcebook (COB)

Insert the following new section after COB 6.13 (Process for reattribution of inherited estates). The inserted text is not shown underlined.

6.14 Permitted Links

Application

- 6.14.1 R The *rules* in this section apply on an ongoing basis to *linked long-term* contracts that are effected by:
- (1) *insurers* other than *EEA insurers*; and
 - (2) *EEA insurers* in the United Kingdom.
- 6.14.2 R The rules in this section do not apply to:
- (1) contracts that were effected before 1 July 1994, and under which *linked benefits* were permitted to be determined before that date;
 - (2) contracts effected by an *insurer* that are *linked long-term* contracts only because the *policyholder* is eligible to participate in any *established surplus*;
 - (3) contracts effected by an *EEA insurer* that are *linked long-term* contracts only because the *policyholder* is eligible to participate in an excess of assets representing the whole or a particular part of the *long-term insurance fund* over the liabilities, or a particular part of the liabilities, of the *insurer* as determined by the law of the *EEA state* in which the head office of the *insurer* is situated;
 - (4) contracts to manage the investments of pension funds that are not combined with *contracts of insurance* covering either conservation of capital or payment of a minimum interest, provided that benefits under those contracts must not be determined wholly or partly by reference to the value of, or income from, or fluctuations in the value of, *derivative* contracts other than *permitted derivatives contracts*;
 - (5) contracts effected before 30 June 1995, to the extent that they provide for benefits to be determined by reference to a *collective investment scheme* that was a *listed security* immediately before 1 July 1994; and
 - (6) contracts linked to *permitted units* that were effected before 1 February 1992, except to the extent that they relate to acts or omissions on or after that date.

Principles for firms engaged in linked long-term insurance business

- 6.14.3 R A *firm* must ensure that the values of its *permitted links* are determined fairly and accurately.
- 6.14.4 R A *firm* must ensure that its *linked assets*:
- (1) are capable of being realised in time for it to meet its obligations to *linked policyholders*; and
 - (2) are matched with its *linked liabilities* as required by the *close matching rules*.
- 6.14.5 R A *firm* must ensure that there is no reasonably foreseeable risk that the aggregate value of any of its *linked funds* will become negative.
- 6.14.6 R A *firm* must notify its *linked policyholders* of the risk profile and investment strategy for the *linked fund*:
- (1) at *inception*; and
 - (2) before making any material changes.
- 6.14.7 R A *firm* must ensure that its systems and controls and other resources are appropriate for the risks associated with its *linked assets* and *linked liabilities*.
- 6.14.8 R
- (1) A *firm* must ensure when selecting *linked assets* that there is no reasonably foreseeable risk of a conflict of interest between it and its *linked policyholders*.
 - (2) If a conflict does arise, the *firm* must take reasonable steps to ensure that the interests of the *linked policyholders* are safeguarded.
- 6.14.9 R In applying the rules in this section, a *firm* must consider the economic effect of its *permitted links* and *linked assets* ahead of their legal form.
- 6.14.10 R A *firm* must notify the *FSA* in writing as soon as it becomes aware of any failure to meet the requirements of this section.
- 6.14.11 G In considering what action to take in response to written notification of a failure to meet the requirements of this section, the *FSA* will have regard to the extent to which the relevant circumstances are exceptional and temporary and to any other reasons for the failure.

Rules for firms engaged in linked long-term insurance business

- 6.14.12 R An *insurer* must not contract to provide benefits under *linked long-term* contracts of insurance that are determined:
- (1) wholly or partly, or directly or indirectly, by reference to fluctuations

in any index other than an *approved index*;

- (2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:
 - (a) *approved securities*;
 - (b) *listed securities*;
 - (c) *permitted unlisted securities*;
 - (d) *permitted land and property*;
 - (e) *permitted loans*;
 - (f) *permitted deposits*;
 - (g) *permitted scheme interests*;
 - (h) income from (a) to (g) above;
 - (i) cash;
 - (j) *permitted units*;
 - (k) *permitted stock lending*; and
 - (l) *permitted derivatives contracts*.

6.14.13 G Nothing in these rules prevents a *firm* making allowance in the value of any *permitted link* for any notional tax loss associated with the relevant *linked assets* for the purposes of fair pricing.

6.14.14 R A *firm* that has entered into a *reinsurance contract* in respect of its *linked long-term insurance business* must nevertheless discharge its responsibilities under its *linked long-term contracts* as if no *reinsurance contract* had been effected.

6.14.15 G In order to comply with the requirements of COB 6.14.14R a *firm* should:

- (1) disclose to *policyholders* the implications of any credit risk exposure they may face in relation to the solvency of the reinsurer; and
- (2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to *policyholders*.

Schedule 2: Notification requirements

COB Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COB</i> 6.12.94R(2)	...	...	...	...
<u><i>COB 6.14.10R</i></u>	<u><i>Any failure to meet requirements concerning permitted links</i></u>	<u><i>in writing – details of any failure to meet requirements concerning permitted links</i></u>	<u><i>failure to meet any requirements concerning permitted links</i></u>	<u><i>as soon as reasonably practicable</i></u>
...				

Annex F

Amendments to the new Conduct of Business sourcebook (COBS)

Insert the following new section after COBS 20 (With-Profits). The inserted text is not shown underlined.

21 Permitted Links

21.1 Application

- 21.1.1 R The *rules* in this section apply on an ongoing basis to *linked long-term* contracts that are effected by:
- (1) *insurers* other than *EEA insurers*; and
 - (2) *EEA insurers* in the United Kingdom.
- 21.1.2 R The *rules* in this section do not apply to:
- (1) contracts that were effected before 1 July 1994, and under which *linked benefits* were permitted to be determined before that date;
 - (2) contracts effected by an *insurer* that are *linked long-term* contracts only because the *policyholder* is eligible to participate in any *established surplus*;
 - (3) contracts effected by an *EEA insurer* that are *linked long-term* contracts only because the *policyholder* is eligible to participate in an excess of assets representing the whole or a particular part of the *long-term insurance fund* over the liabilities, or a particular part of the liabilities, of the *insurer* as determined by the law of the *EEA state* in which the head office of the *insurer* is situated;
 - (4) contracts to manage the investments of pension funds that are not combined with *contracts of insurance* covering either conservation of capital or payment of a minimum interest, provided always that benefits under those contracts must not be determined wholly or partly by reference to the value of, or income from, or fluctuations in the value of, *derivative* contracts other than *permitted derivatives contracts*;
 - (5) contracts effected before 30 June 1995, to the extent that they provide for benefits to be determined by reference to a *collective investment scheme* that was a *listed security* immediately before 1 July 1994; and
 - (6) contracts linked to *permitted units* that were effected before 1 February 1992, except to the extent that they relate to acts or omissions on or after that date.

21.2 Principles for firms engaged in linked long-term insurance business

- 21.2.1 R A *firm* must ensure that the values of its *permitted links* are determined fairly and accurately.
- 21.2.2 R A *firm* must ensure that its *linked assets*:
- (1) are capable of being realised in time for it to meet its obligations to *linked policyholders*; and
 - (2) are matched with its *linked liabilities* as required by the *close matching rules*.
- 21.2.3 R A *firm* must ensure that there is no reasonably foreseeable risk that the aggregate value of any of its *linked funds* will become negative.
- 21.2.4 R A *firm* must notify its *linked policyholders* of the risk profile and investment strategy for the *linked fund*:
- (1) at *inception*, and
 - (2) before making any material changes.
- 21.2.5 R A *firm* must ensure that its systems and controls and other resources are appropriate for the risks associated with its *linked assets* and *linked liabilities*.
- 21.2.6 R
- (1) A *firm* must ensure when selecting *linked assets* that there is no reasonably foreseeable risk of a conflict of interest with its *linked policyholders*.
 - (2) If a conflict does arise, the *firm* must take reasonable steps to ensure that the interests of the *linked policyholders* are safeguarded.
- 21.2.7 R In applying the rules in this section, a *firm* must consider the economic effect of its *permitted links* and *linked assets* ahead of their legal form.
- 21.2.8 R A *firm* must notify the *FSA* in writing as soon as it becomes aware of any failure to meet the requirements of this section.
- 21.2.9 G In considering what action to take in response to written notification of a failure to meet the requirements of this section, the *FSA* will have regard to the extent to which the relevant circumstances are exceptional and temporary and to any other reasons for the failure.

21.3 Rules for firms engaged in linked long-term insurance business

- 21.3.1 R An *insurer* must not contract to provide benefits under *linked long-term*

contracts of insurance that are determined:

- (1) wholly or partly, or directly or indirectly, by reference to fluctuations in any index other than an *approved index*;
- (2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:
 - (a) *approved securities*;
 - (b) *listed securities*;
 - (c) *permitted unlisted securities*;
 - (d) *permitted land and property*;
 - (e) *permitted loans*;
 - (f) *permitted deposits*;
 - (g) *permitted scheme interests*;
 - (h) income from (a) to (g) above;
 - (i) cash;
 - (j) *permitted units*;
 - (k) *permitted stock lending*; and
 - (l) *permitted derivatives contracts*.

- 21.3.2 G Nothing in these rules prevents a *firm* making allowance in the value of any *permitted link* for any notional tax loss associated with the relevant *linked assets* for the purposes of fair pricing.
- 21.3.3 R A *firm* that has entered into a *reinsurance contract* in respect of its *linked long-term insurance business* must nevertheless discharge its responsibilities under its *linked long-term insurance contracts* as if no *reinsurance contract* had been effected.
- 21.3.4 G In order to comply with the requirements of *COBS 21.3.3R* a *firm* should:
- (1) disclose to *policyholders* the implications of any credit risk exposure they may face in relation to the solvency of the reinsurer; and
 - (2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to *policyholders*.

Annex G

Amendments to the Supervision manual (SUP)

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

SUP 13A Annex 1G Application of the Handbook to Incoming EEA firms

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>IPRU(INS)</i>	Only <i>IPRU(INS)</i> 3.6 and 3.7 (Linked long term contracts) apply, and only if the firm is an insurer (<i>IPRU(INS)</i> 1.1(b)). <u>[deleted]</u>	As column (2). <u>[deleted]</u>
...

TRADE DATA MONITORS (AMENDMENT) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- C. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Trade Data Monitors (Amendment) Instrument 2007.

By order of the Board
27 September 2007

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

Trade Data Monitors

7.2.14 G ~~A trade data monitor is a provider of services and facilities for the verification of post trade information as contemplated by this chapter and an approved trade data monitor is a provider which has been assessed by the FSA as having the capacity to provide services and facilities in accordance with the service criteria published on the FSA's web site at www.fsa.gov.uk~~

~~The FSA will consider~~ considers that use of an approved trade data monitor by a *firm* will satisfy a *firm's* ~~its~~ obligations under MAR 7.2.12EU, ~~though the approved trade data monitor must continue to have the capacity to provide the services and facilities in accordance with the above service criteria at the time that the *firm* uses the approved trade data monitor.~~ if:

- (1) in assessing the arrangements, the *firm* follows the guidelines published on the FSA's website at www.fsa.gov.uk; and
- (2) it has been confirmed that the arrangements will enable the *firm* to comply with the guidelines through either:
 - (a) a statement by the FSA; or
 - (b) a report by an external auditor to the provider of the arrangements which is made available to *firms* and, on request, to the FSA.

A “trade data monitor” is a provider of such arrangements which has been assessed by the FSA or an external auditor as having the capability to provide services and facilities to *firms* in accordance with the guidelines published on the FSA’s website at www.fsa.gov.uk.

Use of ~~an approved~~ a trade data monitor does not affect a *firm's* obligations under MAR 7.2.10EU regarding the timing of the disclosure of post-trade information.

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (QUALIFYING
MONEY MARKET FUNDS AND MISCELLANEOUS AMENDMENTS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance); and
 - (d) section 247 (Trust scheme rules); and
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 October 2007.

Amendments to the Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Qualifying Money Market Funds and Miscellaneous Amendments) Instrument 2007.

By order of the Board
27 September 2007

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text.

3.2.6 R ...

	Name of scheme
...	
7	...
<u>7A</u>	<u>Where the <i>authorised fund</i> is a <i>qualifying money market fund</i>, a statement to that effect and a statement that the <i>authorised fund's</i> investment objectives and policies will meet the conditions specified in the definition of <i>qualifying money market fund</i>.</u>
...	

4.2.5 R ...

Document status	
...	
3	...
	(q) ...
	(qa) <u>where the <i>authorised fund</i> is a <i>qualifying money market fund</i>, a statement to that effect and a statement that the <i>authorised fund's</i> investment objectives and policies will meet the conditions specified in the definition of <i>qualifying money market fund</i>;</u>
...	

...

Guidance relating to the use of cash collateral

5.4.8 G (1) The use of *stock lending* or the reinvestment of cash collateral should not result in a change of the *scheme's* declared investment objectives or add substantial supplementary risks to the *scheme's* risk profile.

- (2) Collateral taking the form of cash may only be invested in:
 - (a) one of the investments coming within COLL 5.4.6R (1)(c)(iii) to (vii) (Treatment of collateral); or
 - (b) deposits, provided they:
 - (i) are capable of being withdrawn within five business days, or such shorter time as may be dictated by the stock lending agreement; and
 - (ii) satisfy the requirements of COLL 5.2.26R (1) (Investment in deposits).

6.3.4 R ...

(6) ...

(6A) Qualifying money market funds must have at least one valuation point every business day at which the valuation is carried out on an amortised cost basis.

...

6.3.6 G ...

1 ...

(2) ...

(2A) Schemes investing in money market instruments should value such instruments on an amortised cost basis on condition that the scheme is a qualifying money market fund.

Maintaining the value of a qualifying money market fund

6.3.13 R The authorised fund manager of a qualifying money market fund must:

(1) carry out a valuation of the scheme property on a mark to market basis at least once every week and at the same valuation point used to value the scheme property on an amortised cost basis; and

(2) ensure that the value of the scheme property when valued on a mark to market basis does not differ by more than 0.5% from the value of the scheme property when valued on an amortised cost basis.

6.3.14 G The authorised fund manager should advise the depositary when the mark to market value of a qualifying money market fund varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The authorised fund manager of a qualifying money market fund should agree procedures with the depositary designed to stabilise the value of the scheme in these events.

6.8.3 R ...

- (2) *An authorised fund may have ~~an~~ interim income allocation dates and one or more interim accounting periods for each of those dates and, if it does, the *interim income allocation date* must be within four months of the end of the relevant *interim accounting period(s)*.*

HANDBOOK ADMINISTRATION (NO 7) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 rules);
 - (b) section 84 (Matters which may be dealt with by prospectus rules);
 - (c) sections 89A to 89G (Transparency Rules);
 - (d) section 88 (Sponsors);
 - (e) section 96 (Obligations of issuers of listed securities);
 - (f) section 96A (Disclosure of information requirements);
 - (g) section 101 (Listing rules: general provisions); and
 - (h) Schedule 7 (The Authority as Competent Authority for Part VI); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex L comes into force on 28 September 2007;
 - (2) Part 2 of Annex F, Annex H, Part 2 of Annex L and Part 2 of Annex Q come into force on 1 November 2007;
 - (3) Part 2 of Annex K comes into force on 15 December 2007;
 - (4) the remainder of this instrument comes into force on 6 October 2007.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Threshold Conditions (COND)	Annex B
The Fit and Proper Test for Approved Persons (FIT)	Annex C
General Provisions (GEN)	Annex D
Fees manual (FEES)	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Conduct of Business sourcebook (COB)	Annex G
New Conduct of Business sourcebook (COBS)	Annex H
Insurance: Conduct of Business sourcebook (ICOB)	Annex I
Market Conduct sourcebook (MAR)	Annex J

Supervision manual (SUP)	Annex K
Decision Procedure and Penalties manual (DEPP)	Annex L
Compensation sourcebook (COMP)	Annex M
Credit Unions sourcebook (CRED)	Annex N
Electronic Money sourcebook (ELM)	Annex O
Professional Firms sourcebook (PROF)	Annex P
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex Q
Listing Rules sourcebook (LR)	Annex R
Prospectus Rules sourcebook (PR)	Annex S
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex T
Perimeter Guidance manual (PERG)	Annex U

Notes

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

Citation

- F. This instrument may be cited as the Handbook Administration (No 7) Instrument 2007.

By order of the Board
27 September 2007

Annex A

Amendments to the Glossary of definitions

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

<i>ancillary risk</i>	(in relation to an <i>insurer</i> with <i>permission</i> under the <i>Act</i> ... (as defined for the purposes of <i>AUTH</i> , <i>INSPRU</i> and <i>SUP</i>) ...
<i>class</i>	(1) (in <i>AUTH</i> , <i>GENPRU</i> , <i>INSPRU</i> and <i>SUP</i>)
<i>COLL</i>	the New Collective Investment Schemes sourcebook.
<i>commitment</i>	... (as defined for the purposes of <i>AUTH</i> , <i>INSPRU</i> and <i>SUP</i>)...
<i>controlled undertaking</i>	any subsidiary undertaking within the meaning of the <i>Act</i> other than section 1162 of the Companies Act 2006 <u>258(4)(b) of the Companies Act 1985</u> or section 420(2)(b) of the <i>Act</i> ;
<i>employees' share scheme</i>	has the same meaning as in section 1166 <u>743</u> of the Companies Act 2006 <u>1985</u> .
<i>ENF</i>	the Enforcement manual.
<i>open to review</i>	(as defined in section 391(8) of the Act (Publication)) (in relation to a <i>supervisory notice</i> which does not take effect immediately or on a specified date) the status of the matter to which the notice relates when: (a) the period during which any <i>person</i> may refer a matter to the <i>Tribunal</i> is still running; or (b) the matter has been referred to the <i>Tribunal</i> but has not been dealt with; or (c) the matter has been referred to the <i>Tribunal</i> and dealt with but the period during which an appeal may be brought against the <i>Tribunal's</i> decision is still running; or (d) such an appeal has been brought but has not been determined.
<i>overseas regulator</i>	... (a) ... (b) ...

- ...
- (iii) a function corresponding to any function exercised by the Secretary of State under the Companies Act ~~1985~~ Acts (as defined in section 2 of the Companies Act 2006);
- ...
- parent undertaking* (1) ... section ~~446~~ 258 of the Companies Act ~~2006~~ 1985...:
- ...
- in relation to (ii) ... Schedule ~~7~~ 10A to the Companies Act ~~2006~~ 1985...
- ...
- regulated market* ...
- (3) (in DTR 4, 5 and 6, and in LR to the extent necessary to give effect to these provisions) (in accordance with article 4(1)(14) of *MiFID*) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions [Title III of MiFID].
- relevant pension scheme* (a) ~~an appropriate scheme for the purposes of section 1(8) of the section 1(8) of the Social Security Act 1986 or for the purposes of article 3(8) of the Social Security (Northern Ireland) Order 1986; or~~
- (b) ~~an exempt approved scheme under section 592(1) of the Income and Corporation Taxes Act 1988 to which the employer is not a contributor and which provides benefits additional to those provided by:~~
- (i) ~~another scheme approved under Chapter 1 of Part XIV of that Act to which the employer is a contributor; or~~
- (ii) ~~a statutory scheme as defined in section 612(1) of that Act; or~~
- (iii) ~~a relevant statutory scheme as defined in section 611A(1) of that Act; or~~

(e) ~~a pension scheme approved under Chapter IV of Part XIV of that Act.~~

a pension scheme or an additional voluntary contribution.

share

...

(3) (in *DTR* and *LR*, and in *FEES* where relevant to *DTR* or *LR*) (in accordance with section ~~540~~ 744 of the Companies Act ~~2006~~ 1985) ...

subsidiary undertaking

...

(3) (in *LR*) as defined in section ~~1162~~ 258 of the Companies Act ~~2006~~ 1985.

treasury shares

qualifying shares to which ~~Chapter 6~~ sections 162A to 162G of the Companies Act ~~2006~~ 1985 ~~applies~~ apply.

undertaking

(as defined in section ~~1161~~ 259 of the Companies Act ~~2006~~ 1985...)

Annex B

Amendments to the Threshold Conditions (COND)

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

- 2.4.6 G ...
- (3) ... A *firm* requiring specific *guidance* on the contents and level of detail of its business plan should contact the ~~Corporate Authorisation department (see AUTH 3: Applications for Part IV permission)~~ Firm Contact Centre (020 7066 3954), or, if relevant ...
- 2.5.3 G (1) ... The suitability of each *person* who performs a *controlled function* will be assessed by the *FSA* under the *approved persons* regime (see ~~AUTH 6 (Approved persons)~~; *SUP 10 (Approved persons)* and *FIT*). ...
- ...
- 2.5.6 G In determining whether a *firm* will satisfy, and continue to satisfy, threshold condition 5 in respect of conducting its business with integrity and in compliance with proper standards, the relevant matters, as referred to in *COND 2.5.4G(2)*, may include but are not limited to whether:
- ...
- (2) the firm has been convicted, or is connected with a *person* who has been convicted, of any criminal offence; this must include, where provided for by the Exceptions Order to the Rehabilitation of Offenders Act 1974, any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the *United Kingdom* or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing ~~any unspent offence involving fraud, corruption, perjury, theft, false accounting or other dishonesty, money laundering, market abuse or insider dealing, offences under legislation relating to insurance, banking or other financial services, companies, insolvency, consumer credit or consumer protection or any significant tax offence; where relevant, any spent convictions excepted for this purpose under the Rehabilitation of Offenders Act 1974 will be taken into consideration;~~
- ...

Annex C

Amendments to The Fit and Proper test for Approved Persons (FIT)

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

- 1.2.2 G The method of applying for *approved person* status is set out in ~~AUTH 6~~ and SUP 10. ...
- 2.1.3 G The matters referred to in FIT 2.1.1G to which the FSA will have regard include, but are not limited to:
- (1) whether the *person* has been convicted of any criminal offence; this must include, where provided for by relevant, any spent convictions excepted under the Exceptions Order to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the order), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the *United Kingdom* or other offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, *money laundering*, market manipulation or ~~insider dealing~~ *insider dealing*;
- ...

Annex D

Amendments to the General Provisions (GEN)

In this Annex, striking through indicates deleted text.

GEN TP 1.2 Table 2: Transitional Provisions applying across the Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
24	Paragraph 23 and <i>guidance</i> in the <i>Handbook</i> other than in: <i>COND</i> ; <i>APER</i> ; <i>FIT</i> ; <i>AUTH</i> ; <i>PROF</i> ; <i>MAR</i> 1	G	Expired		

Annex E

Amendments to the Fees manual (FEES)

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

- 3.1.7 G A potential applicant for *Part IV permission* (or *Treaty firm*) has the opportunity to discuss its proposed application (or exercise of *Treaty rights*) with the *FSA* before submitting it formally. (see ~~*AUTH 3.9.1G*~~ For more information, contact the Firm Contact Centre (020 7066 3954) or visit the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>.) ...
- 3.1.8 G See ~~*AUTH 3.9*~~ the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml> in relation to the procedures for making applications for *Part IV permission* ...

Annex F

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

Part 1: Changes which come into force on 6 October 2007

...

13.9.1A G Table 13B is a summary of the financial resources test for a *Category B firm*.

Table 13B This table forms part of rule 13.9.1

SUMMARY OF FINANCIAL RESOURCES FOR <i>CATEGORY B FIRMS</i>				
Type of <i>firm</i>	Financial Resources Test 1 <i>Own funds</i> Test	Financial Resources Test 1A Adjusted <i>Net current assets</i> Test	Financial Resources Test 2 Expenditure-based Test	<i>Rule/section</i> References
...				
All <i>Category B firms</i> that do not hold <i>client money</i> or assets, but are <i>permitted</i> to <i>establish, operate or wind up a personal pension scheme</i> .	£10,000	Adjusted <i>net current assets</i> of £1	Adjusted capital equal to the highest of 6/52 of relevant annual expenditure, £400 per adviser, and £10,000 <u>and any other expenditure-based requirement set out in 13.12.1 applicable to the firm</u>	13.10 13.11 13.12.1 G 13.12.2 to 13.12.5A

...

13.12.1G R A *category B firm* whose permission includes *establishing, operating or winding up a personal pension scheme* must have financial resources calculated in accordance with (1) or (2):

(1) ...

(2) For a *firm* which does not hold client money or assets, the highest of:

(a) 6/52 of its relevant annual expenditure, calculated in accordance with 13.12.2 to 13.12.2D;

- (b) an amount equal to £400 multiplied by the number of its advisers; ~~and~~
- (c) £10,000; and
- (d) any other expenditure-based requirement set out in 13.12.1 applicable to the firm.

...

Appendix 13(1)

Defined terms for Chapter 13

...

Category B3 firm a *Category B firm* whose *permission* includes only *insurance mediation activity* in relation to *non-investment insurance contracts*, ~~*mortgage home finance*~~ *mediation activity*, *assisting in the administration and performance of contracts of insurance*, *arranging transactions in life policies* and other *insurance contracts*, *advising on investments* and receiving and transmitting, on behalf of investors, orders in relation to *securities* and *units in collective investment schemes*; but which is subject to a *requirement* not to hold or control *client money* or *custody assets*.

Part 2: Changes which come into force on 1 November 2007

3-173A(1) R ...

- (a) ...
- (b) after notifying the *FSA* in writing, ~~in accordance with rule 10-174,~~ in accordance with rule 3-173B.

...

The following text is all new and is not underlined.

After 3-173A(9), insert 3-173B as follows:

3-173B CRR for derivative transactions under 3-173A(1)(b)
 General rule

3-173B(1) R A *firm* must calculate for each *derivative* transaction a *CRR* by multiplying the *counterparty* exposure calculated in accordance with (2) and (3) below, by the appropriate percentage in Table 3-173B(5) below.

Collateral

3-173B(2) R A *firm* may:

- (a) reduce the *counterparty* exposure on which its *CRR* is calculated to the extent that it holds *acceptable collateral* to cover that exposure; and
- (b) where it does not have an *ACMP*, may continue to multiply the *counterparty* exposure by 8% multiplied by the *counterparty* weight, to the extent that the *firm* holds *adequate collateral* to cover that exposure.

Counterparty exposure

3-173B(3) R A *firm* must calculate the *counterparty* exposure on *derivative* transactions in accordance with either (a), (b) or (c) below:

- (a) where a *counterparty* has not fully paid a *margin requirement* on a *derivative* transaction listed on an *exchange* or cleared through a *clearing house*, or met it through the deposit of *acceptable collateral* not otherwise used, a *firm* must calculate the *counterparty* exposure as the shortfall;
- (b) where a *firm* sells or writes an *option* to a *counterparty* or buys an *option* on behalf of a *counterparty* and the *counterparty* has not paid the full *option* premium, or met it through the deposit of *acceptable collateral* not otherwise used, it must calculate the *counterparty* exposure as the uncovered premium on the transaction; or
- (c) a *firm* must calculate the *counterparty* exposure arising from a *derivative* transaction other than a written or sold *option* or a *derivative* transaction listed on an *exchange* or cleared through a *clearing house*, as the credit equivalent amount calculated in accordance with Table 3-173B(3A), not covered by the deposit of *acceptable collateral* not otherwise used.

R Table 3-173B(3A) – Method of calculating credit equivalent amount

Type of derivative transaction	Credit equivalent amount	
	If A is positive	If A is negative
Interest rate swaps: single currency		
(a) floating rate swapped against floating rate A nil	A	nil
(b) fixed rate swapped against floating rate:		

- under one year to maturity - over one year to five years - over five years	A A + 0.5% of N A + 1.5% of N	nil 0.5% of N 1.5% of N
Cross-currency interest rate swaps - under one year to maturity - over one year to five years - over five years	A + 1% of N A + 5% of N A + 7.5% of N	1% of N 5% of N 7.5% of N
Other interest rate contracts* - under one year to maturity - over one year to five years - over five years	A A + 0.5% of N A + 1.5% of N	nil 0.5% of N 1.5% of N
Foreign exchange and gold contracts* - exchange rate contracts with an original maturity of 14 days or less - under one year to maturity - over one year to five years - over five years	nil A + 1% of N A + 5% of N A + 7.5% of N	nil 1% of N 5% of N 7.5% of N
Equity contracts* - under one year to maturity - over one year to five years - over five years	A + 6% of N A + 8% of N A + 10% of N	6% of N 8% of N 10% of N
Precious metal (not gold) contracts* - under one year to maturity - over one year to five years - over five years	A + 7% of N A + 7% of N A + 8% of N	7% of N 7% of N 8% of N
Commodity contracts* - under one year to maturity - over one year to five years - over five years	A + 10% of N A + 12% of N A + 15% of N	10% of N 12% of N 15% of N
Notes		
* <i>FRAs, swaps, futures, purchased options, and other contracts for differences</i>		
A = the replacement cost of the contract		
N = the notional or actual principal amount or value underlying the contract		
For contracts with multiple exchanges of principal, the % of N has to be multiplied by the remaining number of payments still to be made according to the contract.		
In the case of a derivative referenced on a bond which satisfies the criteria for a <i>qualifying debt security</i> , the %N applicable to interest rate derivatives may be utilised to calculate the credit equivalent amount. For a derivative referenced on a 'non-qualifying' bond, the credit equivalent amount must be calculated with reference to the %N applicable to equity derivatives.		
For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate		

contracts that meet these criteria and have a remaining maturity of over one year, the percentage is no lower than 0.5%.

If a *firm* uses the modified maturity ladder approach to calculate *PRR*, it may use Table 3-173B(3B).

R Table 3-173B(3B) – Method of calculating credit equivalent amount for commodities

Type of derivative transaction*	Credit equivalent amount	
	If A is positive	If A is negative
Precious metals (except gold) - under one year to maturity - over one year to five years - over five years	A + 2% of N A + 5% of N A + 7.5% of N	2% of N 5% of N 7.5% of N
Base metals - under one year to maturity - over one year to five years - over five years	A + 2.5% of N A + 4% of N A + 8% of N	2.5% of N 4% of N 8% of N
Softs (agricultural) - under one year to maturity - over one year to five years - over five years	A + 3% of N A + 5% of N A + 9% of N	3% of N 5% of N 9% of N
Other commodity - under one year to maturity - over one year to five years - over five years	A + 4% of N A + 6% of N A + 10% of N	4% of N 6% of N 10% of N
<p>Notes</p> <p><i>FRAs, swaps, futures, purchased options, and other contracts for differences</i></p> <p>A = the replacement cost of the contract</p> <p>N = the notional or actual principal amount or value underlying the contract</p> <p>For contracts with multiple exchanges of principal, the % of N has to be multiplied by the remaining number of payments still to be made according to the contract.</p> <p>In the case of a derivative referenced on a bond which satisfies the criteria for a <i>qualifying debt security</i>, the %N applicable to interest rate derivatives may be utilised to calculate the credit equivalent amount. For a derivative referenced on a ‘non-qualifying’ bond, the credit equivalent amount must be calculated with reference to the %N applicable to equity derivatives.</p> <p>For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate</p>		

contracts that meet these criteria and have a remaining maturity of over one year, the percentage is no lower than 0.5%.
--

Sums due for payment or owed on closed out derivative transactions

3-173B(4) R When a *counterparty* has not fully met amounts owed to a *firm* arising out of losses on closed out *derivative* transactions through the deposit of *acceptable collateral* not otherwise used, or has not fully settled amounts owed in respect of periodic or final settlement of transactions, a *firm* must calculate *CRR* equal to the unpaid loss multiplied by the appropriate percentage from the Table 3-173B(5) below.

3-173B(4A) R In the case of a failed FX transaction (whether originally contracted for *forward* settlement, or undertaken in the spot market) where the *firm* has released funds to its *counterparty*, but has not received the funds in the alternative currency, the *CRR* must be calculated as the gross value of the funds not received, multiplied by the appropriate percentage from Table 3-173B(5) below.

CRR percentages

3-173B(5) R A *firm* must multiply the *counterparty* exposure by the appropriate percentage from the table below, but:

- (a) may opt to calculate *CRR* using the highest available credit percentage in the table below in order to avoid undue complication; and
- (b) may reduce the *counterparty* weight applicable to *counterparty* exposures calculated in accordance with (3)(c) above to 50%, where the *counterparty* would normally attract a *counterparty* weight of 100% in accordance with Table 1 in Appendix 47.

R TABLE 3-173B(5) - CRR percentages

Type of contract	Nature of <i>counterparty</i> to whom <i>counterparty</i> exposure exists	Business days after <i>counterparty</i> exposure first occurred	
		0 - 5	6 or more
Failed FX transaction	Any	8% x <i>counterparty</i> weight*	100%
Other	A <i>counterparty</i> granted a credit line under an <i>ACMP</i>	8% x <i>counterparty</i> weight*	
	A <i>counterparty</i> not granted a credit line under an <i>ACMP</i>	8% x <i>counterparty</i> weight*	100%

Netting

- 3-173B(6) R A *firm* may offset *counterparty* exposures arising on *derivative* transactions calculated in accordance with (2), (3) and (4) above before it multiplies the residual exposure by the appropriate *CRR* percentage as follows:
- (a) variation margin payable to a counterparty against an initial *margin requirement* or variation *margin requirement* receivable from a counterparty;
 - (b) variation margin payable to a counterparty against a positive “A” as calculated in accordance with Table 3-173B(3A);
 - (c) a negative “A” as calculated in accordance with Table 3-173B(3A) against an initial *margin requirement* or variation *margin requirement* receivable from a counterparty;
 - (d) a negative “A” against a positive “A” in each case as calculated in accordance with Table 3-173B(3A);
 - (e) loss on a closed out *derivative* transaction which has not been settled against variation margin payable to a counterparty;
 - (f) loss on a closed out *derivative* transaction which has not been settled against negative “A” calculated in accordance with Table 3-173B(3A);
 - (g) profit on a closed out *derivative* transaction which has not been settled against an initial *margin requirement* or variation *margin requirement* receivable from a *counterparty*;
 - (h) profit on a closed out *derivative* transaction which has not been settled against a loss on a closed out *derivative* transaction;
 - (i) profit on a closed out *derivative* transaction which has not been settled against a positive “A” as calculated in accordance with Table 3-173B(3A);
 - (j) premium receivable in respect of written *options* against variation margin payable, initial margin payable or a closed out profit payable to the counterparty or a negative “A” as calculated in accordance with Table 3-173B(3A);
 - (k) where the *firm* has received the premium due for a written *option*, a negative “A” (the replacement cost) for the written *option* against a positive “A” in each case as calculated in accordance with Table 3-173B(3A); or
 - (l) in the case of *perfectly matched contracts* these may be treated as a single contract with a notional principal equivalent to the net

receipts; or

- (m) where transactions are subject to (3)(c) above, the potential future credit exposures (PFCE) on transactions with the same *counterparty* (i.e. % o N) may be netted in accordance with Table 3-173B(6) below,

provided that:

- (i) the exposures arise on transactions with the same *counterparty*; and
- (ii) the *firm* has a written agreement, supported by a legal opinion obtained in accordance with rule 3-170(11).

Table 3-173B(6)

The netted PFCE is the sum of:	
step one	40% of gross PFCE
step two	60% of gross PFCE multiplied by the net-to-gross ratio (NGR)
Notes:	
$\text{NGR} = \frac{\text{(net replacement cost)}}{\text{(gross replacement cost)}}$	
The NGR must be calculated on all contracts included in a legally valid bilateral netting agreement with a given counterparty.	

Equivalent contracts

- 3-173B (7) R Rule 3-173B(3)(c) also applies to contracts, which, although they are listed on an *exchange* are fully dependent upon the issuer for performance (e.g. covered warrants).

Sub-total

- 3-173B (8) R The sum of the amounts calculated in accordance with this rule is the *firm's CRR* for *derivative* transactions.

...

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 3

Amend the following definitions as shown:

- acceptable collateral* (1) (other than for the purposes of rule 3-173B) means any of the following items of collateral provided to a *firm* by a *counterparty* ...
- (2) (for the purposes of rule 3-173B) means any of the following items of collateral provided to a *firm* by a *counterparty*:
- (a) cash;
 - (b) gold and silver bullion and coinage;
 - (c) certificates of deposit issued by and lodged with the *firm*;
 - (d) securities issued by *Zone A* central governments and *Zone A* central banks; and
 - (e) *securities* issued by the *European Communities*,
- to which the following conditions apply:
- (i) the *firm* must have an unconditional right to apply or realise the *acceptable collateral* for the purpose of repaying the *counterparty*'s obligations to the *firm*; and
 - (ii) *securities* must be *marked to market* daily using the valuation principles in rule 3-41(9);

qualifying debt security means a *debt security* which:

- (1) (other than for the purposes of rule 3-173B):
- (a) represents or evidences indebtedness;
 - ...
 - ...
- (3) (for the purposes of rule 3-173B) meets the following conditions:
- (a) it attracts zero specific risk under Table 2 in Appendix 47; or
 - (b) it is issued by, or fully guaranteed by:
 - (i) a *Zone B* central government or central bank and the *security* is denominated in the local currency of the issuer;

- (ii) a multilateral development bank;
- (iii) a Zone A public sector entity;
- (iv) a company whose share is a constituent of one of the indices making up the FTSE All-World Index; or
- (v) an issue of, or fully guaranteed by an investment firm or recognised third-country investment firm; or
- (c) it is issued by, fully guaranteed by, endorsed or accepted by:
 - (i) a credit institution incorporated in a Zone A country; or
 - (ii) a credit institution incorporated in a Zone B country and the debt security has a residual maturity of one year or less; or
- (d) it is a mortgage backed security relating to residential real estate of the type referred to in BIPRU 3.4.94R(1)(d)(i) which meets the requirements about legal certainty referred to in BIPRU 3.4.62R; or
- (e) it is rated by at least one of the agencies shown in Table 3 in Appendix 47, and every such rating equals or exceeds the corresponding minimum shown in that table;

Insert the following definitions in the appropriate alphabetical position; the text is not underlined:

- adequate collateral* means any of the following items of collateral provided to a *firm* by a *counterparty*:
- (a) cash;
 - (b) standby letters of credit and unconditional, irrevocable first on demand guarantees to the extent of their face value, issued by a *Zone A credit institution* which is not the counterparty nor an *associate* of the *counterparty*, and which is not an *affiliated company*, *associate* or a *controller* of the *firm*;
 - (c) standby letters of credit and unconditional, irrevocable first on demand guarantees to the extent of their face value, issued

by a bank which is not a *Zone A credit institution* (not being the *counterparty* nor an *associate* of the *counterparty*) which has been accepted under the *firm's ACMP* and which is not an *affiliated company, associate* or a *controller* of the *firm*;

- (d) *certificates of deposit*;
- (e) gold and silver bullion and coinage;
- (f) *securities*;
- (g) *physical commodities*; and
- (h) the performance guarantees issued in support of the securities lending and borrowing programmes of Euroclear and Clearstream, in respect only of exposure arising from participation in such programmes,

to which the following conditions apply -

- (i) the *firm* must have an unconditional right to apply or realise the collateral for the purpose of repaying the *counterparty's* obligations to the *firm*; and
- (ii) *securities* must -
 - (aa) be *marked to market* daily using the valuation principles in rule 3-41(9); and
 - (bb) not be issued by the *counterparty* nor by an *associate* of the *counterparty*;

margin requirement means, in relation to a *counterparty*, the value of any amounts which the *firm* or *intermediate broker* would be required to pay under the rules of an *exchange* or *clearing house* to -

- (a) meet any *marked to market* losses occurring on contracts undertaken for that *counterparty* at that time; or
- (b) as an initial margin fidelity deposit in respect of all the *counterparty's* open positions at that time,

on the assumption that those transactions were the only transactions undertaken on the *exchange* or *clearing house* by the *firm* or *intermediate broker* at that time;

option (for the purposes of rule 3-173B) means a contract which confers the right to buy or sell a security, contractually based investment, currency, gold or commodity at a given price on or before a given date. (NB: the definition of an option used for this purposes deliberately differs from that in the main Handbook Glossary);

The following text is all new and is not underlined.

After Appendix 46, insert Appendix 47 as follows:

Appendix 47

Tables applicable to CRR for derivative transactions under rule 3-173B

TABLE 1
Counterparty Weights To Be Applied In Calculating Liquidity Adjustment And CRR
(rule 3-173B(5)(b))

Type of counterparty	Counterparty weight
claims on, or explicitly guaranteed by, or collateralised with <i>securities</i> issued by: <ul style="list-style-type: none"> - the central government or central bank of a <i>Zone A</i> country; - the <i>European Communities</i>; or - any other government or central bank, provided the <i>exposure</i> is denominated in that country's national currency. 	NIL
claims on discount houses, gilt-edged <i>market makers</i> , institutions with a <i>money</i> market dealing relationship with the Bank of England and those <i>Stock Exchange money brokers</i> which operate in the gilt-edged market, where the claims are secured on gilts, UK Treasury bills, eligible <i>local</i> authority and eligible bank bills, or London CDs	10%
claims on, or explicitly guaranteed by: <ul style="list-style-type: none"> - a <i>multilateral development bank</i>; - the regional government or <i>local</i> authority of a <i>Zone A</i> country; - a <i>Zone A credit institution</i>; - a <i>recognised clearing house</i> or <i>recognised exchange</i>; - a recognised third country or <i>EEA investment firm</i>; - a <i>Zone B credit institution</i>, provided the <i>exposure</i> has a maturity of one year or less. 	20%
any other <i>counterparty</i>	100%

Guidance

The guarantee should be explicit and be legally enforceable by the *firm* and should prevent a *firm's* capital from becoming deficient as a result of experiencing a loss on such an exposure. The exposure must be retained on the *firm's* balance sheet.

TABLE 2
Specific risk *PRA*s

Issuer	Residual maturity	<i>PRA</i>
An issue of, or fully guaranteed by, or fully collateralised by a <i>Zone A</i> central government or central bank or the European Communities	Any	0%
An issue of, or fully guaranteed by, a <i>Zone B</i> central government or central bank denominated in the local currency	Zero to 12 months	0%

TABLE 3
Minimum ratings for *qualifying debt securities*

Issuer	Rating agency	Minimum Rating	
		<i>Securities</i>	Money Market Obligations
Any	Moody's Investors Service Standard & Poor's Corporation FITCH Ratings Ltd	Baa3 BBB- BBB-	P3 A3 F-3
Canadian	Canadian Bond Rating Service Dominion Bond Rating Service	B++low BBB low	A-3 R-2
Japanese	Japan Credit Rating Agency, Ltd Mikuno & Co Japan Rating & Investment Information Inc	BBB- BBB BBB-	J-2 M-3 a-2

Annex G

Amendments to the Conduct of Business sourcebook (COB)

In this Annex, underlining indicates new text.

- 3.2.7 G ...
- (4) A company's annual report and accounts issued in accordance with a requirement of the Companies Act 1985 or Companies Act 2006 (as applicable) (or corresponding Northern Ireland or EEA provisions) are exempt under item (2) and article 59 of the *Financial Promotion Order*. ...
- ...
- 7.17.14 G In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of "total issued share capital" is likely to be the concept of "paid up and issued share capital" under the Companies Act 1985 or Companies Act 2006 (as applicable).

Annex H

Amendments to the new Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

- 12.4.13 G In relation to companies limited by shares and incorporated in Great Britain, the most meaningful measure of “total issued share capital” is likely to be the concept of “paid up and issued share capital” under the Companies Act 1985 or Companies Act 2006 (as applicable).

Annex I

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

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

ICOB 1 Ann 2G Summary of Handbook provisions for insurance intermediaries

...

	Module	Application
...		
Regulatory processes	Authorisation manual, AUTH	Applies to: (1) a person, other than an authorised person, considering carrying on the regulated activities that include insurance mediation activities in the United Kingdom, and who requires guidance on whether authorisation is required and, if so, how to apply to the FSA for Part IV permission; (2) an EEA firm or a Treaty firm that wishes to establish a branch or provide cross border services into the United Kingdom in relation to insurance mediation activities or wishes to apply for a top-up permission that includes insurance mediation activities; (3) a person wishing to obtain approval for persons to perform controlled functions in relation to insurance mediation activities; and (4) a person wishing to understand how the FSA will use its powers in relation to authorisation to determine applications.
	...	
...		

Insert at the end of the Table.

The following Regulatory Guides may also be relevant to insurance intermediaries:

The Perimeter Guidance manual (PERG): see PERG 5 (Guidance on insurance mediation activities)

Annex J

Amendments to the Market Conduct sourcebook (MAR)

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

1.9.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market for, a *qualifying investment*, has also failed to meet the standard expected by a *regular user*:

...

(3) the characteristics of the market in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under ~~section 198 of the Companies Act 1985~~ DTR 5);

...

Annex K

Amendments to the Supervision manual (SUP)

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

Part 1: Changes which come into force on 6 October 2007

- 1.2.1 G (1) The ~~Authorisation manual (AUTH)~~, the Supervision manual (SUP)
...
- (2) ~~AUTH sets out the relationships between the FSA and applicants for PART IV permission and persons wishing to exercise EEA rights, Treaty rights or UCITS directive rights. [deleted]~~
...
- 3.2.2 G The Act, together with other legislation such as the Companies Acts 1985, ~~and 1989 and 2006~~, the Building Societies Act 1986 and the Friendly Societies Act 1992, provides the statutory framework for *firms*' and auditors' obligations.
- 6.2.1 G ... A *firm's Part IV permission* specifies all or some of the following elements (~~as detailed in AUTH 3.3.3G (When is Part IV permission required and what does it contain? see PERG 2 Annex 2 (Regulated activities and the permission regime) and the FSA website "How do I get authorised": <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>): ...~~
- 6.3.3 G In applying for a variation of *Part IV permission*, a branch of a *firm* from outside the *EEA* should be mindful of any continuing requirements referred to in AUTH 3.18 and, for *insurers*, AUTH 3.12 the rest of the Handbook.
- 6.3.5 G ... For example, the *FSA* will not grant a variation of *Part IV permission* to allow a *friendly society* to carry on reinsurance business (~~see AUTH 3.12.5G~~) as this is not permitted under the Friendly Societies Acts 1974 and 1992. A firm should refer to AUTH 3 for details of any restriction or discuss its plans with its usual supervisory contact at the FSA.
- 6.3.13 G ... *Firms* should note that, ~~as explained in AUTH 3.9.29G(3), the FSA will not use the power described in AUTH 3.9.29G(2) to grant Part IV permission for insurance business which has not been included in the application although the FSA is able in principle to use its power to give Part IV permission for an applicant to carry on a regulated activity for which it did not originally apply, this is not possible under the Insurance Directives, which set out minimum information requirements for an application for authorisation including information on the specified investments the applicant proposes to deal in.~~
- 6.3.20 G ... In these circumstances, the *FSA* may require the *firm* to complete appropriate parts of the full application pack (see AUTH-3 the FSA website "How do I get authorised":

<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>), as directed by the FSA. Applications for variation involving significant changes may be processed by the *firm's* usual supervisory contact at the FSA, in conjunction with the ~~Corporate Authorisations~~ Permissions department.

- 6.3.30 G The FSA will also consider the specific requirements that apply to certain types of activity (see ~~AUTH 3.11 to AUTH 3.20~~) as these may not allow certain combinations of activity.
- 6.3.31 G In considering whether to grant a *firm's* application to vary its *Part IV permission*, the FSA will also have regard, under section 49(1) of the Act (Persons connected with an applicant), to any *person* appearing to be, or likely to be, in a relationship with the *firm* which is relevant (see ~~AUTH 3.9.22G to AUTH 3.9.24G (Connected persons)~~). The *Financial Groups Directive Regulations* make special consultation provisions where the FSA is exercising its functions under Part IV of the Act (Permission to carry on regulated activities) for the purposes of carrying on supplementary supervision (see ~~AUTH 3.9.22G(1A)~~). Broadly, where the FSA, in the course of carrying on supplementary supervision, is considering varying the Part IV permission of a person who is a member of a group which is a financial conglomerate, the consultation provisions in section 49(2) of the Act are disappplied. In their place, the regulations impose special obligations, linked to the Financial Groups Directive, to obtain the consent of the relevant competent authorities, to consult those authorities and to consult with the group itself.

The FSA's powers in respect of application for variation of Part IV permission

- 6.3.32 G The FSA's power to vary a *Part IV permission* after it receives an application from a *firm* extends to including in the *Part IV permission* as varied any provision that could be included as though a fresh *permission* was being given in response to an application under section 40 of the Act (Application for permission), see ~~AUTH 3.~~ ...
- 7.2.1 G ... (~~See AUTH 3.6 and AUTH 3.7 for a further explanation of potential limitations and requirements on a firm's permission.~~)
- 10.6.5 G ... Such a *person* is defined in section ~~741~~ 251 of the Companies Act ~~1985~~ 2006 as a "shadow director". ...
- 11.4.11 G The steps that the FSA expects a *firm* to take to comply with SUP 11.4.10R include, if applicable:
- ...
- (2) monitoring notifications to the *firm* in accordance with Part ~~VI~~ 22 of the Companies Act ~~1985~~ 2006;
- ...
- 13.12.1 G ...

- (2) An applicant for *Part IV permission* which is submitting a *notice of intention* with its application for such *permission* (~~see *AUTH 3.20* (Specific obligations: applicants seeking to establish a branch in, or provide services into, another EEA State)~~) should contact the ~~Authorisation~~ Permissions department (020 7066 3954) in the first instance (~~see *AUTH 1.9* (Next steps)~~).
- 13A.1.2 G This chapter does not apply to:
- (1) an *EEA firm* ...; in this case the *EEA firm* requires a “*top-up permission*” under Part IV of the *Act* and ~~should refer to *AUTH 3* (Applications for Part IV permission)~~ (see the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>); or ...
- ...
- 13A.3.11 G ...
- (2) ... Otherwise, it will have to seek a *Part IV permission* (see ~~*AUTH 3* (Applications for Part IV permission)~~ the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>).
- 13A.6.3 G ... An *EEA firm* or *Treaty firm* should ~~read *AUTH 6* (Approved persons)~~ but also refer to *SUP 10.1* (Application) which sets out the territorial provisions of the *approved persons* regime.
- 13A.7.1 G If a *person* established in the *EEA*: ...
- to carry on a particular *regulated activity* in the *United Kingdom*, it must seek *Part IV permission* from the *FSA* to do so (see ~~*AUTH 3* the *FSA*~~ website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>). ...
- 13A.7.4 G For *guidance* on how to apply for *Part IV permission* under the *Act*, see ~~*AUTH 3* (Applications for Part IV permission)~~ the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>. ...
- 14.6.8 G Where the *FSA* gives a direction referred to in *SUP 14.6.4G*, the *incoming EEA firm* may apply for *Part IV permission* (see ~~*AUTH 3* (Applications for Part IV permission)~~ the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>) to take effect not earlier than the date that its qualification for *authorisation* is cancelled (as specified in the direction).
- 18.2.12 G ... In any case the *FSA* will need time to:
- (1) consider the application, if an application by the transferee for a *Part IV permission* or a variation of *permission* is necessary (~~*AUTH* and *SUP 6*~~ provide provides *guidance* on this);

...

Appendix 2

- 2.10.1 G The FSA may ask a *firm* seeking a grant or variation of *permission* to provide a *scheme of operations* as part of the application process (see ~~AUTH 3.9.9G(1)~~ and SUP 6.3.25G). ...
- 2.13.1 R A *firm* which has submitted a *scheme of operations* to the FSA, whether required by SUP App 2.4, SUP App 2.5 or SUP App 2.8, or as part of an application under SUP 6.3 (see SUP 6.3.25G), SUP 6.4 (see SUP 6 Annex 4), ~~AUTH 3.9~~ (see ~~AUTH 3.9.9G(1)~~) or SUP 11.5 (see SUP 11.5.5G), or an amended *scheme of operations*, must during the period covered by that *scheme of operations*: ...

Appendix 3

- 3.10.1 G The *guidance* in ~~AUTH 3.10~~ and Table 3 describes in broad outline ...
- 3.10.13 G ... The *insurance undertaking* will, therefore, generally be able to qualify for *permission* as a *Treaty Firm* ~~firm~~ for its reinsurance business if it follows the procedure provided for by Schedule 4 (see SUP 13A.3.4G to SUP 13A.3.11G (Treaty Firms) and also ~~AUTH 3.21~~ (Treaty firms applying for Part IV permission)). ...

Part 2: Changes which come into force on 15 December 2007

Bureau de Change Money service business and trust or company service providers

- 15.8.4 G (1) In accordance with article ~~25~~ 31 of the *Money Laundering Regulations*, with effect from ~~1 April 2004~~ 15 December 2007, a *firm* is required to notify the FSA:
- (a) before it begins or within 28 days of it beginning; and
- (b) ~~as soon as reasonably practicable~~ immediately after it ceases;
- to operate a money service business or a trust or company service provider bureau de change (within (a) of *money service business*).
- (2) The notification referred to in (1) should be made in accordance with the requirements in SUP 15.7 (Form and method of notification).
- 15.8.5 G A *firm* which is already operating a ~~bureau de change~~ money service business or a trust or company service provider as at ~~1 April 2004~~ 15 December 2007 and ~~intends to continue doing so~~ is required by the *Money Laundering Regulations* to notify the FSA of that fact and should do so in the manner specified in SUP 15.8.4G(2) before 15 January 2008.

Annex L

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

Part 1: Changes which come into force on 28 September 2007

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the ~~Act~~ Act are as follows:
- ...
- (3) Friendly Societies Act 1992, section 58A: ...
- 6.2.2 G In relation to *behaviour* which may have happened or be happening in the context of a *takeover bid*, the *FSA* will refer to the *Takeover Panel* and give due weight to its views ~~in the context of the *Takeover Panel's* powers and responsibilities.~~

Part 2: Changes which come into force on 1 November 2007

DEPP 2 Annex 1G

Section of the Act	Description	Handbook reference	Decision maker
...			
280(1)/(2)	...	...	...
301C(5)/(7)	when the <i>FSA</i> is proposing/deciding <u>proposing or deciding</u> to object to a change in control of a <i>UK RIE</i> following receipt of a notice of control	<i>REC 4.2C</i>	<i>Executive procedures</i>
301D(1)/(3)/ (4)	when the <i>FSA</i> has imposed a requirement on an institution to suspend a <i>financial instrument</i> from trading and it is proposing/deciding to refuse an application by the institution or the issuer for the revocation of the requirement	<i>REC 4.2</i>	
<u>301D(1)/</u> (4)	<u>when the <i>FSA</i> is not satisfied that the approval requirement is met, it may give a decision notice (which must be preceded by a warning notice) to a</u>	<i>REC 4.2C</i>	<i>Executive procedures</i>

	<u>person who has failed to comply with a duty to notify imposed by section 301A</u>		
<u>301D(3)/(4)</u>	<u>when the FSA becomes aware of matters as a result of which it is satisfied that the approval requirement is not met with respect to a person who is a controller of a recognised investment exchange, it may give a decision notice (which must be preceded by a warning notice) to the controller</u>	<u>REC 4.2C</u>	<u>Executive procedures</u>
313B(9)	...	...	...
<u>313B(10)/(11)</u>	<u>when the FSA has required an institution to suspend a financial instrument from trading and it is proposing or deciding to refuse an application by the institution or the issuer for the cancellation of the suspension</u>	<u>REC 4.2D</u>	<u>Executive procedures</u>
321(8)/(9)	...	...	...

Annex M

Amendments to the Compensation sourcebook (COMP)

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

5.4.4 R For the purpose of *COMP 5.4.3R* and *COMP 5.4.5R(1)(b)*, the situation of a risk or commitment is determined as follows:

...

(4) in cases not covered by (1) to (3):

(a) where the policyholder who first took out the *contract of insurance* is an individual, the risk or commitment is situated where he has his ~~habitual residence~~ habitual residence at the date when the *contract of insurance* commenced;

...

Annex N

Amendments to the Credit Unions sourcebook (CRED)

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

- 2.2.4 G Each sourcebook or manual has a reference code of two or more letters. This is usually a contraction or abbreviation of its titles, for use in cross-references in the text and in the index. Thus, for example the *Credit Unions* sourcebook abbreviates to *CRED*, while the ~~*Authorisation*~~ *Supervision* manual abbreviates to *AUTH SUP*.
- 6.1.3 G The full provisions are to be found in the following sourcebooks or manuals of the *Handbook*:
- ...
- (3) ~~*Authorisation*~~ manual (~~*AUTH*~~) [deleted]
- ...
- 13.2.2 G ~~The *Authorisation* manual (*AUTH*) explains in full the circumstances in which *authorisation* is required, the *authorisation* process and the *FSA*'s powers in relation to *authorisation*.~~ The circumstances in which *authorisation* is required are set out in the Perimeter Guidance manual (*PERG*). Information on the *authorisation* process can be found on the *FSA* website "How do I get authorised":
<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>.
- 13.2.3 G ~~*AUTH* 3.9.3D requires an applicant for *Part IV* permission to apply in writing in the manner directed, and with the information required, in the application pack provided by the *FSA*. An applicant for *Part IV* permission should consult the *FSA* website "How do I get authorised":~~
<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>.
- 13.5.4 G ~~The *FSA*'s *Authorisation* manual (*AUTH*) explains in full the circumstances in which *authorisation* is required, the *authorisation* process and the *FSA*'s powers in relation to *authorisation*.~~ The circumstances in which *authorisation* is required are set out in the Perimeter Guidance manual (*PERG*). Information on the *authorisation* process can be found on the *FSA* website "How do I get authorised":
<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>, and FEES 3 (Application, Notification and Vetting Fees) sets out the authorisation fees that are payable. ~~The key chapters of *AUTH* for a person applying, or considering applying, to the *FSA* to become a *credit union* with a *Part IV* permission to accept deposits are:~~
- (1) ~~*AUTH* 3: Applications for *Part IV* permission; and~~

- (2) ~~AUTH 6: Approved persons.~~
- (3) ~~{deleted}~~
- 13.6.4 G As part of its application for *Part IV permission*, an applicant may wish to apply for certain *limitations* or *requirements* (~~see AUTH 3.6, AUTH 3.7 and the application pack~~). ...
- 13.6.5 G ... For example, the *FSA* can:
- ...
- (2) ~~the FSA~~ can impose *requirements*, for example, to restrict the scope of a *credit union's Part IV permission* to carry on *regulated activities* or require a *credit union* to submit financial returns more frequently than normal (~~see AUTH 3.7~~).
- 13.7.3 G ~~AUTH 6.3.1D requires an applicant~~ Applicants for *Part IV permission* to ~~to~~ *should* complete Form A (included as part of the *FSA's* application pack) when applying for approval of a *person* to perform a *controlled function*.
- 13.7.7 G ~~AUTH 6.3.4D requires that, until an application for approval has been determined by the FSA, the applicant must inform the FSA of any significant change to the information given in Form A immediately.~~ *SUP 10.13.16R* requires that, if a *firm* becomes aware of information which would reasonably be material to the assessment of an *approved person's*, or a *candidate's*, fitness and propriety (see *FIT*), it must inform the *FSA* on Form D as soon as practicable.

Annex O

Amendments to the Electronic Money sourcebook (ELM)

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

1.5.2 G Application of other parts of the Handbook to ELMIs

Block	Module	Application
...
Business Standards	...	...
	Conduct of Business sourcebook (<i>COB</i>)	... Otherwise, <i>COB</i> does not apply to an <i>ELMI</i> when <i>issuing e-money</i> . As explained in <i>AUTH App 3 PERG 3</i> , the <i>rules in COB</i> about <i>financial promotions</i> do not usually apply to <i>e-money</i> , but may do so in certain situations.

Regulatory processes	Authorisation manual (<i>AUTH</i>)	Applies to every <i>ELMI</i>.
...

5.5.2 R Except as otherwise provided for in *ELM*, and subject to *ELM* 5.5.3R, a *firm* must determine amounts included in the calculations required by the *ELM financial rules* in accordance with the accounting principles and rules which the *firm* would apply if it were drawing up financial statements under the Companies Act 1985 (and Companies Act 2006 (as applicable)) including those accounting principles and rules contained in the United Kingdom Statements of Standard Accounting Practice (SSAPs) and Financial Reporting Standards (FRSs) or, where applicable, *international accounting standards* effective at the relevant time.

6.3.10 G ... There is *guidance* on the meaning of issuer under that article in *AUTH App 3.2 PERG 3* (The regulated activity of issuing e-money).

8.3.3 G ~~*AUTH App 3.4 PERG 3*~~ gives *guidance* on the restrictions on financial promotion in section 21 of the *Act* (Restrictions on financial promotion) in relation to *e-money*.

Annex P

Amendments to the Professional Firms sourcebook (PROF)

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

- 2.1.15 G ... For further guidance on when a *regulated activity* is carried on ‘in the *United Kingdom*’, *exempt professional firms* are referred to section 418 of the *Act* and the *guidance* in ~~AUTH 2.4~~ PERG 2.4 (Link between activities and the United Kingdom).

Annex Q

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

Part 1: Changes which come into force on 6 October 2007

- 6.2.3 G ~~Applications~~ Applicants for *authorised person* status should ~~be made in accordance with the Authorisation manual (AUTH)~~ refer to the *FSA* website “How do I get authorised”:
<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>. ...

Part 2: Changes which come into force on 1 November 2007

- 2.4.6 R In assessing whether the *persons* who effectively direct the business and operations of the *UK RIE* are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it, the *FSA* may have regard to the repute and experience of the *UK RIE's key individuals*.

Annex R

Amendments to the Listing Rules sourcebook (LR)

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

- 5.2.11 R In the circumstances of *LR 5.2.10R*, the *company* must notify the *security holders* that the required 75% has been attained ... accompanying the ~~section 429~~ section 979 notice must state that the notice period has commenced and the anticipated date of cancellation....

Cancellation as a result of schemes of arrangements etc

- 5.2.12 R *LR 5.2.5R*, *LR 5.2.5AR* and *LR 5.2.8R* do not apply to the cancellation of ordinary *equity shares* of an *issuer* as a result of:
- (1) a takeover or restructuring of the *issuer* effected by a scheme of arrangement under Part 13 of the Companies Act 1985 ~~Part 26 of the Companies Act 2006~~; or

...

- 5.3.2 R The *issuer* must also include ...

...

- (3) ... ~~section 899 of the Companies Act 2006 (court sanction for compromise arrangement)~~ section 425 of the Companies Act 1985 ...

- 9.3.12 R *LR 9.3.11R* does not apply if:

- (1) ... authorised by shareholders in accordance with section ~~570, 571 and 573~~ 95 of the Companies Act ~~2006~~ 1985 ...

...

- 9.5.10 R (1) If a *listed company* makes an *open offer*, *placing*, *vendor consideration* *placing*, *offer for subscription* of *equity shares* or an issue out of treasury (other than in respect of an employees' share scheme) of a *class* already *listed*, the price must not be at a discount of more than 10% to the middle market price of those *shares* at the time of announcing the terms of the offer or at the time of agreeing the placing (as the case may be). ...

...

- (3) Paragraph (1) does not apply to an offer or placing at a discount of more than 10% if:

...

- (b) it is an issue of *shares* for cash or the sale of *treasury shares* for cash under a pre-existing general authority to disapply ~~section 561 of the Companies Act 2006 (Existing shareholder's right of pre-emption)~~ section 89 of the Companies Act 1985 (Offers to shareholders to be on a pre-emptive basis).

...

9.6.21 R A *listed company* must prepare and publish a second interim report in accordance with ~~LR 9.9~~ DTR 4.2R if the effect of the change in the accounting reference date is to extend the accounting period to more than 14 months.

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

- (1) a statement setting out all the ~~beneficial and non-beneficial~~ interests (in respect of which transactions are notifiable to the company under DTR 3.1.2R) of each *person* who ~~is has been~~ a *director* of the *listed company* ~~during as at the end of~~ the period under review including:
 - (a) all changes in the ~~beneficial and non-beneficial~~ interests ...
 - (b) ... a statement that there have been no changes in the ~~beneficial and non-beneficial~~ interests ...₂

~~stating the date each interest commenced (and the date it came to an end or if ongoing, a statement to that effect)~~. Interests of each *director* include the interests of ~~connected persons as defined in the Companies Act 2006~~ connected persons of which the *listed company* is, or ought upon reasonable enquiry to become, aware.

- (2) a statement showing...:
 - (a) all information disclosed to the *listed company* in accordance with ~~Part 22 of the Companies Act 2006 (Information about interests in a company's shares)~~ or DTR 5; or

...

...

9.8.6A G (1) The effect of LR 9.8.6R(1) is that a *listed company* is required to set out a 'snapshot' of the total interests of a *director* and his or her *connected persons*, as at the end of the period under review (including certain information to update it as at a date not more than a month before the date of the notice of the annual general meeting). The interests that need to be set out are limited to those in respect of which transactions fall to be notified under the notification requirement for *PDMRs* in DTR 3.1.2R. *Persons* who are *directors* during, but not at the end of, the period under review need not be included.

(2) A listed company unable to compile the statement in LR 9.8.6R(1) from information already available to it may need to seek the relevant information, or confirmation, from the director himself, including that in relation to connected persons, but would not be expected to obtain information directly from connected persons.

9.8.13 R Any summary financial statement issued by a *listed company* as permitted under the Companies Act ~~1985 2006~~, must disclose:

...

(2) the information required for summary financial statements set out in the Companies Act ~~2006 1985~~.

10.8.9 G ...

(3) ... Further, if the consideration to be paid is to be determined by reference to the future profitability of the joint venture or an independent valuation at the time of exercise, this consideration will be treated as being uncapped. If this is the case, the initial agreement will be classified in accordance with LR 10 Annex 1 5R (3) and (3A) as a class 1 transaction at the time it is entered into.

11 Annex 1.1R

...

5 (1) A transaction that consists of:

...

(c) a loan or assistance to a *director* by a *listed company* or any of its *subsidiary undertakings* if the terms of the loan or assistance are in accordance with those specifically permitted to be given to a *director* under section 204 or 205 of the Companies Act 2006.

...

13.8.2 R A *circular* relating to a resolution proposing to disapply the statutory pre-emption rights under section ~~561 89~~ of the Companies Act ~~2006 1985~~ (Existing shareholders' right of pre-emption)...

Amend the following definitions in LR Appendix 1 as shown.

App 1

employees' share scheme

has the same meaning as in section ~~466 743~~ of the Companies Act ~~2006 1985~~.

<i>parent undertaking</i>	as defined in section 1162 <u>258</u> of the Companies Act 2006 <u>1985</u> .
<i>share</i>	(in accordance with section 540 <u>744</u> of the Companies Act 2006 <u>1985</u>) ...
<i>subsidiary undertaking</i>	as defined in section 1162 <u>258</u> of the Companies Act 2006 <u>1985</u> .
<i>treasury shares</i>	qualifying shares to which Chapter 6 <u>sections 162A to 162G</u> of the Companies Act 2006 <u>1985</u> <u>applies</u> <u>apply</u> .

LR TR

Transitional Provisions for venture capital trusts

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
4.	...				

General Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
<u>5.</u>	<u>LR provisions referring to Companies Acts 1985, 2006 or related provisions.</u>	<u>R</u>	(1) <u>To the extent that the whole or part of a provision of the Companies Act 2006 is yet to come into force, any reference to that provision or part of it should be read as a reference to the corresponding provision of the Companies Act 1985 currently in force (subject to the application of any relevant transitional provisions in the Companies Act 2006 or the rules).</u> (2) <u>To the extent that the whole or part of a</u>	<u>6 October 2007</u>	<u>20 January 2007</u>

		<p><u>provision of the Companies Act 1985 is no longer in force it shall be read as a reference to the corresponding provision of the Companies Act 2006 or relevant DTR rule that has superseded it (subject to the application of any relevant transitional provisions).</u></p>		
--	--	--	--	--

Annex S

Amendments to the Prospectus Rules sourcebook (PR)

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

3.1.1 R An *applicant* must submit to the *FSA* the following information:

...

(8) ~~written confirmation of the number of securities to be allotted or issued (pursuant to a board resolution allotting or issuing the securities); [deleted]~~

...

Supplementary prospectus to be submitted as soon as possible practicable

3.4.3 R ...

PR TR

Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	<u>PR provisions referring to Companies Acts 1985, 2006 or related provisions.</u>	<u>R</u>	<p>(1) <u>To the extent that the whole or part of a provision of the Companies Act 2006 is yet to come into force, any reference to that provision or part of it should be read as a reference to the corresponding provision of the Companies Act 1985 currently in force (subject to the application of any relevant transitional provisions in the Companies Act 2006 or the rules).</u></p> <p>(2) <u>To the extent that the whole or part of a provision of the Companies Act 1985 is no longer in force it shall</u></p>	<u>6 October 2007</u>	<u>20 January 2007</u>

			<u>be read as a reference to the corresponding provision of the Companies Act 2006 or relevant <i>DTR rule</i> that has superseded it (subject to the application of any relevant transitional provisions).</u>		
--	--	--	---	--	--

Annex T

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

- 3.1.4 R (1) An issuer must notify an *RIS* of any information notified to it in accordance with:
- (a) *DTR* 3.1.2R (Notification of transactions by persons discharging ~~material~~ managerial responsibilities);
 - (b) ~~*LR* 9.8.6 R(1) (Additional information); [deleted]~~ and
 - (c) section 793 of the Companies Act 2006 (Notice requiring information about interests in shares) to the extent that it relates to the interests of a *director* or, as far as the issuer is aware, any *connected person*.
- 3.1.6 R If an *issuer* ~~receives notification of the same dealing under *DTR* 3.1.2R, *LR* 9.8.6R(1) and section 793 of the Companies Act 2006,~~ it must make clear in its notification to the *RIS* that a single transaction in respect of the same *financial instrument* has taken place makes the appropriate notification to the *RIS* under *DTR* 3.1.4R(1)(a), a further notification to an *RIS* is not required in the event of it receiving information regarding the same dealing in a notification under section 793 of the Companies Act 2006.
- 5.1.1 R In this chapter:
- ...
- (2) references to a “non-UK issuer” are to an *issuer* whose *shares* are admitted to trading on a *regulated market* and whose *Home State* is the United Kingdom other than:
 - (a) a public company within the meaning of ~~section 4 of the Companies Act 2006~~ section 1(3) of the Companies Act 1985; and
- ...
- 6.3.3 R (1) ...
- (2) ...
- [**Note:** article 12(1) of the *TD implementing directive*]
- 6.3.4 R ...
- [**Note:** article 12(2) of the *TD implementing directive*]
- 6.3.5 R (1) ...

[**Note:** article 12(3) of the *TD implementing directive*]

...

DTR TP 1 ...
Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12 ...					
13.	<u>DTR provisions referring to Companies Acts 1985, 2006 or related provisions.</u>	<u>R</u>	<p>(1) <u>To the extent that the whole or part of a provision of the Companies Act 2006 is yet to come into force, any reference to that provision or part of it should be read as a reference to the corresponding provision of the Companies Act 1985 currently in force (subject to the application of any relevant transitional provisions in the Companies Act 2006 or the rules).</u></p> <p>(2) <u>To the extent that the whole or part of a provision of the Companies Act 1985 is no longer in force it shall be read as a reference to the corresponding provision of the Companies Act 2006 or relevant DTR rule that has superseded it (subject to the application of any relevant transitional provisions).</u></p>	<u>6 October 2007</u>	<u>20 January 2007</u>

Annex U

Amendments to the Perimeter Guidance manual (PERG)

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

- 2.2.1 G Under section 23 of the *Act* (Contravention of the general prohibition), a *person* commits a criminal offence if he carries on activities in breach of the *general prohibition* in section 19 of the *Act* (The general prohibition) (~~see *AUTH 1.2.2G*~~).
...
- 2.2.3 G ...:
...
(9) If not, do I benefit from the few provisions of the *Act* that *authorise* me without a *permission* under Part IV of the *Act* (see ~~*AUTH 1.2.4G*~~ *PERG 2.10.9G* (Members of Lloyd's))?
(10) If not, what is the scope of the *Part IV permission* that I need to seek from the *FSA* (see *PERG 2 Annex 2G* and ~~*AUTH 3*~~)?
...
2.2.5 G The process of applying for *Part IV permission* is ~~described in *AUTH 3*~~ available on the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>. ... The exceptions (which are explained in *AUTH 3.4* and *AUTH 3.5*) ~~involve distinctions being drawn within each of several activities and *investments* so specified.~~ ...
2.11.1 G Any *person* who concludes or is advised that he will need to make an application for *Part IV permission* should look at *PERG 2 Annex 2G* to determine the categories of *specified investment* and *regulated activities* that are relevant to the next step and should then refer to ~~*AUTH 3*~~ the *FSA* website “How do I get authorised”: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml> for details of the application process.
- 2 Annex 2G Regulated activities and the permission regime
...

Table 2: Contracts of insurance
...
Notes to Table 2
...
Note 2:

See *IPRU(INS)* 11.8 and the definition of *ancillary risks* in *IPRU(INS)* and *AUTH 3.12.6G* to *AUTH 3.12.12G* for *guidance* on the treatment of supplementary and ancillary provisions in relation to *contracts of insurance*.

- 4.2.1 G ... ~~In order to be authorised, a person must either:~~
- (1) ~~hold a *Part IV permission* given by the *FSA* (see *AUTH 1.3* (The Authorisation manual) and *AUTH 3* (Application for Part IV permission));~~
or
 - (2) ~~qualify for *authorisation* (see *SUP 13A* (Qualifying for authorisation under the Act)), for example if the *person* is an *EEA firm* or a *Treaty firm*.~~
- 4.2.3 G ...
- If a *person* gets as far as question (8) and the answer to that question is ‘no’, that *person* requires *authorisation* and should refer to *AUTH 3* (Applications for Part IV permission) the *FSA* website “How do I get authorised”:
<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml> for details of the application process.
- 4.6.25 G In the scenarios identified in *AUTH PERG 4.6.23G(3)* and *AUTH PERG 4.6.24G(2)*, the *FSA* considers that it is necessary to look at the process and outcome of scripted questioning as a whole. ...
- 4.11.11 G ... This is because *arrangements* made with borrowers at the exhibition would be subject to the exclusion in article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) (see *AUTH PERG 4.5.7G*). ...
- 5.2.2 G ... ~~To be authorised, a person must either:~~
- (1) ~~hold a *Part IV permission* given by the *FSA* (see *AUTH 1.3* (The Authorisation manual) and *AUTH 3* (Application for Part IV permission));~~
or
 - (2) ~~qualify for *authorisation* (see *SUP 13A* (Qualifying for authorisation under the Act)); for example, if the *person* is an *EEA firm* or a *Treaty firm*.~~
- 5.2.3 G ...
- If a *person* gets as far as question (8) and the answer to that question is “no”, that *person* requires *authorisation* and should refer to *AUTH 3* (Applications for Part IV permission) the *FSA* website “How do I get authorised”:
<http://www.fsa.gov.uk/Pages/Doing/how/index.shtml> for details of the application process. ...
- 7.6.5 G The fee for an application for a certificate under article 54 of the *Regulated Activities Order* is £2,000 (see *AUTH 4 Annex 1R*).
- 8.4.21 G ... ~~*AUTH 1.9.1G* explains about *approval*.~~

8.35.1 G ... ~~*AUTH* explains about the *authorisation* process and the procedures for obtaining *Part IV permission* and for the approval of individuals. ...~~

**COMPENSATION SOURCEBOOK (PROTECTED DEPOSITS LIMIT)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 157(1) (Guidance);
 - (2) section 213 (The compensation scheme);
 - (3) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2007.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Compensation Sourcebook (Protected Deposits Limit) Instrument 2007.

By order of the Board
28 September 2007

Annex

Amendments to the Compensation sourcebook (COMP)

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

TP 1.1 Transitional provisions table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...
<u>16</u>	<u>COMP</u> <u>10.2.3R</u>	<u>R</u>	<u>The change to the limit for <i>protected deposits</i> made by the Compensation Sourcebook (Protected Deposits Limit) Instrument 2007 does not apply in relation to a <i>claim</i> against a <i>relevant person</i> that was in <i>default</i> before 1 October 2007.</u>	<u>From 1 October 2007 indefinitely</u>	<u>Amended with effect from 1 October 2007</u>

- 10.2.2 G The limits apply to the aggregate amount of *claims* in respect of each category of *protected claim* that an *eligible claimant* has against the *relevant person*. Consequently, a claimant who has, for example, a *claim* against a *relevant person* for a ~~deposit~~ of £2,000 in connection with *protected investment business* of £30,000, and for a further ~~deposit~~ of £1,500 such *claim* of £20,000, will not receive 100% compensation ~~on both deposits~~ for both *claims*; instead he will receive ~~£3,350~~ £48,000 (100% of the first £2,000 ~~£30,000~~ and 90% of the next ~~£1,500~~ £20,000). Similarly, if a claimant receives more than one payment in respect of a ~~claim~~ *claim* or ~~claims~~ *claims* on one or more *protected contract of insurance*, the claimant will only receive 100% of the first £2,000 of the total paid, and not 100% of the first £2,000 of each payment.

10.2.3 R ...

Type of claim	Level of cover	Maximum payment
...
<i>Protected deposit</i>	100% × first £2,000 90% × next £33,000 <u>100% of claim</u>	£31,700 <u>£35,000</u>

**MiFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the General Provisions (Powers exercised).
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 2 of Annex S (SUP) comes into force on 5 November 2007;
 - (2) the remainder of the instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the FSA'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) below.

(1)	(2)
Changes to several Handbook modules	Annex A
Glossary of definitions	Annex B
Principles for Businesses (PRIN)	Annex C
Senior Management Arrangements, Systems and Controls (SYSC)	Annex D
Threshold Conditions (COND)	Annex E
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex F
The Fit and Proper Test for Approved Persons (FIT)	Annex G
General Provisions (GEN)	Annex H
Fees manual (FEES)	Annex I
Prudential sourcebook for Insurers (INSPRU)	Annex J
Interim Prudential sourcebook: Insurers (IPRU(INSPRU))	Annex K
Interim Prudential sourcebook: Investment Businesses (IPRU(INV))	Annex L
Conduct of Business sourcebook (COBS)	Annex M
Insurance: Conduct of Business sourcebook (ICOB)	Annex N

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex O
Client Assets sourcebook (CASS)	Annex P
Market Conduct sourcebook (MAR)	Annex Q
Training and Competence sourcebook (TC)	Annex R
Supervision manual (SUP)	Annex S
Collective Investment Schemes sourcebook (COLL)	Annex T
Credit Unions sourcebook (CRED)	Annex U
Electronic Money sourcebook (ELM)	Annex V
Professional Firms sourcebook (PROF)	Annex W
Listing Rules sourcebook (LR)	Annex X
Prospectus Rules sourcebook (PR)	Annex Y
Perimeter Guidance manual (PERG)	Annex Z

Notes

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

Citation

- F. This instrument may be cited as the MiFID (Deferred Matters and Consequential Amendments) Instrument 2007.

By order of the Board
25 October 2007

Amended by Addendum
25 October 2007

Errata
1 November 2007

Annex A

Amendments to the Handbook, the Handbook Guides and the Regulatory Guides

In this Annex, the word or phrase in column (1) is replaced in each place where it occurs by the word or phrase in column (2), except where indicated in column (3) or unless the context requires otherwise.

(1)	(2)	(3)
<i>alternative trading system</i>	<i>multilateral trading facility</i>	
<i>client agreement</i>	client agreement	SUP 6.4.22G SUP 6 Annex 4.2G
<i>core investment service</i>	<i>investment services and activities</i>	Glossary definition of "ISD investment firm" SYSC App 1.1.2G(2)
<i>DGD</i>	<i>Deposit Guarantee Directive</i>	
<i>distance means</i>	distance means	
<i>DMD</i>	<i>Distance Marketing Directive</i>	
<i>ICD</i>	<i>Investor Compensation Directive</i>	
<i>IMD</i>	<i>Insurance Mediation Directive</i>	
<i>intermediate customer</i>	<i>professional client</i>	Glossary definition of "market counterparty" Glossary definition of "private customer"
<i>Investment Services Directive</i>	<i>MiFID</i>	Glossary definition of "ISD" SUP 14.1.3G(1)(d) SUP 16.4.4
<i>ISD</i>	<i>MiFID</i>	Glossary definition of "ISD investment firm" SYSC App 1.1.2G(2) BIPRU TP 6.12 MAR 1 Annex 1.1.5EU(3) MAR 1 Annex 1.1.6G MAR 2.3.5EU(4)

		SUP 16.7.26R SUP 16.7.30R SUP 16.7.35R SUP 16.7.36R SUP 16.7.36AR SUP 16.7.77R (Note 3) DTR TP1 Para 10, 11
<i>ISD instrument</i>	<i>financial instrument</i>	COLL 6.9.9R
<i>ISD investment firm</i>	<i>MiFID investment firm</i>	SUP 16.7.26R SUP 16.7.27A SUP 16.7.30
<i>key facts scheme</i>	<i>key features scheme</i>	
<i>key features</i>	<i>a key features document</i>	
<i>market counterparty</i>	<i>eligible counterparty</i>	Glossary definition of "intermediate customer" Glossary definition of "private customer"
<i>means of distance communication</i>	<i>means of distance communication</i>	
<i>outgoing electronic commerce communication</i>	<i>Outgoing electronic commerce communication</i>	
<i>non-core investment service</i>	<i>ancillary service</i>	SYSC App 1.1.2G(2)
<i>providing basic advice on a stakeholder product</i>	<i>giving basic advice on a stakeholder product</i>	
<i>private customer</i>	<i>retail client</i>	Glossary definition of "intermediate customer" Glossary definition of "market counterparty"
<i>Retail customer</i>	<i>consumer</i>	
<i>Revenue allocated CTF</i>	<i>HMRC allocated CTF</i>	

Annex B

Amendments to the Glossary of definitions

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

G Guidance on the Glossary of definitions

...

3. Each sourcebook or manual has a reference code of two or more letters, usually a contraction or abbreviation of its title (for example, *GEN* stands for the General Provisions and ~~*COB*~~ *COBS* for the Conduct of Business sourcebook).

...

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

<i>alternative projection</i>	(in <i>COBS</i>) a <i>projection</i> calculated on the basis described in paragraph 1.5R of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2R), rather than in accordance with the remainder of those <i>rules</i> .
<i>appropriate charges information</i>	(in <i>COBS</i>) information about charges which is calculated and presented in accordance with the <i>charges rules</i> in <i>COBS</i> 13.4.1R and <i>COBS</i> 13 Annex 3.
<i>contracting out comparison</i>	a description of: (a) the benefits that minimum contributions would secure if a <i>retail client</i> did not contract out of the State Second Pension; and (b) the material differences between the anticipated position if a <i>retail client</i> remains contracted into the State Second Pension and the anticipated position if that <i>client</i> contracts out; which is calculated to the <i>client's</i> state retirement age using the <i>lower</i> and <i>higher rates of return</i> and aggregate contributions for the current and the next two tax years.
<i>deductions plan</i>	(in <i>COBS</i>) a plan that describes the deductions from asset share that a <i>firm</i> expects to make for the cost of guarantees and the use of capital (<i>COBS</i> 20.2.8R).
<i>generic projection</i>	(in <i>COBS</i>) a projection which reflects the terms of a contract which is representative of the type of business normally undertaken by the <i>firm</i> , or the type of business it is promoting, rather than the terms of a particular

	contract with, or that will be offered to, a particular <i>client</i> .
<i>higher rate of return</i>	(in <i>COBS</i>) the higher rate of return described in paragraph 2.3 of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2).
<i>intermediate rate of return</i>	(in <i>COBS</i>) the intermediate rate of return described in paragraph 2.3 of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2).
<i>Lloyd's complaint procedures</i>	the procedures maintained by the <i>Society</i> under <i>DISP</i> 1.7.1R.
<i>Lloyd's complaint rules</i>	<i>DISP</i> 1.7.
<i>lower rate of return</i>	(in <i>COBS</i>) the lower rate of return described in paragraph 2.3 of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2).
<i>personal projection</i>	a <i>projection</i> that reflects the terms of a particular contract with, or to be offered to, a particular <i>client</i> .
<i>PPFM guidance table</i>	the table in <i>COBS</i> 20.3.8G (Guidance on with-profits principles and practices).
<i>PPFM issues table</i>	The table in <i>COBS</i> 20.3.6R (Issues to be covered in PPFM).
<i>projection period</i>	(in <i>COBS</i>) the period covered by a <i>standardised deterministic projection</i> , which begins on the date the investment is reasonably expected to be made and ends on the <i>projection date</i> described in paragraph 2.1 of <i>COBS</i> 13 Annex 2.
<i>respondent</i>	(in <i>DISP</i>) a <i>firm</i> , <i>licensee</i> or <i>VJ participant</i> covered by the <i>compulsory jurisdiction</i> , <i>consumer credit jurisdiction</i> or <i>voluntary jurisdiction</i> of the <i>Financial Ombudsman Service</i> .
<i>security-based CTF</i>	a <i>CTF</i> , other than a <i>stakeholder CTF</i> , which is not limited to <i>deposit</i> based investment.
<i>senior personnel</i>	those <i>persons</i> who effectively direct the business of the <i>firm</i> , which could include a <i>firm's governing body</i> and other <i>persons</i> who effectively direct the business of the <i>firm</i> .
<i>standardised deterministic projection</i>	a <i>projection</i> which is either a <i>generic projection</i> or a <i>personal projection</i> produced in accordance with the assumptions contained in <i>COBS</i> 13 Annex 2.
<i>statutory money purchase illustration</i>	an annual illustration of the contributions made for the benefit of, and the potential benefits due to, a member of a <i>personal pension scheme</i> , which is prepared in accordance with the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110).

TPF rules the rules and guidance in *COBS 20.2.1R* to *COBS 20.2.39G* and *COBS 20.2.51R* to *COBS 20.2.57G*.

Amend the following definitions as shown.

~~*additional voluntary contribution*~~ [deleted]

adviser an individual who is: a representative; ~~or~~ an *appointed representative* or a *tier agent*.

approved counterparty any of the following:
(a) ...
...
(c) ~~an ISD~~ a *MiFID investment firm* whose authorisation (as referred to in article ~~3 of the ISD~~ 5 of *MiFID*) authorises it to carry on activities of the kind referred to in (b); or
(d) in respect of a transaction involving a new issue of *securities* which are to be *listed*, the *issuer* or ~~an ISD~~ a *MiFID investment firm* acting on behalf of the *issuer*.

associate ...
(3) ...
(a) ...
(b) an *appointed representative* of A, or a *tier agent* of A, or of any *affiliated company* of A;
(c) ...

AVC ~~*additional voluntary contribution*~~ a voluntary contribution arrangement paid by a member of an *occupational pension scheme* under the terms of the scheme or of a separate contract.

~~*branded fund*~~ [deleted]

~~*capital resources gearing rules*~~ [deleted]

~~*claims handling*~~ [deleted]

client (1) ...
(a) every client is a *customer* or ~~a *market counterparty*~~ an *eligible counterparty*;

- (b) ...
 - (i) ...
 - (ii) a client of an *appointed representative* of a *firm* with or for whom the *appointed representative* acts or intends to act in the course of business for which the *firm* has accepted responsibility under section 39 of the *Act* (Exemption of appointed representatives) or, where applicable, a client of a *tied agent* of a *firm*;
 - ...
 - (iv) if a *person* ("C1"), with or for whom the *firm* is conducting or intends to conduct *designated investment business*, is acting as agent for another *person* ("C2"), either C1 or C2 in accordance with ~~COB 4.1.5R (Agent as client)~~ the rule on agent as client COBS 2.4.3R;
 - ...

compensation scheme the Financial Services Compensation Scheme established under section 213 of the *Act* (The compensation scheme) for compensating *persons* in cases where *authorised persons* and *appointed representatives*, or, where applicable, a *tied agent* of a *firm*, are unable, or are likely to be unable, to satisfy *claims* against them.

complaints reporting rules ~~DISP 4.10~~ 1.6.

connected person ...

(3)

- (a) ...
- (b) ...
- (c) he is the partner, *manager*, employee, agent, *appointed representative*, or, where applicable, *tied agent*, banker, auditor, actuary or solicitor of: ...

...

consumer (1) ...

(2) ...

- (a) who uses, has used, or is or may be contemplating using,

	any of the services provided by:
	(i) ...
	(ii) <u>a person acting as an appointed representative, or, where applicable, a tied agent; or</u>
	(b) ...
<i>control</i>	(1) (except for a common platform firm in (2)) (in relation to the acquisition, increase or reduction of control of a <i>firm</i>) the relationship between a <i>person</i> and the <i>firm</i> or other <i>undertaking</i> of which the <i>person</i> is a controller.
	(2) (for a common platform firm in SYSC 8 and SYSC 10) control as defined in Article 1 of <u>the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive)</u> .
<i>deal on own account</i>	(for the purposes of <i>GENPRU</i> and <i>BIPRU</i>) has the meaning in <i>BIPRU</i> 1.1.23R (Meaning of dealing on own account) which is in summary the service referred to in paragraph 2 point 3 of Schedule Section A to the Annex I to the ISD MiFID , subject to the adjustments in <i>BIPRU</i> 1.1.23R(2) and <i>BIPRU</i> 1.1.23R(3) (Implementation of Article 5(2) of the <i>Capital Adequacy Directive</i>).
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business:
	...
	o. providing <u>providing basic advice on a stakeholder product</u> (article 52B).
DGD	[deleted]
DMD	[deleted]
domestic ECA provider	[deleted]
EEA ECA recipient	[deleted]
electronic commerce activity provider	[deleted]
<i>eligible counterparty</i>	(1) <u>(for the purposes other than those set out in (2))</u> (in accordance with <i>COBS</i> 3.6.1R) a <i>client</i> that is either a <i>per se eligible counterparty</i> or an <i>elective eligible counterparty</i> .

- (2) (for the purposes of PRIN, in relation to activities other than designated investment business) a client categorised as an eligible counterparty in accordance with PRIN 1 Ann 1R.

*eligible
counterparty
business*

the following services and activities carried on by a *firm*:

- (a) *dealing on own account, execution of orders on behalf of clients* or reception and transmission of orders; or
- (b) any *ancillary service* directly related to a service or activity referred to in (a); or
- (c) *arranging in relation to business which is not MiFID or equivalent third country firm business;*

but only to the extent that the service or activity is carried on with or for an *eligible counterparty*.

employee

- (1) (for all purposes except those in (2)) an individual:
- (a) ...
- (b) whose services, under an arrangement between that *person* and a third party, are placed at the disposal and under the control of that *person*;

but excluding an *appointed representative* or a tied agent of that *person*.

- (2) (for the purposes of:
- (a) ~~COB 7.13~~ COBS 11.7 (Personal account dealing);
- ...
- (c) ...
- an individual:
- (i) ...
- (ii) who is:
- (A) an *appointed representative* or, where applicable, a tied agent of the *person* referred to in (1); or
- (B) employed or appointed by an *appointed representative* or, where applicable, a tied agent of that *person*, whether under a contract

of service or for services or otherwise, in connection with the business of the *appointed representative* or *tied agent* for which that *person* has accepted responsibility.

excluded communication

the following types of ~~communication~~ *financial promotion* (a *firm* may rely on more than one of the paragraphs in relation to the same *financial promotion*):

...

(d) a personal quotation or illustration form; ~~or~~

(e) a "one-off" *financial promotion* that is not a *cold call* ...

...

(iii) the *financial promotion* is not part of an organised marketing campaign; or

(f) a communication that is exempted by the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

field representative

an *appointed representative* ~~of the firm~~ or, where applicable, a *tied agent*, or an *employee* of the *firm* (or of its *appointed representative* or, where applicable, its *tied agent*), whose normal fixed place of business is not a business address of the *firm* which appears on the *firm's* stationery.

free-standing additional voluntary contribution

[deleted]

FSAVC

~~free-standing additional voluntary contribution~~ an arrangement which allows a member of an *occupational pension scheme* to make AVCs to a *private pension policy* or *pension contract*, where the *policy* or *contract* is separate from, but associated with, an *occupational pension scheme* which is a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.

gearing

[deleted]

ICD

[deleted]

IMD

[deleted]

IMD minimum implementation provisions

[deleted]

incoming

[deleted]

~~electronic
commerce
communication~~

~~incoming ECA
provider~~

a person, other than an exempt person or a person who has been given a waiver in accordance with article 8(1) of the *E-Money Directive*, who:

- (a) provides an *electronic commerce activity*, from an *establishment* in an *EEA State* other than the *United Kingdom*, with or for a ~~UK~~ an ECA recipient present in the United Kingdom; and

...

~~initial margin~~

[deleted]

~~intended
retirement date~~

[deleted]

~~intermediate
customer~~

(for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)):

- (1) (except in *COB 3*) a *client* who is not a *market counterparty* and who is:

- (a) ...

...

~~introducer~~

an individual appointed by a *firm*, ~~or by an appointed representative or, where applicable, a tied agent~~, to carry out in the course of *designated investment business* either or both of the following activities:

- (a) ...

...

~~ISD instrument~~

[deleted]

~~ISD investment
firm~~

[deleted]

~~Lloyd's market
activities~~

[delete existing definition and replace with the following text]

- (a) advising on syndicate participation at Lloyd's, including advising on a transaction in the capacity transfer market;

- (b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;

- (c) agreeing to carry on the regulated activities in (a) and (b);

- (d) carrying on designated investment business which is not MiFID

business in relation to funds at Lloyd's; or

(e) communicating or approving a financial promotion in relation to:

(i) the underwriting capacity of a Lloyd's syndicate; or

(ii) membership of a Lloyd's syndicate; or

(iii) life policies written at Lloyd's; or

(iv) any of the activities specified in (a) or (d).

*market
counterparty*

(for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation));

(1) (except in COB 3) a *client* who is:

(a) ...

...

material interest

(in ~~COB~~ COBS) (in relation to a transaction) any interest of a material nature, other than:

(a) ...

(b) goods or services which can reasonably be expected to assist in carrying on *designated investment business* with or for *clients* and which are provided or to be provided in compliance with ~~COB 7.18.3R (Use of dealing commission to purchase goods or services)~~ COBS 11.6.3R.

*outgoing ECA
provider*

a *firm* which:

(a) provides an *electronic commerce activity*, from an *establishment* in the *United Kingdom*, with or for an ~~EEA~~-*ECA recipient* present in an EEA State other than the United Kingdom; and

(b) ...

*outgoing
electronic
commerce
communication*

[deleted]

pension transfer

a transaction, resulting from the decision of a *retail client* who is an individual, to transfer benefits from:

...

(f) a deferred annuity *policy*, where the eventual benefits depend on

investment performance in the period up to the ~~intended retirement date~~ date when those benefits will come into payment.

<i>periodic statement</i>	a report which a <i>firm</i> is required to provide to a <i>client</i> under <i>COBS 17.3 16.3</i> (Periodic reporting).
<i>post-sale notice</i>	[deleted]
<i>pre-sale notice</i>	[deleted]
<i>principal</i>	(1) in relation to a <i>person</i> : (a) ... (b) (if the <i>person</i> is an <i>appointed representative</i> <u>or, where applicable, a <i>tied agent</i></u>) the <i>authorised person</i> who is party to a contract with the <i>appointed representative</i> , <u>or who is responsible for the acts of the <i>tied agent</i></u> , resulting in him being exempt under section 39 of the <i>Act</i> (Exemption of <i>appointed representatives</i> <u>appointed representatives</u>).
	(2) ...
<i>private customer</i>	(for the purposes only of <i>COBS TP 1 (Transitional Provisions in relation to Client Categorisation)</i>): (1) (except in relation to <i>COB 3, 4.2 and 6.4</i>) subject to (h), a <i>client</i> who is not a <i>market counterparty</i> or an <i>intermediate customer</i> , including: (a) ... (e) a <i>person</i> to whom a <i>firm</i> provides basic advice on stakeholder products ; <u>gives basic advice</u> ;
<i>regulated activity</i>	in accordance with section 22 of the <i>Act</i> (The classes of activity and categories of investment)) any of the following activities specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities): ... (gf) <i>making arrangements with a view to a home purchase plan</i> (article 25C(2)); (gg) <u><i>operating a multilateral trading facility</i> (article 25D)</u> ; ... (oa) providing <u>providing</u> <i>basic advice</i> on <u>on</u> <i>stakeholder products</i>

(article 52B);

...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

regulated institution

any of the following:

...

- (e) ~~an ISD~~ a *MiFID investment firm* whose authorisation (as referred to in article 3 ~~of the ISD 5 of MiFID~~) authorises it to carry on activities of the kind referred to in (d).

regulated market

[delete existing definition and replace with the following]

a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of *MiFID*.

[Note: article 4(1)(14) of *MiFID*]

relevant security

- (1) (in *MAR 2*) when used with reference to the *Buy-back and Stabilisation Regulation*) (in accordance with Article 2(6) of the *Buy-back and Stabilisation Regulation*) ~~shares, debentures, government and public securities, warrants and certificates representing certain securities~~ transferable securities which are admitted to trading on a *regulated market* or for which a request for admission to trading on a *regulated market* has been made, and which are the subject of a *significant distribution*.
- (2) (otherwise in *MAR 2*) ~~shares, debentures, government and public securities, warrants and certificates representing certain securities~~ transferable securities.
- (3) (in *LR*) has the same meaning as in section 80 of the Companies Act 1985.

representative

an individual who:

- (a) is appointed by a *firm*, or by an *appointed representative* of a *firm*, to carry on any of the following activities:
- (i) ...

	(ii) providing <u>providing basic advice on</u> stakeholder products;
	...
	...
<i>scheme</i>	(1) (except in <i>COBS</i> , <i>CASS</i> and <i>SUP</i>) a <i>collective investment scheme</i> .
	(2) (in <i>COBS</i> , <i>CASS</i> and <i>SUP</i>):
	(a) a <i>regulated collective investment scheme</i> ;
	(b) an <i>investment trust</i> where the relevant <i>shares</i> have been, or are to <u>will be</u> , acquired through an <i>investment trust savings scheme</i> <u>savings scheme</u> ;
	(c) an <i>investment trust</i> , where <u>if</u> :
	(i) the relevant <i>shares</i> are to <u>will be</u> held within an ISA or PEP which promotes one or more specific investment trusts <u>in a wrapper or personal pension scheme; and</u>
	(ii) <u>the trust and the wrapper or personal pension scheme will be promoted together;</u>
	(d) (in COB 10 <u>COBS 19.5</u>) in addition to (a), (b) and (c), an <i>unregulated collective investment scheme</i> .
<i>securitised derivative</i>	an <i>option</i> or <i>contract for differences</i> which, in either case, is listed under <i>LR 19</i> of the <i>listing rules</i> (including such an <i>option</i> or <i>contract for differences</i> which is also a <i>debenture</i>). (See also COB 5.4.3AG for the treatment of a securitised derivative.)
<i>shortfall</i>	(1) (in relation to cancellation of an <i>investment agreement</i>) the amount a <i>firm</i> is entitled to charge a <i>customer</i> for the market loss in accordance with COB 6.7.54R to COB 6.7.58R (Shortfall; Exceptions to shortfall) . <u>COBS 15.4.3R.</u>
	(2) ...
<i>statement of demands and needs</i>	[deleted]
<i>surrender value</i>	...
	(b) where the contract is a pension contract <u>personal pension scheme or stakeholder pension scheme</u> , the amount payable on the transfer of the investor's accrued rights under that contract to another pension contract <u>personal pension scheme or stakeholder pension scheme</u> ;

	...
traded on	[deleted]
transaction-specific advice	<p><i>advice on investments:</i></p> <p>(a) given in connection with: dealing or arranging activities carried on by the firm that fall within MAR 3.1.2R(2)(a), (b) or (c); or</p> <p>(i) <u>dealing in investments as principal; or</u></p> <p>(ii) <u>dealing in investments as agent; or</u></p> <p>(iii) <u>acting as an arranger; or</u></p>
	...
transfer value analysis	[deleted]
UK ECA recipient	[deleted]
venture capital contact	<p>(when a firm carries on designated investment business <u>regulated activities</u> with or for a person in the course of or as a result of carrying on <i>venture capital business</i>) that person in connection with that designated investment business <u>regulated activity</u> if:</p>
	...

Annex C

Amendments to the Principles for Businesses (PRIN)

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

Approach to client ~~classification~~ categorisation

- 1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not eligible counterparties). The approach that a firm needs to take regarding ~~classification~~ categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business or other activities, as described in PRIN 1.2.3G and PRIN 1.2.4G.*

Delete the text of 1.2.3G and replace it with the text shown below, which is not underlined.

~~Classification: designated investment business~~

- 1.2.3 G (1) In relation to the carrying on of *designated investment business*, a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.
- (2) The person to whom a firm gives basic advice will be a retail client for all purposes, including the purposes of Principles 6, 7, 8 and 9.
- (3) In relation to carrying on activities other than *designated investment business* (for example, *general insurance business* or *accepting deposits*) the firm may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between *eligible counterparties* and *customers* in complying with those Principles. If it chooses to make such a distinction, it must comply with PRIN 1 Ann 1R in determining whether that client is an *eligible counterparty* (see PRIN 3.4.2R). In doing so, the requirements in SYSC will apply, including the requirement to make and retain adequate records.
- (4) In relation to carrying on activities that fall within both (1) and (3) (for example, mixed *designated investment business* and *accepting deposits*), a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.

Classification: other activities

- 1.2.4 G In relation to the carrying on of activities other than *designated investment business*, for example *general insurance business* or *accepting deposits*, only ~~COB 4.1.12R~~ and ~~COB 4.1.13G~~ (Large intermediate customer classified as a market counterparty) and ~~COB 4.1.14R~~ (Client classified as a private customer) in ~~COB 4.1~~ (Client classification) apply (see *PRIN 3.4.2R*). ~~[deleted]~~
- 1.2.5 G A *firm* is therefore not required to classify its *clients* (because ~~COB 4.1.4R~~ does not apply) and may choose to comply with *Principles 6, 7, 8 and 9* as if all its *clients* were *customers*. Alternatively, it may choose to distinguish between *eligible counterparties* and *customers* in complying with those *Principles*. But, in that case, the *firm* would need to classify any *client* treated as an *eligible counterparty*. In doing this, the requirements in ~~SYSC~~ will apply, including the requirement to establish appropriate systems and controls and the requirement to make and retain adequate records. In classifying its *eligible counterparties*, it would be open to such a *firm*, although not obligatory, to permit *professional clients* to change to *eligible counterparty* status in accordance with ~~COB 4.1.12R~~. It would also have to treat an *eligible counterparty* as a *customer* if the *firm* had chosen to treat the *retail client* in the circumstances set out in ~~COB 4.1.14R~~. ~~[deleted]~~
- 1.2.6 G If the *person* with or for whom the *firm* is carrying on an activity is acting through an agent, the ability of the *firm* to treat the agent as its *client* under ~~COB 4.1.5R~~ COBS 2.4.3R (Agent as client) will not be available. For example, if a *general insurer* is effecting a *general insurance contract* through a general insurance broker who is acting as agent for a disclosed *policyholder*, the *policyholder* will be a *client* of the *firm* and the *firm* must comply with the *Principles* accordingly.

After PRIN 1 insert the following new Annex. The text is not underlined.

PRIN 1 Ann 1 R Non-designated investment business – clients that a firm may treat as an eligible counterparty for the purposes of PRIN

- 1.1 A *firm* may categorise the following types of *client* as an *eligible counterparty* for the purposes of *PRIN*:
- (1) a properly constituted government (including a quasi-governmental body or a government agency) of any country or territory;
 - (2) a central bank or other national monetary authority of any country or territory;
 - (3) a supranational whose members are either countries or central banks or national monetary authorities;
 - (4) a State investment body, or a body charged with, or intervening in, the

management of the public debt;

- (5) another *firm*, or an *overseas financial services institution*;
- (6) any *associate* of a *firm* (except an *OPS firm*), or of an *overseas financial services institution*, if the *firm* or institution consents;
- (7) a *client* when he is classified as an *eligible counterparty* in accordance with 1.2; or
- (8) a *recognised investment exchange, designated investment exchange, regulated market or clearing house*.

1.2 A *firm* may classify a *client* (other than another *firm*, *regulated collective investment scheme*, or an *overseas financial services institution*) as an *eligible counterparty* for the purposes of *PRIN* under 1.1(7) if:

- (1) the *client* at the time he is classified is one of the following:
 - (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);
 - (b) a *body corporate* that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:
 - (i) a balance sheet total of 12.5 million euros (or its equivalent in any other currency at the relevant time);
 - (ii) a net turnover of 25 million euros (or its equivalent in any other currency at the relevant time);
 - (iii) an average number of employees during the year of 250;
 - (c) a local authority or public authority;
 - (d) a *partnership* or unincorporated association which has net assets of at least £10 million (or its equivalent in any other currency at the relevant time) (and calculated, in the case of a limited *partnership*, without deducting loans owing to any of the *partners*);
 - (e) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) with assets of at least £10 million (or its equivalent in any other currency), calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
 - (f) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or operator of a *personal pension scheme* or *stakeholder pension scheme*

where the *scheme* has (or has had at any time during the previous two years):

- (i) at least 50 members; and
 - (ii) assets under management of not less than £10 million (or its equivalent in any other currency at the relevant time); and
- (2) the *firm* has, before commencing business with the *client* on an *eligible counterparty* basis:
- (a) advised the *client* in writing that he is being categorised as an *eligible counterparty* for the purposes of *PRIN*;
 - (b) given a written warning to the *client* that he will lose protections under the *regulatory system*;
 - (c) for a *client* falling under (1)(a) or (b):
 - (i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a *person* authorised to take such a decision for the *client*; and
 - (ii) not been notified by the *client* that the *client* objects to being classified as an *eligible counterparty*;
 - (d) for a *client* falling under (1)(c), (d), (e) or (f):
 - (i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a *person* authorised to take such a decision for the *client*; and
 - (ii) obtained the *client's* written consent or is otherwise able to demonstrate that consent has been given.

...

3.1.1 R *PRIN* applies to every *firm*, except that:

...

(4) for a *UCITS qualifier*, only ~~Principles~~ *Principles* 1, 2, 3, 7 and 9 apply, and only with respect to the activities in *PRIN* 3.2.2R (Communication and approval of financial promotions);

(5) *PRIN* does not apply to an *incoming ECA provider* acting as such.

3.1.2 G *SYSC* App 1, *COBS* 1 Ann 1 and the territorial *guidance* in *PERG* 13.6 all ~~contains~~ contain *guidance* that is relevant to ~~on~~ the reservation of responsibility to a *Home State regulator* referred to in *PRIN* 3.1.1R(1).

- 3.1.3 G *PRIN* 3.1.1R(2) reflects article 27 41 of the *Banking Consolidation Directive* which provides ...
- 3.3.2 G *ECO* 1.1.6R has the effect that *PRIN* does not apply to an *incoming ECA provider* acting as such. [deleted]
- 3.4.2 R For the purposes of *PRIN*, the following provisions of *COB* 4.1 (Client classification) also apply to a *firm* intending to carry on, or carrying on, activities other than *designated investment business*: For the purposes of *PRIN*, a *firm* intending to carry on, or carrying on, activities that do not involve *designated investment business*, may treat a *client* as an *eligible counterparty* in accordance with *PRIN* 1 Ann 1 R.
- (1) ~~*COB* 4.1.12R and *COB* 4.1.13G (Large intermediate customer classified as a market counterparty); and~~
- (2) ~~*COB* 4.1.14R (Client classified as a private customer).~~
- 3.4.3 G (1) ~~The whole of *COB* 4.1 (Client classification)~~ *COBS* 3 (Client categorisation) applies to a *firm* intending to conduct, or conducting, *designated investment business* (other than ~~*providing giving basic advice on a stakeholder product,*~~) and ancillary activities relating to *designated investment business*. Any *client* ~~classifications~~ categorisation established in relation to such business will be applicable for the purposes of *Principles* 6, 7, 8 and 9.
- (2) The *person* to whom a *firm* ~~*provides gives basic advice on a stakeholder product*~~ will be a *retail client* for all purposes including the purposes of *Principles* 6, 7, 8 and 9.
- 4.1.4 G (1) ...
- (2) ... Further information about these limitations is contained in ~~Part 2 of *COBS* App 1~~ *COBS* 1 Ann 1.

PRIN TP 1 Transitional provisions

There are no transitional provisions in *PRIN*. However:

(1) [deleted]

(2) [deleted]

	<u>Material to which the transitional provision applies</u>		<u>Transitional Provision</u>	<u>Transitional Provision: dates in force</u>	<u>Handbook provision: coming into force</u>
<u>1.</u>	<u>PRIN 1 Ann 1 R 1.2(2)</u>	<u>R</u>	<u>A firm need not comply with PRIN 1 Ann 1R 1.2(2) in relation to an eligible counterparty if the client was correctly categorised as a market counterparty on 31 October 2007 and the firm complied with COB 4.1.12R(2) (Large intermediate customer classified as market counterparty).</u>	<u>From 1 November 2007 indefinitely</u>	<u>1 November 2007</u>

Annex D

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1.1 Application of SYSC 2 and SYSC 3

Who?

...

1.1.1 R SYSC 2 and SYSC 3 apply to every *firm* except that:

...

(5) for an *authorised professional firm* when carrying on *non-mainstream regulated activities*, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply; ~~and~~

(6) for a *common platform firm*, SYSC 2 and SYSC 3 does not apply; ~~and~~

(7) SYSC 2 and SYSC 3 do not apply to an *incoming ECA provider acting as such*.

1.1.2 G (1) Question 12 in SYSC 2.1.6 G ~~and SYSC App 1 contain~~ contains guidance on SYSC 1.1.1 R(1)(b) and (c).

...

(4) Further guidance on which matters are reserved to a *firm's Home state regulator* can be found at SUP 13A Annex 2G.

1.1.7 R SYSC 2 and SYSC 3 apply with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative* or, where applicable, its *tiered agent*) in the *United Kingdom* unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case SYSC 2 and SYSC 3 apply with that wider scope in relation to the activity described in that *rule*.

1.1.11A G ~~ECO 1.1.6R has the effect that SYSC does not apply to an *incoming ECA provider acting as such*.~~ [deleted]

...

2.1.6 G

	Question	Answer
...		
12	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<p>SYSC 1.1.1 R(2) and SYSC 1.1.7R restrict the application of SYSC 2.1.3R for such a <i>firm</i>. Accordingly:</p> <p>(1) ...</p> <p>(2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 2.1.3R(2). However, the systems and controls that must be overseen are those relating to matters which the <i>FSA</i>, as <i>Host State regulator</i>, is entitled to regulate (there is guidance on this in SYSC App 1 <u>SUP 13A Annex 2G</u>). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</p> <p>(3) ...</p> <p>...</p>
...		

3.1.4 G A *firm* has specific responsibilities regarding its *appointed representatives* or, where applicable, its *tied agents* (see SUP 12).

3.2.3 G (1) A *firm's governing body* is likely to delegate many functions and tasks for the purpose of carrying out its business. When functions or tasks are delegated, either to *employees* or to *appointed representatives* or, where applicable, its *tied agents*, appropriate safeguards should be put in place.

3.2.8 R (1) A *firm* which carries on *designated investment business* with or for ~~customers~~ retail clients or professional clients must allocate to a *director* or *senior manager* the function of:

...

(2) In SYSC 3.2.8R(1) "compliance" means compliance with the *rules* in:

(a) ~~COB~~ COBS (Conduct of Business);

...

- 4.3.1 R A *MiFID investment firm common platform firm*, when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring that the *firm* complies with its obligations under *MiFID the regulatory system*. In particular, senior personnel and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under *MiFID the regulatory system* and take appropriate measures to address any deficiencies.
- [**Note:** article 9(1) of the *MiFID implementing Directive*]
- 4.3.2 R A *MiFID investment firm common platform firm* must ...
- 4.3.4 G ~~*SYSC 2, which sets out how certain functions in a firm should be allocated, does not affect the collective responsibility of the senior personnel of a MiFID investment firm under this section. [deleted]*~~
- 10.2.2 R (1) ...
- (2) Information may also be withheld or not used by a *common platform firm* when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same *group*. This provision does not affect any requirement to transmit or use information that may arise apart from the *rules* in ~~*COB*~~ or *COBS*.
- 10.2.4 R When any of the *rules* of ~~*COB*~~, *COBS* or *CASS* ...
- 11.1.4 R *SYSC 11* does not apply to:
- ...
- (5) an *incoming Treaty firm*; or
- (6) an incoming ECA provider acting as such.
- 12.1.3 R This section does not apply to:
- ...
- (4) an *ICVC*; or
- (5) an incoming ECA provider acting as such.
- 13.1.4 G *SYSC 13* does not apply to an incoming ECA provider acting as such.
- 13.3.1 G The following is a non-exhaustive list of *rules* and *guidance* in the *Handbook* that are relevant to a *firm's* management of operational risk:
- (1) ...

- (2) ~~COB~~ COBS contains *rules* and *guidance* that can relate to the management of operational risk; for example, ~~COB 2 (Rules which apply to all firms conducting designated investment business), COB 3 (Financial promotion), COB 5 (Advising and selling), COB 7 (Dealing and managing) and COB 9 (Client assets)~~ COBS 2 (Conduct of business obligations), COBS 4 (Communicating with clients, including financial promotions), COBS 6 (Information about the firm, its services and remuneration), COBS 7 (Insurance mediation), COBS 9 (Suitability (including basic advice)), COBS 11 (Dealing and managing), COBS 12 (Investment research), COBS 14 (Providing product information to clients) and COBS 19 (Pensions: supplementary provisions).

- 13.5.1 G In this chapter, the following interpretations of risk management terms apply:
- (1) a *firm's* risk culture encompasses the general awareness, attitude and behaviour of its *employees* and *appointed representatives* or, where applicable, its *tiered agents*, to risk and the management of risk within the organisation;
- 13.6.1 R A *firm* should consult SYSC 3.2.2G to SYSC 3.2.5G for *guidance* on reporting lines and delegation of functions within a *firm* and SYSC 3.2.13G to SYSC 3.2.14G for *guidance* on the suitability of *employees* and *appointed representatives* or, where applicable, its *tiered agents*. This section provides additional *guidance* on management of *employees* and other human resources in the context of operational risk.
- 13.7.4 G A *firm* should ensure the adequacy of its processes and systems to review external documentation prior to issue (including review by its compliance, legal and marketing departments or by appropriately qualified external advisers). In doing so, a *firm* should have regard to:
- (1) compliance with applicable regulatory and other requirements (~~such as COB 3 (Financial promotion)~~);
- ...
- 14.1.2A R This section does not apply to an *incoming ECA provider* acting as such.
- 14.1.29 G When determining the adequacy of its *internal controls*, a *firm* should consider both the potential risks that might hinder the achievement of the objectives listed in SYSC 14.1.28G, and the extent to which it needs to control these risks. More specifically, this should normally include consideration of:
- (1) ...
- (2) how the delegation or contracting of functions or activities to *employees*, *appointed representatives* or, where applicable, its *tiered agents* or other third parties (for example *outsourcing*) is to be

monitored and controlled (see SYSC 3.2.3G to SYSC 3.2.4G, SYSC 14.1.12G to SYSC 14.1.16G and SYSC 14.1.33G; additional guidance on the management of *outsourcing* arrangements is also provided in SYSC 13.9);

...

15.1.2A G This section does not apply to an *incoming ECA provider* acting as such.

16.1.2A G This section does not apply to an *incoming ECA provider* acting as such.

17.1.2A G This section does not apply to an *incoming ECA provider* acting as such.

18.2.2 G (1) *Firms* are encouraged to consider adopting (and encouraged to invite their *appointed representatives* or, where applicable, their *tiered agents* to consider adopting) appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the *FSA*.

...

Delete SYSC Appendix 1. The text of this appendix is not shown struck through.

~~**SYSC Appendix 1: Matters reserved to a Home State regulator (see SYSC 1.1.1 R (1)(b) and SYSC 1.1.1 R (1)(c)) (SYSC App 1**~~

~~[deleted]~~

Annex E

Amendments to the Threshold Conditions sourcebook (COND)

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

Competent and prudent management and exercise of due skill, care and diligence

- 2.5.7 G In determining whether a *firm* will satisfy and continue to satisfy ~~threshold condition~~ threshold condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters, as referred to in *COND 2.5.4G(2)*, may include, but are not limited to whether:
- (1) ...
 - (4) those *persons* who perform *controlled functions* under certain *arrangements* entered into by the *firm* or its contractors (including *appointed representatives* or, where applicable, tied agents) act with due skill, care and diligence in carrying out their *controlled function* (see *APER 4.2* (Statement of Principle 2) or managing the business for which they are responsible (see *APER 4.7* (Statement of Principle 7));
- ...

Annex F

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

- 1.1.4 G The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disapplied under *MiFID* (see *APER 2.1.1AP* and *FIT 1.2.4AG*. See also *COBS App 1 Part 3 1 Ann 1, Part 2, 1.1R* (EEA territorial scope rule: compatibility with European law)).
- 4.3.2 G ~~In many cases the required standard will be set out in *MAR 3 (Inter-Professional Conduct)* and the *Code of Market Conduct (MAR 1)*. Market codes and exchange rules will also be relevant. [deleted]~~
- 4.3.3 E A factor to be taken into account in determining whether or not an *approved person's* conduct complies with this *Statement of Principle (APER 2.1.2P)* is whether he, or his *firm*, has complied with ~~*MAR 3 (Inter-Professional Conduct)*~~ or the *Code of Market Conduct (MAR 1)* or relevant market codes and exchange rules.

Annex G

Amendments to The Fit and Proper test for Approved Persons (FIT)

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

- 2.2.1 G In determining a *person's* competence and capability, the *FSA* will have regard to matters including but not limited to:
- (1) whether the *person* satisfies the relevant ~~requirements of the *FSA's* Training and Competence sourcebook (TC)~~ requirements in relation to the *controlled function* the *person* performs or is intended to perform;
 - (2) ...

Annex H

Amendments to the General Provisions (GEN)

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

- 1.1.1 R (1) ...
- (2) For a *UCITS qualifier*, this chapter applies only with respect to the *communication and approval of financial promotions* to which ~~COB 3 (Financial promotion)~~ COBS 4 (Communicating with clients, including financial promotion) applies and to the maintenance of facilities to which *COLL 9.4 (Facilities in the United Kingdom)* and ~~*CIS 17.5 (Facilities in the United Kingdom)*~~ apply.

...

2 Annex 1 G

Introduction	
1.	...
Benefits of designation	
2.	Under certain <i>rules</i> , <i>firms</i> may treat transactions effected on a <i>designated investment exchange</i> in the same way as transactions on <i>RIEs</i> (for example, see COB 5 Annex 1 E, CASS 2 and COB 7.11).
...	

- 4.2.2 G There are other pre-contract information requirements outside this chapter, including:

...

- (4) ~~for electronic commerce activities by outgoing or domestic ECA providers, in ECO 2 (Outgoing ECA providers) and ECO 3 (Domestic (and non-EEA) ECA providers)~~ carried on from an establishment in the United Kingdom, in COBS 5.2, ICOB 2.6A and MCOB 2.7A; and

...

4 Annex 1 G

...
Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain clear, fair and not misleading <u>fair, clear and not misleading</u> . For example, an <i>authorised professional firm</i> may wish to make it clear that it is also regulated by its professional body.

- 5.1.1 G This chapter contains:
- (1) *guidance for firms and appointed representatives or tied agents* on the circumstances in which the *FSA* permits *firms* and their *appointed representatives or tied agents* to reproduce the *FSA* logo;
- ...
- 5.1.3 G *GEN 5 Annex 1G* is a general licence, which sets out the circumstances in which the *FSA* permits *firms* and their *appointed representatives or tied agents* to reproduce the *FSA* and keyfacts logos. A *firm*, ~~or an appointed representative or tied agent~~ need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.
- 5.1.4 G The *FSA* has no policy to allow use of the logos by a *firm*, ~~or appointed representative or tied agent~~ other than as set out in *GEN 5 Annex 1G*. If, however, a *firm*, ~~or appointed representative or tied agent~~ wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the *FSA* for an individual licence, giving full reasons why it considers the *FSA* should grant the licence.

5 Annex 1 G Licence for use of the *FSA* and keyfacts logos by authorised firms and appointed representatives or tied agents

Application	
1.1	The <i>FSA</i> grants this licence to <i>firms</i> , and <i>appointed representatives and tied agents</i> .
...	
Permission to use the <i>FSA</i> logo	
3.1	A <i>firm</i> , and its <i>appointed representatives and tied agents</i> are permitted to use the <i>FSA</i> logo:

...			
Permission to use the keyfacts logo			
3A.1	A firm, and its <i>appointed representatives</i> <u>and tied agents</u> are permitted to use the keyfacts logo as and when it is required or permitted to be used by the <i>rules</i> .		
3A.2	The following are examples of places where the <i>rules</i> require or permit the keyfacts logo to be used:		
	(1)	In COB <u>COBS</u> :	
		(a)	in an initial disclosure document <i>initial disclosure document</i> or combined initial disclosure document <i>combined initial disclosure document</i> (COB 4.3.9R <u>COBS 6.3</u>); and
		(b)	in a fees and commission statement <i>menu</i> (COB 4.3.11R <u>COBS 6.3</u>).
...			
Further conditions on the use of the FSA and keyfacts logos			
5.1	The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the <i>FSA</i> or keyfacts logos are displayed does not:		
	(1)	in any way imply that the <i>FSA</i> is endorsing the <i>firm</i> or its <i>appointed representatives</i> , <i>tied agents</i> or products, services or communications (see also <i>GEN</i> 1.2.2R(1)); or	
	(2)	misrepresent the <i>firm's</i> or its <i>appointed representative's</i> <u>or tied agent's</u> relationship with the <i>FSA</i> or present false information about the <i>FSA</i> ; or	
	...		
Use of the FSA logo by appointed representatives			
6.1	<i>Firms</i> and <i>appointed representatives</i> <u>or, where applicable, tied agents</u> are reminded that an <i>appointed representative</i> <u>or tied agent</u> is not a <i>firm</i> . Therefore, the permission in paragraph 3.1 does not extend to a statement made by an <i>appointed representative</i> <u>or tied agent</u> about its own status. However, the effect of paragraph 3.1 is that an <i>appointed representative</i> <u>or tied agent</u> is permitted to reproduce the <i>FSA</i> logo as part of a statement about the authorisation or regulation by the <i>FSA</i> of the <i>appointed representative's</i> <u>or tied agent's principal</u> , provided the other		

	conditions of paragraph 3.1 and those of paragraphs 4.1 and 5.1 are met.
...	

TP 1.1 Table: (1) Transitional Provisions applying across the Handbook

...	
(3)	The more specific transitional provisions relating to record keeping and <i>notification rules</i> override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the <i>Handbook</i> relating to the matter. For example, COB contains transitional provisions relating to various matters which are limited in duration and which override these transitional provisions in relation to those matters.
...	

TP 1.2 ...

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
(2)	<u>[deleted]</u>				
...					
(6)	<u>[deleted]</u>				
...					

In the appropriate numerical position in Schedule 4 (Powers exercised) insert the text shown underlined below:

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *GEN*:

Section 158A (Guidance on outsourcing by investment firms and credit institutions)

Annex I

Amendments to the Fees manual (FEES)

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

- 5.1.4 R A *firm* which is exempt under *DISP* ~~4.1.7R~~ 1.1.12R is also exempt from *FEES* 5.1 to *FEES* 5.6.
- 5.1.4A R A *firm* will only be exempt from *FEES* 5.7 for any given *financial year* if it met the conditions in *DISP* ~~4.1.7R~~ 1.1.12R on 31 March of the immediately preceding *financial year*.

Annex J

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 1.3.9 G *SUP* 4 (Actuaries) sets out the role and responsibilities of the *actuarial function* and of the with-profits actuary.
- (1) ...
- (2) As part of his duties under *SUP* 4.3.16G, the *with-profits actuary* must advise the *firm's governing body* on the discretion exercised by the *firm*. In the context of the calculation of the *with-profits insurance capital component*, the *with-profits actuary* must also advise the *firm's governing body* as to whether the methods and assumptions (including the allowance for management actions) used for that calculation are consistent with the *firm's Principles and Practices of Financial Management (PPFM - see ~~COB 6.10~~ COBS 20.3)* and with its regulatory duty to treat its *customers* fairly.
- 1.3.15 G In this section, any reference to the *Principles and Practices of Financial Management (PPFM)* is a reference to the requirements in ~~COB 6.10~~ COBS 20.3 (Principles and Practices of Financial Management) for *firms* to establish, maintain and record the principles and practices of financial management according to which the business of its *with-profits funds* is conducted.
- 1.5.26 G Where a *firm* merges separate funds for different types of business, it will need to ensure that the merger will not result in *policyholders* being treated unfairly. When considering merging the funds, the *firm* should consider the impact on its *PPFM* (see ~~COB 6.10~~ COBS 20.3) and on its obligations to notify the *FSA* (see *SUP* 15.3). In particular, a *firm* would need to consider how any *inherited estate* would be managed and how the fund would be run in future, such that *policyholders* are treated fairly.

Annex K

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

- 9.6 ...
- (6) There must be deposited with every revenue ‘account’ and ‘balance sheet’ of an *insurer* any statement or report on the affairs of the *insurer* made or submitted:
- (a) ...
- (b) to the *insurer's with-profits policyholders* under ~~COB 6.11.8G, COB 6.11.9R~~ COBS 20.3.3G, COBS 20.4.7R or *SUP 4.3.16AR(4)*,
- ...
- Appendix 9.6 ...
- 1 ...
- 2 Subject to 3, if the *insurer* carries on *long-term insurance business*, the certificate required by rule 9.34(1) must also state that -
- (a) ...
- ...
- (c) the *with-profits fund* has been managed in accordance with the *Principles and Practices of Financial Management*, as established, maintained and recorded under ~~COB 6.10~~ COBS 20.3; and
- ...

Annex L

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

IPRU(INV) Chapter 3 Appendix 1- Glossary of Terms for IPRU(INV) 3:

arranger means a *firm* -

- (a) whose sole *investment business* consists of activities within the following articles of the Regulated Activities Order -
...
- (ii) article 25(1) (arranging deals in investments);
...
- (iv) article ~~49~~ 53 (advising on investments);

associate in relation to a person ("A"), means

...

(b) an *appointed representative* or where applicable, a *tiered agent* of A or of any undertaking in the same *group* as A; and

(c) ...

client means any *person* with or for whom a *firm* conducts or intends to conduct *designated investment business* or any other *regulated activity*; and:

(a) every client is a *customer* or a an *market counterparty eligible counterparty*;

(b) "client" includes:

...

(iv) if a *person* ("C1"), with or for whom the *firm* is conducting or intends to conduct *designated investment business*, is acting as agent for another *person* ("C2"), either C1 or C2 in accordance with ~~COB 4.1.5R~~ COBS 2.4.3R (Agent as client);

...

intermediate [deleted]

customer

market [deleted]

counterparty

private customer [deleted]

supervisory [deleted]

authority

...

Chapter 5: FINANCIAL RESOURCES

...

- 5.2.3(2) R The *financial resources requirement* ~~for a firm which is not an exempt CAD firm~~ is an *own funds requirement* determined in accordance with paragraph (a) of rule 5.2.3(3) ~~if~~ for a firm which:
- (i) is an exempt CAD firm which is also an operator of a collective investment scheme and that scheme only invests in venture capital investments for non-retail clients; or
 - (ii) is not an exempt CAD firm if:
 - (a) ...

IPRU(INV) Chapter 5 Appendix 1-

Glossary of Terms for Chapter 5...:

best execution in relation to the effecting of a transaction, means the effecting of that transaction in compliance with ~~COB 7.5~~ COBS 11.2.

controller (as defined in section 422 of the Act (Controller))

in relation to a *firm* or other undertaking ("A") means a person who:

- (a) ...
- (e) is entitled to exercise, or ~~control~~ control the exercise of, 10% or more of the voting power in A; or
- (f) ...

non-private - retail customer client means ~~an intermediate customer~~ a professional client or an eligible counterparty.

Chapter 9: Financial resources requirements for an exempt CAD firm

...

9.2.3 R An *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business* must also have and maintain at all times financial resources calculated in accordance with the chapter of *IPRU(INV)* to which the *firm* is otherwise subject (Chapters 3 or 5) at least equal to the requirements set out in the relevant chapter (except that if the only *designated investment business* an *exempt CAD firm* is carrying on in addition to *investment services and activities* is making arrangements with a view to transactions in investments (article 25(2) *Regulated Activities Order*) and/or agreeing to carry on that *regulated activity* it only needs to comply with requirements set out in this chapter and not chapters 3 or 5).

9.4.2 R The policy of professional indemnity insurance must incorporate terms which make provision for:

(1) cover in respect of claims for which an *exempt CAD firm* may be liable as a result of the conduct of itself, its *employees* and its appointed representatives or where applicable, its tied agent (acting within the scope of their appointment);

...

13.1.4(7) G The cover provided by the policy should be wide enough to include the liability of the *firm*, its *appointed representatives*, or where applicable, its tied agent, *employees* and its agents for breaches of the *firm's* duty of skill and care, fiduciary duty, duty to look after documents or assets, fraud, and breaches of obligations imposed by or under *the Act* (or the *Financial Services Act 1986* if relevant). If the *firm* operates outside the *UK* then the policy should cover other regulatory requirements imposed under the laws of other countries in which the *firm* operates.

...

APPENDIX 13 (1) Defined terms for Chapter 13

adviser an individual who is:

(a) ...

...

	(c)	an <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> .
<i>client</i>	...	
	(a)	...
	(b)	"client" includes:
		...
	(ii)	a client of an <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> of a <i>firm</i> with or for whom the <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> , acts or intends to act, in the course of business for which the <i>firm</i> has accepted responsibility under section 39 of the <i>Act</i> (Exemption of appointed representatives);
		...
	(iv)	if a <i>person</i> ("C1"), with or for whom the <i>firm</i> is conducting or intends to conduct <i>designated investment business</i> , is acting as agent for another <i>person</i> ("C2"), either C1 or C2 in accordance with COB 4.1.5R <u>COBS 2.4.3R</u> (Agent as client);
		...
<i>connected person</i>		in relation to a <i>person</i> ,
	(a)	...
		...
	(d)	its employee (whether under a contract of service or a contract for services) or an employee of its <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> ;
		...
<i>contract for differences</i>	(a)	...
	(c)	<u>a derivative instrument for the transfer of credit risk to which article 85(3) of the <i>Regulated Activities Order</i> applies</u>

<i>customer</i>	(1) (except in COB 3 <u>COBS 4</u>) a <i>client</i> who is not a <u>an</u> market counterparty <u>eligible counterparty</u> .
	(2) (in COB 3 <u>COBS 4</u>) a <i>person</i> in (1) or a <i>person</i> who would be such a <i>person</i> if he was <u>were</u> a <i>client</i> .
<i>financial adviser</i>	an individual appointed by an <i>independent intermediary</i> or by its <i>appointed representative</i> <u>or where applicable, tied agent</u> to provide any or all of the following services: ...
<i>intermediate customer</i>	[deleted]
<i>private customer</i>	[deleted]
<i>properly secured</i>	fully secured by a first <i>charge</i> in favour of the <i>firm</i> on land and buildings, or on a <i>readily realisable investment</i> where the <i>firm</i> has in its possession or under its control <u>control</u> a document of title or a document evidencing title to that <i>investment</i> ;
<i>representative</i>	(in relation to <i>designated investment business</i>) an individual appointed by a <i>provider firm</i> or by an <i>appointed representative</i> <u>or where applicable, tied agent</u> of that <i>firm</i> , to carry out either or both of the following activities:

Annex M

Amendments to the Conduct of Business sourcebook (COBS)

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

- 1.1.2 R The *general application rule* is modified in Annex 1 according to the activities of a *firm* (Part 1); and its location (Part 2) ~~and certain temporary provisions (Part 2A).~~

COBS 1 Annex 1: Application (see COBS 1.1.2R)

Part 1: what?

Modifications to the general application rule according to activities

1.	Eligible counterparty business	
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> that is <i>MIFID</i> or equivalent third country business.
		...
...		
3.	Transactions concluded on an MTF	
3.1	R	The <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (client limit orders) do not apply to transactions concluded under the rules governing an <i>MTF</i> (where the transactions are <i>MIFID</i> or equivalent third country business). However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients</i> behalf, it is executing their orders on a <i>MTF</i> . [Note: article 14(3) of <i>MiFID</i>]
4.	Transactions concluded on a regulated market	
4.1	R	In relation to transactions concluded on a <i>regulated market</i> (where the transactions are <i>MiFID</i> or equivalent third country business), members and participants of the <i>regulated market</i> are not required to apply to each other the <i>COBS</i> provisions in paragraph 1.1R and <i>COBS</i> 11.4 (client limit orders). However, the member or participant must comply with those provisions in respect of its <i>clients</i> if, acting on its <i>clients'</i> behalf, it is executing their orders on a <i>regulated market</i> . [Note: article 42(4) of <i>MiFID</i>]
...		

6	<u>Use of third party processors in life insurance mediation activities</u>	
6.1	R	If a <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) outsources <i>insurance mediation activities</i> to a <i>third party processor</i> :
		(1) <u>the <i>firm</i> must accept responsibility for the acts and omissions of that <i>third party processor</i> conducting those outsourced activities; and</u>
		(2) <u>any <i>COBS</i> rule requiring the <i>third party processor's</i> identity to be disclosed to <i>clients</i> must be applied as a requirement to disclose the <i>firm's</i> identity;</u>
		<u>unless the <i>third party processor</i> is <i>advising on investments</i>.</u>
Part 2A: temporary provisions to be removed on making the Policy Statement for the conduct of business regime: non-MiFID deferred matters [Delete the heading (above) and the contents of this Part]		
Part 3: Guidance		
1.	The main extensions and restrictions to the general application rule	
1.1	G	The <i>general application rule</i> is modified in Parts 1 to 2A and 2 of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this <i>rule</i> . For example, <i>COBS</i> 4 (Communications to clients) and <i>COBS</i> 5 (Financial promotion) have extended the application of the rule.
...		
2.	The Single Market Directives and other directives	
...		
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non-UK element. The <i>EEA territorial scope rule</i> is unlikely to apply if a UK firm <i>firm</i> is doing business in a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>United Kingdom</i> product. However, if there is a non-UK element, the <i>firm</i> should consider whether:
		(1) <u>it is subject to the directive; (in general, directives only apply to <i>UK firms</i> and <i>EEA firms</i>, but the implementing provisions may not treat non-<i>EEA firms</i> more favourably than <i>EEA firms</i>);</u>
		(2) whether the business it is performing is subject to the directive; and
		(3) whether the particular <i>rule</i> is within the scope of the directive.
		If the answer to all three questions is ‘yes’, the <i>EEA territorial scope rule</i> may change the effect of the <i>general application rule</i> .
...		

4	Insurance Mediation Directive: effect on territorial scope	
...		
4.2	G	In the <i>FSA's</i> view, the responsibility for these minimum requirements rests with the <i>Home State</i> , but a <i>Host State</i> is entitled to impose additional requirements <u>within the Directive's scope</u> in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:
	(1)	for a <i>UK firm</i> providing <i>passport activities</i> <u>through a branch</u> in another <i>EEA State</i> under the Directive, whether through a branch or cross-border services , the rules implementing the Directive's minimum requirements apply but <u>the territorial scope of the additional rules</u> within the Directive's scope do not <u>is not modified</u> ;
	(2)	for an <i>EEA firm</i> providing <i>passport activities</i> under the Directive in the <i>United Kingdom</i> , the rules implementing the Directive's minimum requirements do not apply, but the additional rules within the Directive's scope do apply <u>have their unmodified territorial scope</u> unless the <i>Home State</i> imposes measures of like effect. (See recital 19 and article 12(5) of the <i>Insurance Mediation Directive</i>)
...		
6.	Distance Marketing Directive: effect on territorial scope	
...		
6.4	G	Conversely, <u>the territorial scope of</u> the relevant rules in this sourcebook will <u>is modified as necessary so that they do not</u> apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA state</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA state</i> .
...		
7.	Electronic Commerce Directive: effect on territorial scope	
...		
7.2	G	A key element of the Directive is the ability of a <i>person</i> from one <i>EEA state</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA state</i> . Accordingly, the territorial application of the rules in this sourcebook is modified so that they apply <u>at least</u> to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA state</i> . Conversely, a <i>firm</i> <u>that is a national of the UK or another EEA State</u> , carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> , need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the <i>Electronic Commerce Directive</i>)
7.3	G	...

7.4	G	In the <i>FSA's</i> view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):	
		(1)	is in line with the <i>Distance Marketing Directive</i> ; and
		(2)	overrides that of any other Directive discussed in this section section <u>Annex</u> to the extent that it is incompatible.
...			
8.	Investor Compensation Directive		
8.1	G	...	
		(2)	In the <i>FSA's</i> view, these matters are a <i>Home State</i> responsibility although a <i>Host State</i> may continue to apply its own rules in the 'general good'. Accordingly, these <i>rules</i> apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> but also apply in accordance with the general application rule <u>their standard territorial scope</u> to an <i>EEA MiFID investment firm</i> providing services in the <i>UK</i> whether through a branch or cross-border services unless its <i>Home State</i> applies rules of like effect.
9.	UCITS Directive: effect on territorial scope		
...			
9.2	G	Accordingly, the territorial scope of this sourcebook is modified so that:	
		(1)	the <i>rules</i> relating to the distribution of a <i>simplified prospectus</i> apply to the management company (<i>operator</i>) of a UCITS whose <i>Home State</i> is the <i>United Kingdom</i> when marketing in other <i>EEA States</i> ;
		(2)	those <i>rules</i> do not apply to a management company of a UCITS whose <i>Home State</i> is another <i>EEA State</i> when marketing in the <i>United Kingdom</i> ; other <i>rules</i> , such as the <i>financial promotion rules</i> and the information gathering and suitability rules (see <i>COBS 9 Suitability</i> (including basic advice)) continue to apply <u>without modification of this territorial scope</u> .
...			

2.3.7 G The fact that a fee, commission or non-monetary benefit is paid or provided to or by an *appointed representative* or, where applicable, by a *tied agent*, does not prevent the application of the *rule* on inducements.

3.3.1 R ~~In relation to MiFID or equivalent third country business, a~~ A *firm* must:

...

Per se professional clients

3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

...

- (3) in relation to business that is not *MiFID or equivalent third country business*, a large undertaking meeting ~~either~~ any of the following conditions:
- (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or has had at any time during the previous two years) called up share capital or net assets of at least £105 million (or its equivalent in any other currency at the relevant time);
 - (b) ~~a large~~ undertaking that meets (or any of whose *holding companies* or *subsidiaries* meets) two of the following tests:
 - (i) a balance sheet total of EUR 12,500,000;
 - (ii) a net turnover of EUR 25,000,000;
 - (iii) an average number of employees during the year of 250;
 - (c) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;
 - (d) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
 - (e) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or operator of a *personal pension scheme* or *stakeholder pension scheme* where the scheme has (or has had at any time during the previous two years):
 - (i) at least 50 members; and
 - (ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);

(f) a local authority or public authority.

3.5.2 R In relation to MiFID or equivalent third country business a local authority
A or a public authority is not likely to be a regional government for the
purposes of COBS 3.2.5R(4). In the FSA's opinion, a local authority may be
a per se professional client for those purposes if it meets the test for large
undertakings in COBS 3.2.5R(2).

...

3.6 Eligible counterparties

3.6.1 R (1) ...

(2) ~~In relation to MiFID or equivalent third country business, a A client~~
can only be an *eligible counterparty* in relation to *eligible*
counterparty business (PRIN 1 Ann 1 is an exception to this).

3.6.4 R A firm may treat a client as an *elective eligible counterparty* if:

(1) the client is an undertaking and:

(a) is a *per se professional client* (except for a client that is only a
per se professional client because it is an institutional investor
under COBS 3.5.2R(5)) and, in relation to business other than
MiFID or equivalent third country business; ~~or~~

(i) is a body corporate (including a limited liability
partnership) which has (or any of whose holding
companies or subsidiaries has) called up share capital
of at least £10 million (or its equivalent in any other
currency at the relevant time); or

(ii) meets the criteria in the rule on meeting two
quantitative tests (COBS 3.5.2R(3)(b)); or

(b) ...

...

[Note: article 24(3) and the second paragraph of article 24(4) of MiFID
and article 50(1) of the MiFID implementing Directive]

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.5 G (1) ...

(2) This chapter does not apply in relation to communicating with an
eligible counterparty other than the section on compensation

information (see COBS 4.4) but elements of the requirements in *PRIN* may apply.

- 4.1.6 R *Approving a financial promotion without communicating it is not MiFID or equivalent third country business. Communicating a financial promotion to a person other than a client or a potential client ~~client~~ is also not MiFID or equivalent third country business. Further guidance on what amounts to MiFID business may be found in PERG 13.*

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

- 4.2.2 G (1) ...
- (2) COBS 4.2.1R(2)(b) does not limit the application of the fair, clear and not misleading rule under COBS 4.2.1R(2)(a). So, for example, a communication in relation to designated investment business that is both a communication to a professional client and a financial promotion, will still be subject to the fair, clear and not misleading rule.

The reasonable steps defence to an action for damages

- 4.2.6 R If, in relation to a particular communication or financial promotion, a firm takes reasonable steps to ensure it complies with the fair, clear and not misleading rule, a contravention of that rule does not give rise to a right of action under section 150 of the Act.

4.6 Past, simulated past and future performance

Application

- 4.6.1 R (1) Subject to (2) and (3), this section applies to a firm in relation to:
- (a) ~~in the case of MiFID or equivalent third country business, in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a retail client~~ the provision of information in relation to its designated investment business; and
- (b) ~~in relation to approving or communicating a financial promotion.~~ the communication or approval of a financial promotion;

where such information or financial promotion is addressed to, or disseminated in such a way that it is likely to be received by, a retail client.

...

- 4.6.9 R (1) A firm that communicates to a client a projection for a packaged product must ensure that the projection complies with the projections rules in COBS 13.4, COBS 13.5 and COBS 13 Annex 2, which is not

a financial instrument.

- (2) A firm must not communicate a projection for a highly volatile product to a client unless the product is a financial instrument.

4.7 Direct offer financial promotions

- 4.7.3 G (1) ...
- (2) A firm communicating or approving a direct offer financial promotion may also be subject to the rules on providing product information in COBS 14.2, including the exceptions in COBS 14.2.5R to 14.2.9R.

4.7.4 G In order to enable a *client* to make an informed assessment of a *relevant investment* or *relevant business*, a *firm* may wish to include in a *direct offer financial promotion*:

- (1) ...; ~~and~~
- (2) ...; ~~and~~
- (3) (in relation to a promotion for a packaged product that is not a financial instrument) a key features illustration, in which a generic projection may generally be used.

4.7.5 G COLL 4.6.12R requires an authorised fund manager to ensure that its financial promotions, which contain an invitation to purchase the units in a UCITS scheme, indicate that a simplified prospectus and a full prospectus exist, and the places where they may be obtained by the public or how the public may have access to them.

4.8 Cold calls and other promotions that are not in writing

Application

- 4.8.1 R This section applies to a *firm* in relation to a *financial promotion* that is not in writing, but it does not apply:
- (1) ...
- ...
- (3) if the financial promotion is a non-retail communication;
- (34) ...
- (45) ...

4.9 Financial promotions with an overseas element

Application

- 4.9.1 R ...
- (3) This section does not apply to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:
- ...
- (d) if it is a *non-retail communication*;
- ~~(de)~~ ...
- ~~(ef)~~ ...

4.11 Record keeping: financial promotion

- 4.11.1 R (1) ...
- ...
- (4) This *rule* does not apply in relation to a communication that is made by a *firm* in relation to its *MiFID or equivalent third country business*:
- (a) to the extent that the communication is a *third party prospectus*; ~~or~~
- (b) if it is *image advertising*;
- (c) if it is a *non-retail communication*.
- (5) This *rule* does not apply in relation to a communication ~~that is not~~ made by a *firm* other than in relation to *MiFID or equivalent third country business*:
- (a) ...
- (b) ...
- (c) ...
- (d) if it is a *non-retail communication*;
- ~~(de)~~ ...
- ~~(ef)~~ ...

After 4.11 insert 4.12 which is a new section and is not underlined.

4.12 Unregulated collective investment schemes

- 4.12.1 R (1) A *firm* may *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme* without breaching the restriction on promotion in section 238 of the *Act* if the promotion falls within an exemption in the table in (4), as explained further in

the Notes.

- (2) Where the left-hand column in the table in (4) refers to promotion to a category of *person*, this means that the invitation or inducement:
- (a) is made only to recipients who the *firm* has taken reasonable steps to establish are *persons* in that category; or
 - (b) is directed at recipients in a way that may reasonably be regarded as designed to reduce, so far as possible, the risk of participation in the *collective investment scheme* by *persons* who are not in that category.
- (3) A *firm* may rely on more than one exemption in relation to the same invitation or inducement.

Promotion to:	Promotion of an unregulated collective investment scheme which is:
<p>Category 1 person</p> <p>(1) a <i>person</i> who is already a <i>participant</i> in an <i>unregulated collective investment scheme</i>; or</p> <p>(2) A <i>person</i> who has been, in the last 30 months, a <i>participant</i> in an <i>unregulated collective investment scheme</i>.</p>	<p>A. that <i>collective investment scheme</i>; or</p> <p>B. any other <i>collective investment scheme</i> whose underlying property and risk profile are both 'substantially similar' (see Note 1) to those of that <i>collective investment scheme</i>; or</p> <p>C. a <i>collective investment scheme</i> which is intended to absorb or take over the assets of that <i>collective investment scheme</i>; or</p> <p>D. a <i>collective investment scheme</i>, <i>units</i> in which are being offered by its <i>operator</i> as an alternative to cash on the liquidation of that <i>collective investment scheme</i>.</p>
<p>Category 2 person</p> <p>(1) A <i>person</i>:</p> <p>(a) for whom the <i>firm</i> has taken reasonable steps to ensure that <i>investment</i> in the <i>collective investment scheme</i> is suitable; and</p>	<p>That <i>collective investment scheme</i></p>

<p>(b) who is an 'established' or 'newly accepted' <i>client</i> of the <i>firm</i> or of a <i>person</i> in the same <i>group</i> as the <i>firm</i> (see Notes 2 & 3).</p>	
<p>Category 3 person</p> <p>A <i>person</i> who is eligible to participate in a scheme constituted under:</p> <p>(1) the Church Funds Investment Measure 1958;</p> <p>(2) section 24 of the Charities Act 1993; or</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964.</p>	<p>Any such <i>collective investment scheme</i></p>
<p>Category 4 person</p> <p>An eligible employee, that is, a <i>person</i> who is:</p> <p>(1) an officer;</p> <p>(2) an <i>employee</i>;</p> <p>(3) a former officer or <i>employee</i>; or</p> <p>(4) a member of the immediate family of any of (1) - (3),</p> <p>of an employer which is (or is in the same <i>group</i> as) the <i>firm</i>, or which has accepted responsibility for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</p>	<p>1. A <i>collective investment scheme</i> the instrument constituting which:</p> <p>A. restricts the property of the <i>scheme</i>, apart from cash and near cash, to:</p> <p>(1) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of <i>company</i> or any other connected <i>company</i> (see Note 4);</p> <p>(2) (in any case), any property, provided that the <i>scheme</i> takes the form of:</p> <p>(i) a limited <i>partnership</i>, under the terms of which the employer (or connected <i>company</i>) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or</p> <p>(ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments</p>

	<p>(other than <i>charges</i>) for <i>investment</i> transactions earlier entered into, which the eligible employee was not aware of at the time he entered into them; and</p> <p>B. (in a case falling within A(1) above) restricts participation in the <i>scheme</i> to eligible employees, the employer and any connected <i>company</i>.</p> <p>2. Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); or</p> <p>(ii) with one or more <i>clients</i> of such a <i>company</i>.</p>
<p>Category 5 person</p> <p>A <i>person</i> admitted to membership of the Society of Lloyd's or any <i>person</i> by law entitled or bound to administer his affairs.</p>	<p>A <i>scheme</i> in the form of a limited <i>partnership</i> which is established for the sole purpose of underwriting <i>insurance business</i> at Lloyd's.</p>
<p>Category 6 person</p> <p>An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the <i>Act</i> (Exemption of appointed representatives)) if the <i>financial promotion</i> relates to a <i>regulated activity</i> in respect of which the <i>person</i> is exempt from the <i>general prohibition</i>.</p>	<p>Any <i>collective investment scheme</i>.</p>
<p>Category 7 person</p> <p>An <i>eligible counterparty</i> or a <i>professional client</i>.</p>	<p>Any <i>collective investment scheme</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i> (see Note 5).</p>

<p>Category 8 person</p> <p>A <i>person</i>:</p> <p>(1) in relation to whom the <i>firm</i> has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the <i>person</i> is capable of making his own investment decisions and understanding the risks involved;</p> <p>(2) to whom the <i>firm</i> has given a clear written warning that this will enable the <i>firm</i> to promote <i>unregulated collective investment schemes</i> to the <i>client</i>; and</p> <p>(3) who has stated in writing, in a <i>document</i> separate from the contract, that he is aware of the fact the <i>firm</i> can promote certain <i>unregulated collective investment schemes</i> to him.</p>	<p>Any <i>collective investment scheme</i> covered by the assessment.</p>
---	---

The following Notes explain certain words and phrases used in the table above.

Note 1 The property of a *collective investment scheme* is 'substantially similar' to that of another *collective investment scheme* if in both cases the objective is to invest in the same one of the following sectors:

- (a) *on-exchange derivatives* or *warrants*;
- (b) *on-exchange* (or quoted) *securities*;
- (c) the property market (whether in *security* of property *companies* or in property itself);
- (d) collectable items of a particular description (such as works of art, antique vehicles, etc);
- (e) artistic productions (such as films, television, opera, theatre or music);
- (f) unlisted *investments* (including unlisted *debt securities*).

The risk profile of a *scheme* will be substantially similar to that of

another *scheme* only if there is such similarity in relation to both liquidity and volatility.

Note 2 A *person* is an 'established client' of another *person* if he has been and remains an actual *client* of that *person* in relation to *designated investment business* done with or through that other *person*.

Note 3 A *person* is a 'newly accepted' *client* of a *firm* if:

- (a) a written agreement relating to *designated investment business* exists between the *client* and the *firm* (or, if the *client* is normally resident outside the *United Kingdom*, an oral or written agreement); and
- (b) that agreement has been obtained without any contravention of section 238 or 240 of the *Act*, or of any *rule* in *COBS* applying to the *firm* or (as far as the *firm* is reasonably aware) any other *authorised person*.

Note 4 A *company* is 'connected' with another *company* if:

- (a) they are in the same *group*; or
- (b) one *company* is entitled either alone or with another *company* in the same *group*, to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other *company* or of its *holding company*.

Note 5 *Firms* may use the *client* categorisation regime that applies to business other than *MiFID* or *equivalent third country business*. [This is the case even if the *firm* will be within the scope of *MiFID* when it makes the promotion.]

4.12.2 G *Guidance on the regulatory system as it applies to unregulated collective investment schemes* appears at *PERG 8.20*.

5 Distance communications

5.1 The distance marketing disclosure rules

Application

5.1.-1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

5.2 E-commerce

Application

- 5.2.1 R This section applies to a *firm* ~~that is carrying on an electronic commerce activity provider~~ from an establishment in the United Kingdom, with or for a person in the United Kingdom or another EEA State.
- Information about the ~~electronic commerce activity provider~~ *firm* and its products or services
- 5.2.2 ...
- 6.1.4 R A *firm* must provide a *retail client* with the following general information, if relevant:
- ...
- (8) (a) in the case of a *common platform firm* ~~or a third country investment firm~~, a description, which may be provided in summary form, of the *conflicts of interest policy*;
- (b) ...
-
- 6.1.7 R (1) ...
- ...
- (4) A *firm* within (1) that holds *client designated investments* or *client money* for a *professional client* must provide that *client* with the information in paragraphs (1)(~~e~~ d) and (2)(a) and(b).
- 6.3.6 G (1) A *firm* will satisfy the requirements as to timing in the *rules* referred to in COBS 6.3.3G(4) and (5) if its *representative* provides information to the *client* on first making contact with the *client*.
- (2) The menu is unlikely to be fair, clear and not misleading if a *firm* uses it for a service other than *personal recommendations*.
- 6.3.18 R (1) ...
- (2) (a) Paragraph (1) does not apply if, in relation to a *life policy* or a *pension contract*:
- (i) the maximum amounts or rates already disclosed to the *client* only apply to products of the example term or age of *client* given in the *menu* or ~~payment information~~ other payment information or to products with shorter terms; and
- (ii) ...
- ...

COBS 6 Annex 1G: Initial disclosure document described in COBS 6.3.137G(1)

1. ...

1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering ~~taking advice on~~ buying certain financial products. Use this information to decide if our services are right for you.

2. Whose products do we offer? [Note 4] [Note 7]

...

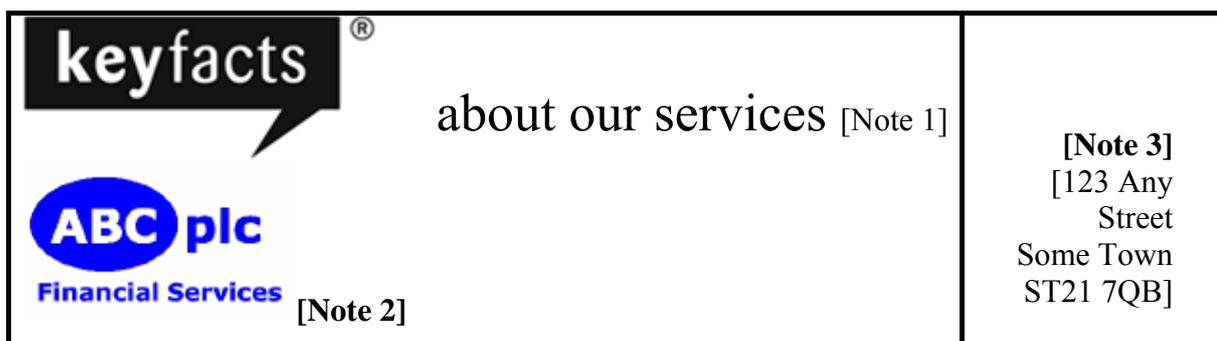
We [can] [Note 8] only offer products from a limited number of companies.

~~Ask us for a list of the companies and products we offer. [Note 11] [These include our own product(s) but our recommendation will be made following an analysis of our entire range of products.] [Note 9]~~

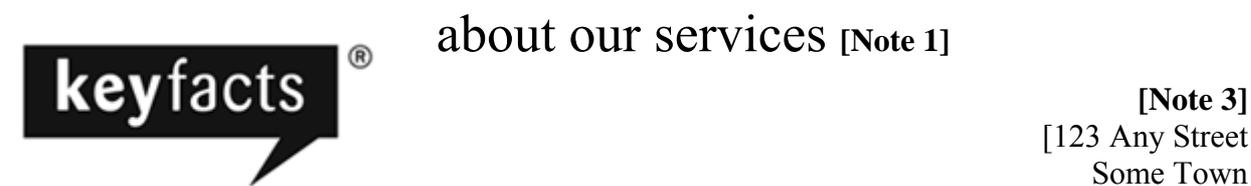
Ask us for a list of the companies and whose products we offer. [Note 11]

...

In COBS 6 Annex 2, delete this image



and replace it with this one:



COBS 6 Annex 2:

...

1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering ~~taking advice on~~ buying certain financial products. Use this information to decide if our services are right for you.

...

4 What will you have to pay us for our services?

...

You will receive a key features facts illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13]

...

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 27] [Note 43] [Note 44]

[question: why are these sections blank?]

...

COBS 6 Annex 3G (Menu described in COBS 6.3)

Table 2 - Commission if you invest a lump sum [Notes 12-17]

Products	Example term or age	Comparison of costs		Example based on £10,000 lump sum
		Our maximum	Market average	
				<i>This shows the maximum costs of our sales and advice for a lump sum investment of £10,000 ignoring any changes in fund value</i>

Savings and investments				
Collective investments (eg unit trusts)	Any	[Note 18]	[Note 20]	[Note 21]
Investment bond	Any	[Note 18]	[Note 20]	[Note 21]
Saving for retirement				
Personal and Stakeholder pensions	Any	[Note 18]	[Note 20]	[Note 21]
At retirement				
— Annuities	— Any	— [Note 18]	— [Note 20]	— [Note 21]
Income drawdown	— Any	— [Note 18]	— [Note 20]	— [Note 21]
Personal Pension Schemes				
<p>Not all types of personal pension scheme are included in the information above about commissions. Instead only the more common types are included, and schemes such as SIPPs are not. Before we start advising you, we will inform you of how much we could be paid if we do recommend one of these products to you.</p> <p>You can also ask us about commission we might receive on underlying investments we recommend you hold within a SIPP if not contained in the information above.</p> <p>[Note 19]</p>				
At retirement				
Annuities	Any	[Note 18]	[Note 20]	[Note 21]
Income drawdown	Any	[Note 18]	[Note 20]	[Note 21]

...

Reliance on information

9.2.5 R A *firm* is entitled ...

Insufficient information

9.2.6 R If a *firm* ...

9.5.2 R A *firm* must retain its records relating to suitability for a minimum of the following periods:

...

(2) if relating to a *life policy*, ~~*pension contract*~~ *personal pension scheme* or *stakeholder pension scheme*, five years;

...

9 Annex 2G Sales processes for stakeholder products

...	
-----	--

Stakeholder pensions	
...	
21	[intentionally blank] <u>A firm may provide a copy of the table setting out initial monthly pension amounts, found within the FSA's "Stakeholder pension decision tree" factsheet, in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A firm should make it clear that the decision on how much to invest is the retail client's responsibility and that he should get further advice if has any concerns.</u>
...	

Reliance on information

10.2.4 R ...

Use of existing information

10.2.5 G ...

Knowledge and experience

10.2.6 G ...

Increasing the client's understanding

10.2.7 G ...

No duty to communicate firm's assessment of knowledge and experience

10.2.8 G ...

10.5.1 G A service should be considered to be provided at the initiative of a *client* (see COBS 10.4.1R(1)(b~~a~~)) ...

11 Dealing and managing

11.1 Application

General application

11.1.1 R This chapter ~~other than the section on personal account dealing (COBS 11.7)~~ applies ~~in relation to a firm~~ to a firm:

(1) ~~MiFID business carried on by a MiFID investment firm~~ or

(2) ~~equivalent business of a third country investment firm~~.

11.1.2 R In this chapter, provisions marked “EU” apply to a ~~third country investment firm~~ firm which is not a *MiFID investment firm* as if they were *rules*.

...

Disapplication of best execution for non-financial spreads

11.1.6 R The section on best execution (COBS 11.2) does not apply to a firm when:

- (1) executing orders: or
- (2) placing orders with other entities for execution: or
- (3) transmitting orders to other entities for execution:

in relation to a *spread-bet* which is not a *financial instrument*, where the *firm* has not made a *personal recommendation* in relation to that *spread-bet*.

Purpose

12.1.1 G The purpose of this chapter is to ~~implement the provisions of~~ :

- (1) ~~MiFID relating to~~ set out specific requirements relating to the production and dissemination of *investment research* and *non-independent research*; and
- (2) implementing the provisions of the *Market Abuse Directive* relating to the disclosures to be made in, and about, *research recommendations*.

Application: Who?

12.1.2 R This chapter applies ~~in relation to~~ a *firm*.

- (1) ~~MiFID business carried on by a MiFID investment firm; and~~ [deleted]
- (2) ~~COBS 12.4 applies to all firms.~~ [deleted]

12.2.5 R A *firm* must have in place arrangements designed to ensure that the following conditions are satisfied:

...

- (3) *the firm* itself, *financial analysts*, and other *relevant persons* involved in the production of *investment research* must not accept inducements from those with a material interest in the subject matter of the *investment research*;

[**Note:** article 25(2)(c) of the *MiFID implementing Directive*]

...

12.3.2 R A ~~firm~~ *firm* which produces or disseminates ~~non-independent research~~ *non-independent research* must ensure that it:

...

13 Preparing product information

13.1 The obligation to prepare product information

13.1.1 R A *firm* must prepare:

(1) a *key features document* for each *packaged product, cash-deposit ISA and cash-deposit CTF* it produces; and

(2) a *key features illustration* for each *packaged product* it produces;

in good time before ~~that document has~~ those documents have to be provided.

Exceptions

13.1.3 R A *firm* is not required to prepare:

...

(3) ~~[intentionally blank]~~ a *key features illustration*, if it includes the information from the key features illustration in a key features document; or

...

13.2.2 R A *key features document* and a key features illustration must also:

(1) (if it is a key features document) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;

(2) (if it is a key features document) display the *firm's* brand at least as prominently as any other ;

(3) (if it is a key features document or a key features illustration which does not form an integral part of the key features document) include the 'keyfacts' logo in a prominent position at the top of the *document*; and

(4) (if it is a key features document or a key features illustration which does not form an integral part of the key features document) include the following statement in a prominent position:

"The Financial Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future

reference”.

13.2.3 G The *Consolidated Life Directive* information can be included in a *key features document*, a *key features illustration* or any other *document*.

13.3.1 R A *key features document* must:

...

(2) explain:

...

(d) (for a *CTF*) that *stakeholder CTFs*, *cash-deposit CTFs* and ~~*share CTFs*~~ *security-based CTFs* are available and which type the *firm* is offering; and

...

[The text in this section is all new and not underlined]

13.4 Contents of a key features illustration

13.4.1 R A *key features illustration* must include *appropriate charges information* and, if it is a *packaged product* which is not a *financial instrument*:

(1) must include a *standardised deterministic projection*;

(2) the projection and charges information must be consistent with each other;

(3) it may also include *alternative projections* except that the most prominent *projection* must be a *standardised deterministic projection*.

Exceptions

13.4.2 R A *key features illustration* must not include a *generic projection* unless:

(1) there are reasonable grounds for believing that that *projection* will be sufficient to enable a *retail client* to make an informed decision about whether to invest; or

(2) it is a *direct offer financial promotion*.

13.4.3 G A *generic projection* is unlikely to be sufficient to enable a *retail client* to make an informed decision about whether to invest if the *premium* or investment returns on the product will be materially affected by the personal characteristics of the investor.

13.4.4 R There is no requirement to include a *projection* in a *key features illustration*:

- (1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or
- (2) if the product is:
 - (a) a *SIPP* from which no *income withdrawals* are being taken; or
 - (b) a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*).

13.4.5 G Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* must follow the appropriate requirements, as outlined in this section, or for *financial instruments* under *COBS 4.6.7*.

[The text in this section is all new and not underlined]

13.5 Preparing product information: other projections

Projections for in-force products

13.5.1 R A *firm* that communicates a *projection* for an in-force *packaged product* which is not a *financial instrument*:

- (1) must include a *standardised deterministic projection*;
- (2) may also include an *alternative projection* except that the most prominent *projection* must be a *standardised deterministic projection*; and

must follow the *projection rules* in *COBS 13 Annex 2*.

Projections: other situations

13.5.2 R A *firm* that communicates a *projection* for a *packaged product* which is not a *financial instrument*,

- (1) for which a *key feature illustration* is not required to be provided; and
- (2) which is not an in-force *packaged product*;

must ensure that such a *projection* is either a *standardised deterministic projection* or an *alternative projection* in accordance with *COBS 13 Annex 2*.

Exceptions to the projection rules: projections for more than one product

- 13.5.3 R A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the *projection rules* in COBS 13.4, 13.5 and COBS 13 Annex 2 to the extent that it complies with the future performance rule (COBS 4.6.7R).
- 13.5.4 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a *firm* that elects to comply with the future performance rule in COBS 4.6.7R will need to explain how the combined *projection* differs from other information that has been or could be provided to the client, including a *projection* provided under the *projection rules* in COBS 13.4, 13.5 and COBS 13 Annex 2.

[The text in this section is all new and not underlined]

COBS 13 Annex 2: Projections

This annex belongs to COBS 13.4.1R(1) (Contents of a key features illustration), 13.5.1R (Projections for in-force products) and 13.5.2 (Projections: other situations).

Projections

1 Calculating standardised deterministic projections

- 1.1 R A *standardised deterministic projection* must:
- (1) include a *projection* of benefits at the *lower, intermediate* and *higher rates of return*;
 - (2) be rounded down; and
 - (3) show no more than three significant figures.

Calculating projections: additional requirements for a pension scheme

- 1.2 R (1) A *standardised deterministic projection* within a *key features illustration* for a *personal pension scheme* or *stakeholder pension scheme* must include or be accompanied by information explaining the impact of inflation on those benefits.
- (2) Where a *firm* chooses to provide that information required in (1) in the form of one or more *projections* of benefits, it must include a *projection* in real terms, so long as it is either:
- (a) calculated using:
 - (i) the appropriate *intermediate rate of return*;
 - (ii) the intermediate rate of price inflation, in accordance with COBS 13 Annex 2 2.5R; and

- (iii) an annuity calculated in accordance with *COBS 13 Annex 2 3.1R*; or
 - (b) consistent with the *statutory money purchase illustration* assumptions, with any material differences between the assumptions used and those otherwise required for accompanying *standardised deterministic projections* explained.
- 1.3 R (1) If a *generic projection* is prepared for a *stakeholder pension scheme* or *personal pension scheme*, sufficient separate *projections*, covering a range of different contractual periods and contributions, must be included for a *retail client* to be able to make an informed decision about whether to invest.
- (2) A *projection* prepared on that basis may omit benefits in nominal terms and only show a range of figures at the *intermediate rate of return*, of benefits in real terms.
- 1.4 G A *firm* will provide sufficient separate *projections* if it prepares a table that shows *projections* in real terms for a variety of periods to maturity and a variety of contribution levels, taking into account the *charges* and other material terms that apply to the *stakeholder pension scheme* or *personal pension scheme*. Such a table could be laid out like a specimen benefits table (see *COBS 13 Annex 2 1.8*).

Calculating an alternative projection

- 1.5 R An *alternative projection* must:
- (1) (if the *alternative projection* is not a *stochastic projection*) not exceed the *higher rate of return*;
 - (2) (if the *alternative projection* is not a *stochastic projection*), use assumptions consistent with the assumptions which apply to *standardised deterministic projections* in this Annex, unless the reasons for any inconsistency are:
 - (a) reasonable;
 - (b) explained to a *retail client*, with enough information for the *retail client* to be able to understand the difference between the *alternative projection* and any *standardised deterministic projection* being provided; and
 - (3) (if the *alternative projection* is a *stochastic projection*) only be used if:
 - (a) there are reasonable grounds for believing that a *retail client* will be able to understand it;

- (b) it is based on a reasonable number of simulations and assumptions which are reasonable and supported by objective data; and
- (c) the *alternative projection* is accompanied by enough information for the *retail client* to be able to understand the difference between the *alternative projection* and any *standardised deterministic projection* being provided.

1.6 G An *alternative projection* may be used either as part of a *key features illustration* or separately. However, it must not detract from any *standardised deterministic projection* required by COBS 13.4.1R or 13.5.1R.

Exceptions

1.7 R A projection:

- (1) for a product that will mature in six *months* or less; or
- (2) prepared in order to determine the maximum level of contributions permitted to be made to a *personal pension scheme*,

may be prepared and presented on any reasonable basis but only if, in the case of (2), the assumptions used to calculate the *projection* and contributions are disclosed with the relevant *projection*.

1.8 R In the case of a *stakeholder pension scheme*, the specimen benefits table, contained within the FSA's "Stakeholder pension decision tree" factsheet and headed "Pension Table...How much should I save towards a pension?" which sets out initial monthly pension amounts, may be used instead of a *standardised deterministic projection* but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

1.9 R The *rules* in this Annex do not apply to a *projection* which is consistent with the *statutory money purchase illustration* requirements.

1.10 R A *standardised deterministic projection* for existing business may omit the *projection* at the *intermediate rate of return*.

2 Assumptions to follow when calculating projections.

Assumptions: projection date

2.1 R A *standardised deterministic projection* must be calculated to the *projection date* described below:

	Product	Projection date
(1)	A contract which is a <i>whole life assurance</i> the <i>premiums</i> under which are regular <i>premiums</i>	The anniversary of the commencement date: (a) which first falls after the seventy-fifth birthday of the life assured; or (b) (if there is more than one life

		assured) the anniversary of the commencement date which falls after the seventy fifth birthday of: (i) (if benefits are payable on the first death) the oldest life assured; or (ii) (in all other cases) the youngest life assured; subject to a minimum <i>projection date</i> of ten years.
(2)	A contract that is not in (1): (a) where the relevant marketing refers to a surrender value or an option to take benefits before they would otherwise be paid; or (b) that is open-ended, or linked to one or more lives, which is not a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i>	An appropriate date which highlights the features of the product
(3)	A contract that is not in (1) or (2) and has a specified maturity date	The maturity date specified in the contract
(4)	A contract that is not in (1) or (2) or (3)	The tenth anniversary of the commencement date

Assumptions: contributions

2.2 R A *standardised deterministic projection* must:

- (1) take account of all contributions due during the *projection period*;
- (2) be calculated on the basis that contributions are accumulated, net of *charges*, at the appropriate rate of return compounded on an annual basis;
- (3) (if it includes assumptions about contribution increases in line with an index) be based on an assumption that contribution increases are consistent with any assumptions regarding that index in this annex; and
- (4) deduct from contributions any rider benefits or extra *premium* which may be charged for an increased underwriting risk.

Assumptions: rates of return

2.3 R A *standardised deterministic projection* must be calculated using the following rates of return:

Nominal rates	Lower rate	Inter-mediate rate	Higher rate
tax-exempt business held in a <i>wrapper</i> or by a <i>friendly society</i> <i>personal pension schemes, stakeholder pension schemes</i> and investment-linked annuities	5%	7%	9%
all other products	4%	6%	8%

Exception

2.4 R A *standardised deterministic projection*:

- (1) must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product;
- (2) may be calculated using a lower rate of return if a *retail client* requests it.

Assumptions: inflation

2.5 R If inflation is taken into account, the *standardised deterministic projection* must be calculated using the following rates:

	Lower rate	Intermediate rate	Higher rate
Price inflation	0.50%	2.50%	4.50%
Earnings inflation	≥ 2%	≥ 4%	≥ 6%

Assumptions: charges

2.6 R The *charges* allowed for in a *standardised deterministic projection*:

- (1) must properly reflect:
 - (a) all of the charges, expenses and deductions a *client* will, or may be expected to, pay;
 - (b) the tax relief available to the *firm* in respect of so much of the *firm's* gross expenses as can properly be attributed to the contract; and
 - (c) the fact that certain *charges* will be fully or partially off-set, but only to the extent that the *firm* can show that the off-set funds will be available when the relevant *charges* arise; and
- (2) must not include the *firm's* dealing costs incurred on the underlying

portfolio.

- 2.7 G
- (1) Development and capital costs should normally be written off in the year in which they are incurred. However, some costs (for example, exceptional new business expenses) may be amortised and previous years' costs may then be brought into account.
 - (2) If it is reasonable to assume that higher expenses will be incurred in the future, appropriate allowances should be made, and any inflation assumptions should be consistent with those prescribed in these rules.
 - (3) Expenses should be apportioned appropriately between products so that scales of expenses can be calculated and applied.
 - (4) Where appropriate, mortality and morbidity should be allowed for on a best estimate basis. The basis for annuities should allow for future improvements in mortality.
 - (5) A projection should not assume that *charges* will fall over time to a rate that is lower than the rate currently being charged on the relevant product (or, if there is no such charge, on a similar product).
 - (6) A projection of surrender value, cash-in value or transfer value should take into account any specific current surrender value basis and penalties which may be applied.

Additional requirements: with-profits policies

- 2.8 R
- (1) A *standardised deterministic projection* for a *with-profits policy* must properly reflect the deductions from asset share which a *firm* expects to make in accordance with its *deductions plan*.
 - (2) A *standardised deterministic projection* for a *with-profits policy* where bonus rates apply must assume that the bonus rates supported by the relevant premium and rate of return apply throughout the term of the contract.

Additional requirements: unsecured and alternatively secured pensions

- 2.9 R
- (1) A *standardised deterministic projection* for an unsecured or *alternatively secured pension* must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the *rules* in this section.
 - (2) A *standardised deterministic projection* for an unsecured or *alternatively secured pension* must be based on an assumption that the current gilt-index yield will continue to apply throughout the relevant term and include:
 - (a) the maximum initial income specified in the tables published by the Government Actuaries Department for an unsecured or *alternatively secured pension* (as the case may be);

- (b) the assumed level of income;
- (c) for a *short-term annuity*, where subsequent *short-term annuities* are assumed, a statement reflecting that fact;
- (d) (under the heading ‘What the benefits might be’), the amount of income and the projected value of the fund at each fifth anniversary for the *lower, intermediate and higher rates of return*;
- (e) the projected open market values and the amounts of annuity at age 75 or the date at which it is reasonably assumed that an annuity will be purchased (which, for an *alternatively secured pension*, must be after ten years); and
- (f) the amount of annuity that could be secured using an immediate annuity rate available in the market.

3 How to calculate a projection for a future annuity

3.1 R A *projection* for a future annuity must:

- (1) be calculated by rounding all factors to three decimal places before applying them to the relevant retirement fund;
- (2) be based on the mortality tables PMA92 and PFA92, using the medium cohort projection based on year of birth mortality rates;
- (3) (for a protected rights annuity) be calculated on a unisex basis so the policyholder has female mortality and the spouse has male mortality;
- (4) (for an annuity where two lives are concerned):
 - (a) reflect the age difference between the two lives; or
 - (b) be based on the assumption that the male life is three years older than the female (if the genders differ) or the two lives have the same age (if the genders are the same);
- (5) include an expenses allowance of 4%;
- (6) be based on the following rates of return as appropriate:

	Lower rate	Intermediate rate	Higher rate
Level or fixed rate of increase annuities	Y+1.5%	Y+3.5%	Y+5.5%
RPI or LPI linked annuities	Y-1%	Y	Y+1%

where:

'Y' is $0.5*(ILG0 + ILG5) - 0.5$ rounded to the nearest 0.2%, with an exact 0.1% rounded down; and

'ILG0' and 'ILG5' are the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years, assuming 0% and 5% inflation respectively, updated every 6 April to use the ILG0 and ILG5 which applied on or, if necessary, the *business day* immediately before, the preceding 15 February; and

- (7) (in the case of a future annuity with less than one years to maturity) be calculated using annuity rates that are no more favourable than the *firm's* relevant current immediate annuity rate or (if there is no such rate) the relevant immediate annuity rate available in the market; and
- (8) be assumed to be payable monthly in advance with a guaranteed period of 5 years, unless it is unreasonable to do so.

3.2 R A *projection* for a future annuity:

- (1) must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product;
- (2) may be calculated using a lower rate of return if a *retail client* requests it.

4 How to calculate a projection for an appropriate personal pension

4.1 R (If a *client* is considering whether to contract out), a *projection* for an *appropriate personal pension* must include or be accompanied by

- (1) a *contracting out comparison* providing a description of:
 - (a) the benefits that minimum contributions would secure if a *retail client* did not contract out of the State Second Pension; and
 - (b) the material differences between the anticipated position if a *retail client* remains contracted into the State Second Pension and the anticipated position if that *client* contracts out;

which is calculated to the *client's* state retirement age using the lower and higher rates of return in 4.2R and aggregate contributions for the current and the next two tax years.

- (2) an explanation that the figures in the comparison are intended to illustrate:
 - (a) the amount of pension the *client* might get compared with the benefit to be given up under the State Second Pension; and
 - (b) what might happen if the lower and higher rates of return

were achieved each year.

4.2 R This table belongs to 4.1 R

Pre- and post-vesting real rates of return for contracting out comparisons.

Lower rate	Higher rate
1%	3%

5 How to present a projection

5.1 R A *standardised deterministic projection* must be accompanied by:

- (1) appropriate risk warnings, including warnings about volatility, the relationship between figures in real terms and those in nominal terms, and the degree to which any figures can be relied upon; and
- (2) a statement:
 - (a) that *projection* rates are standardised or an explanation that *projection* rates that are lower than the standard rates have been used and why;
 - (b) that *charges* may vary;
 - (c) of the contributions that have been assumed;
 - (d) that increases in contributions have been assumed (if that is the case), together with sufficient information for a *retail client* to be able to understand the nature and magnitude of the assumed increases; and
 - (e) of the sum of any actual *premiums* charged for any rider benefits or increased underwriting risks (where these have been charged).

Additional requirements: pension schemes and products linked to other products

5.2 R A *standardised deterministic projection* for a product where the benefits illustrated depend on a link to a separate product must include an appropriate description of the material factors that might influence the returns available overall and any restrictions assumed in providing an illustration of benefits in relation to that separate product.

[The text in this section is all new and not underlined]

COBS 13 Annex 3: Charges

This annex belongs to COBS 13.4.1R (Contents of a key features illustration)

Charges

1 Appropriate charges information

1.1 R Appropriate *charges* information comprises:

- (1) a description of the nature and amount of the *charges a client* will or may be expected to bear;
- (2) an ‘effect of charges’ table; and
- (3) ‘reduction in yield’ information.

1.2 R Where a *firm* does not include a *projection* within its *key features illustration* the charges information can be on a generic basis.

Exceptions

1.3 R An effect of charges table and reduction in yield information are not required for:

- (1) a *life policy* without a *surrender value*, but an appropriate warning must be included to make it clear that the *policy* has no cash-in value at any time;
- (2) a *SIPP*;
- (3) a *stakeholder pension scheme*, if the following is included instead:
“There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will deduct [£7500 x y/100] that year.”
- (4) a *stakeholder product* that is not a *stakeholder pension scheme*, or a product that will be held in a *CTF* where the relevant product and the *CTF* levy their *charges* annually, if the following is included instead:
“There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we deduct [£250 x y/100] that year. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. [After ten years these deductions reduce to [£250 x r/100] and [£500 x r/100] respectively.]”

where (in the case of (3) and (4)) ‘y’ is the annual charge and ‘r’ is the reduced annual charge (if any).

1.4 R Reduction in yield information is not required for a without profits *life policy* with guaranteed benefits (except on surrender or variation), a *life policy* with a term not exceeding five years or a *life policy* that will be held in a *CTF*.

2 Effect of charges table

2.1 R Each ‘effect of charges’ table must be accompanied by, or refer to:

- (1) a statement that all relevant guarantees have been taken into account (if there are any);
- (2) a warning that one effect of the *charges* referred to is that a *retail client* could get back less than they invest (if that is the case); and
- (3) the rate of return used to calculate the figures in the table.

2.2 R The effect of charges table:

- (1) for a *life policy*, *personal pension scheme* or *stakeholder pension scheme* must be in the following form:

Note 1A	Note 2	Note 3	Note 4	Note 5	Note 6
At end of year	Total paid in to date	With-drawals	Total actual deductions to date	Effect of deductions to date	What you might get back
	£	£	£	£	£
1					
...					
5					
10					
...					

- (2) for any other *packaged product* must be in the following form:

Note 1B	Note 2	Note 3	Note 5	Note 6
At end of year	Investment to date	Income	Effect of deductions to date	What you might get back
	£	£	£	£
1				

5				
10				
...				

(3) must be completed in accordance with the following notes:

- 1A (a) This column must include the first five years, every subsequent fifth year and the final year of the *projection period*.
- (b) Figures may be shown for every subsequent tenth year rather than subsequent fifth year where the *projection period* exceeds 25 years, or for whole of life policies.
- (c) For whole of life policies, should the projected fund reach zero before the end of the *projection period* this must be highlighted.
- (d) For an *alternatively secured pension* figures must be included for each year for a term of ten years.
- (e) If there is discontinuity in the trend of *surrender values*, the appropriate intervening years must also be included.
- (f) Figures for a longer term may be shown.
- 1B (a) This column must include the first year, the fifth year and every subsequent fifth year of the *projection period*.
- (b) For an *alternatively secured pension* figures must be included for each year for a term of ten years.
- (c) Figures for a longer term may be shown.
- 2 This column must show the cumulative contributions paid to the end of each relevant year.
- 3 This column must show the cumulative withdrawals taken or income paid to the end of each relevant year (if any). The column may be omitted if withdrawals or income are not anticipated or allowed.
- 4 This column is optional. If it is retained, it must show the total actual deductions to the end of each relevant year calculated using the following method:
- (a) apply the *intermediate rate of return* for the relevant product to the figure in the ‘effect of deductions to date’ column for the previous year;
- (b) subtract from this figure the figure in the ‘effect of deductions to date’ column for the year being shown; and
- (c) add the resulting figure to the figure in the ‘total actual deductions to date’ column for the previous year (if any).

5 This column may be deleted if the product is a without profits *life policy* with benefits that are guaranteed except on surrender or variation, a *life policy* with a term not exceeding five years, or a *life policy* that will be held in a *CTF*.

If this column is not deleted, the ‘effect of deductions to date’ figure must be calculated by taking the accumulated value of the fund without reference to *charges* and then subtracting from this figure the figure in the ‘what you might get back column’ for the same year.

6 This column must show *standardised deterministic projection* of the surrender value, cash-in value or transfer value, calculated in accordance with the *rules* in *COBS 13 Annex 2 (Projections)* at the appropriate *intermediate rate of return* to the end of each relevant year.

Exception

- 2.3 R An effect of charges table may be amended, but only if and to the extent that that is necessary to properly reflect the nature and effect of the *charges* inherent in a particular product.
- 2.4 G The effect of 2.3R is that, for example, the column labels and explanatory text may be adjusted to reflect the nature of the contract. For instance:
The column titled ‘What you might get back’ might be replaced with ‘What the transfer value might be’ for personal pensions, or ‘Open market value’ for *income withdrawals* or *short-term annuities*.
The withdrawals column may be called ‘Total income taken’ for *income withdrawals* or *short-term annuities*.
The table may be titled ‘What effect will the deductions have?’ for *income withdrawals* or *short-term annuities*.

3 Reduction in yield

- 3.1 R Reduction in yield (‘A’) is ‘B’ less ‘C’ where:
- (1) ‘B’ is the *intermediate rate of return* for the relevant product; and
 - (2) ‘C’ is determined by:
 - (a) carrying out a *standardised deterministic projection* to the *projection date*, using ‘B’; and then
 - (b) calculating the annual rate of return (‘C’) (rounded to the nearest tenth of 1 %) required to achieve the same projection value if *charges* are left out of account.
- 3.2 R A *firm* must present reduction in yield as ‘A%’, as part of a statement which explains that ‘charges and expenses have the effect of reducing your anticipated returns from ‘B%’ to ‘C%’, or in some other appropriate way.

- 3.3 R If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:
- (1) calculated separately for each fund or for the single contribution and the regular contributions (as the case may be); and
 - (2) presented:
 - (a) on a fund by fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or
 - (b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others), as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions (as the case may be); or
 - (c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.
- 3.4 R Where a *firm* is calculating reduction in yield information, it must:
- (1) disregard charges related to mortality and morbidity risks; or
 - (2) (where the requirement in (1) produces figures that are misleading) include a statement with the reduction in yield information that it has been calculated taking into account charges related to mortality and morbidity risk.
- ...
- 14.2.1 R A *firm* that sells:
- (1) a *packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *simplified prospectus scheme* or an *EEA simplified prospectus scheme*);
- ...
- (5) a *unit* in a *simplified prospectus scheme* to a *client*, must offer the *scheme's* current *simplified prospectus* to that *client*. In addition, if the *client* is a *retail client* present in the *EEA*, the *firm* must provide the *simplified prospectus* to the *client* together with:

...

- (b) information about the three types of *CTF* that are generally available (*stakeholder CTFs*, *cash-deposit CTFs* and ~~*share-CTFs*~~*security-based CTFs*), and the type of *CTF* the *firm* is offering (if the *units* will, or may, be held in a *CTF*);

...

Exception to the provision rules: key features documents and simplified prospectuses

14.2.5 R A *firm* is not required to provide:

...

- (2) a *key features document* or *key features illustration*, if another *person* is required to provide the *distance marketing information* by the *rules* of another *EEA State*;

...

Exception: key features illustrations

14.2.6 R ~~[intentionally blank]~~ A *firm* is not required to provide a *key features illustration* for a product if the information that would have been included in that illustration is included in the *key features document* provided to the *client*.

Exception to the provision rules: key features documents and key features illustrations

14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

- (1) a *key features scheme* if it provides a *simplified prospectus* instead;
- (2) a *life policy* that is not a *reinsurance contract* if:
- (a) the *firm* is operating from an establishment in another *EEA State* and the sale is by *distance contract*; or
- (b) the *client* is habitually resident outside the *United Kingdom* and the sale is not by *distance contract*.
- (3) a *traded life policy*.

[**Note:** in respect of (2), articles 4(1) and 16 of the *Distance Marketing Directive* and article 36 of the *Consolidated Life Directive*]

Exception to the provision rules: key features documents and key features illustrations

- 14.2.8 R A *firm* is not required to provide a *key features document* or a key features illustration, if:
- (1) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and
 - (2) the *firm* provides materially the same information in some other way.

Exception to the provision rules: key features documents, key features illustrations and simplified prospectuses

- 14.2.9 R A *firm* is not required to provide a *key features document*, a key features illustration or a *simplified prospectus* for a *key features scheme* or *simplified prospectus scheme* if:
- (1) the *client* is habitually resident outside the *EEA* and not present in the *EEA* when the relevant application is signed; or
 - (2) the purchase is by a *discretionary investment manager* on behalf of a *retail client*; or
 - (3) the sale is *arranged* or *personally recommended* by an *investment manager* and the *client* has agreed that a *key features document* or *simplified prospectus* is not required; or
 - (4) a *retail client* is purchasing a holding in a *scheme* in which the *client* already has a holding, or the *client* is switching from one class of *shares* or *units* to another in the same *scheme*, and the relevant *document* has already been provided to that *client*.

[**Note:** articles 1, 33(1), and 44 of the *UCITS directive*]

- 15.5.5 G This chapter does not act to cancel *distance contracts* entered into by an *appointed representative*, or where applicable, by a tied agent, as principal such as a *distance contract* to provide advisory services, but the *Distance Marketing Regulations* (regulations 9 to 13, see regulation 4(3)) may have this effect.

Long term care insurance

- 16.6.7 R At each anniversary of the date on which a long-term care insurance contract which is based on single premium investment bonds was entered into, the insurer must:
- (1) provide the retail client with a table based on the format of COBS 13 Annex 3 2.2R containing at least the current fund value and projected future policy values (as in column "What you might get back"):
 - (2) where it is the case, inform the retail client of the possibility that future policy values may be insufficient to fulfil the original purpose of the contract; and

- (3) inform the *retail client* how to obtain advice on *investments* in respect of *long-term care insurance contracts*, and that it is in his best interest to do so.

Income withdrawals

16.6.8 R At intervals no longer than 12 *months* from the date of an election by a *retail client* to make *income withdrawals*, the relevant *product provider* must:

- (1) provide the *retail client* with such information required by *COBS 13 Annex 2 2.9R* as will enable the *retail client* to review the election; and
- (2) inform the *retail client* how to obtain *advice on investments* in respect of his *income withdrawals*, and that it would be in his best interests to do so.

...

Insert the following text into COBS 18. All text, apart from some headings, is new and not underlined.

18 Specialist Regimes

...

Energy market activity and oil market activity – non-MiFID business

- 18.2.3 R Only the *COBS* provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not:
- (1) *MiFID* or equivalent *third country business*; or
- (2) *energy market activity* or *oil market activity* set out in *COBS 18.2.4R*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-commerce

12	Investment research
16.2	Occasional reporting

Energy market activity and oil market activity – dealings with or through authorised persons

- 18.2.4 R Only the *COBS* provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not *MiFID* or *equivalent third country business* but which, if the *firm* were not *authorised*, would not be a *regulated activity* because of article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) or article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

COBS	Description
1	Application
2.4	Agent as client and reliance on others
4.12	Unregulated collective investment schemes
5.2	E-commerce

Other non-MiFID business related to commodity or exotic derivative instruments

- 18.2.5 R *COBS* applies as set out in the table to *firms* in respect of activities referred to in the *general application rule* related to:
- (1) *commodity futures*; or
 - (2) *commodity options*; or
 - (3) *contracts for differences* related to an underlying *commodity*; or
 - (4) other *futures* or *contracts for differences* which are not related to *commodities*, financial instruments or cash;

which is not *MiFID* or *equivalent third country business* and *energy market activity* or *oil market activity*.

Application of COBS to other non-MiFID business related to commodity derivative instruments
All of <i>COBS</i> applies, except <i>COBS</i> 18.2.6R to <i>COBS</i> 18.2.9E applies instead of <i>COBS</i> 11.2 (Best execution)

Best execution for other non-MiFID business related to commodity and exotic derivative instruments

- 18.2.6 R A *firm* that *executes* a *customer order* in the course of carrying out activities referred to in *COBS* 18.2.5R must provide best execution.

Exceptions to best execution

- 18.2.7 R The duty to provide best execution does not apply where:
- (1) the *firm* has agreed with a *professional client* that it does not owe a duty of best execution to him; or
 - (2) the *firm* relies on another *person* to whom it passes a *customer order* for *execution* to provide best execution, but only if it has taken reasonable care to ensure that he will do so.

Providing best execution

- 18.2.8 R To provide best execution, a *firm* must:
- (1) take reasonable care to ascertain the price which is the best available for the *customer order* in the relevant market at the time for transactions of the kind and size concerned; and
 - (2) *execute* the *customer order* at a price which is no less advantageous to the *customer*, unless the *firm* has taken reasonable steps to ensure that it would be in the *customer's* best interests not to do so.

- 18.2.9 E
- (1) In order to take reasonable care to ascertain the price which is the best available, a *firm*:
 - (a) should disregard any *charges* and *commission* made by it or its agents that are disclosed to the *customer* under *COBS* 6.1.9R (Information about costs and associated charges);
 - (b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a *firm* can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should *execute* the *customer order* at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the *customer*;
 - (c) should pass on to the *customer* the price at which it *executes* the transaction to meet the *customer order*; and
 - (d) should not take a *mark-up* or *mark-down* from the price at which it *executes* the *customer order*.
 - (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the *customer order* (see *COBS* 18.2.8(1)R)
 - (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain

the price which is the best available for the *customer order* (see *COBS 18.2.8(1)R*)

18.3 Corporate finance business

...

Corporate finance business – non-MiFID business

- 18.3.3 R Only the provisions of *COBS* in the table apply to *corporate finance business* carried on by a *firm* which is not *MiFID* or equivalent *third country business*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.3	Inducements
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, except <i>COBS 4.5 – COBS 4.11</i>
5.1	The information and other requirements of the Distance Marketing Directive, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i>
5.2	E-commerce
11.7	Personal account dealing
12	Investment research
15	Cancellation, but only in relation to <i>distance contracts</i> concluded with <i>consumers</i>

- 18.3.4 G *COBS 15* (Cancellation) is likely to be of limited application to *corporate finance business*. *Distance contracts* concluded with *consumers* in the course of *corporate finance business* will be exempt from *COBS 15* if the price of the financial service is dependent on fluctuations in the financial market outside the *firm's* control.

...

18.5 Operators of collective investment schemes

Application

18.5.1 R This section applies to a *firm* which is an *operator* of a *collective investment scheme*.

Application or modification of general *COBS* rules for *operators*

18.5.2 R An *operator* when it is carrying on *scheme management activity*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Application of conduct of business rules

Chapter, section or rule	Description	Modifications
1	Application	
2.1.1	Acting honestly, fairly and professionally	
2.3	Inducements	
2.4	Agent as client and reliance on others	
4.2.1 – 4.2.3	Fair, clear and not misleading communications	
5.2	E-Commerce	
11.2	Best execution	In the case of an <i>unregulated collective investment scheme</i> , <i>COBS 18.5.4R</i> (Modification of best execution) applies instead of <i>COBS 11.2</i> in the circumstances set out in <i>COBS 18.5.4R</i> .
11.3	Client order handling	
11.5	Record keeping: client orders and decisions to deal	
11.6	Use of dealing commission	

18.5	Operators of collective investment schemes	
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General modifications

- 18.5.3 R The *COBS rules* specified in the table in *COBS 18.5.2R* apply to an *operator* when it is carrying on *scheme management activity* with the following modifications:
- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *scheme* in respect of which the *operator* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on;
 - (2) in the case of an *unregulated collective investment scheme*, when an operator is required by the rules in *COBS* to provide information to, or obtain consent from, a *customer* or *client*, the *operator* must ensure that the information is provided to, or consent obtained from, a *participant* or a potential *participant* in the *scheme* as the case may be; and
 - (3) references to the service of *portfolio management* in *COBS 11.2* and *11.3* are to be construed as references to the management by an *operator* of *financial instruments* held for or within the *scheme* of which it is the *operator*.

Modification of best execution for operators of unregulated collective investment schemes

- 18.5.4 R The best execution provisions applying to an *operator* of a *collective investment scheme* do not apply in relation to an *unregulated collective investment scheme* whose scheme documents include a statement that best execution does not apply in relation to the *scheme* and in which:
- (1) no *participant* is a *retail client*; or
 - (2) no current *participant* in the *scheme* was a *retail client* on joining the *scheme* as a *participant*.

Scheme documents for an unregulated collective investment scheme

- 18.5.5 R An *operator* of an *unregulated collective investment scheme* must not accept a *retail client* as a *participant* in the *scheme* unless it has taken reasonable steps to offer and, if requested, provide to the potential *participant* scheme documents which adequately describe how the operation of the *scheme* is governed.

Format and content of scheme documents

- 18.5.6 G An *operator's* scheme documents may consist of any number of *documents* provided that it is clear that collectively they constitute the scheme documents and provided the use of several *documents* in no way diminishes the significance of any of the statements which are required to be given to the

potential *participant*.

- 18.5.7 G The scheme documents of an *unregulated collective investment scheme* (if they exist) should make it clear that if a *participant* is reclassified as a *retail client*, this reclassification will not affect certain *scheme management activities* of the *operator* of the *scheme*. In particular, despite such a reclassification, the operator will not be required to comply with the best execution provisions applying to an *operator* of a *collective investment scheme*. It should be noted that there is no requirement that scheme documents must be produced for an *unregulated collective investment scheme*.
- 18.5.8 R Where the *scheme* is an *unregulated collective investment scheme* and no current *participant* in the *scheme* was a *retail client* on joining the *scheme* as a *participant*, the scheme documents must include a statement that:
- (1) explains that if a *participant* is reclassified as a *retail client* subsequent to joining the *scheme* as a *participant*, then the *operator* may continue to treat all *participants* in the *scheme* as though they were not *retail clients*;
 - (2) explains that if a *participant* is reclassified as a *retail client* subsequent to joining the *scheme* as a *participant*, then the modification of best execution (see *COBS* 18.5.5R) will continue to apply to that *scheme*; and
 - (3) explains that, in the event of such a reclassification, the *operator* will not be required to provide best execution in relation to the *scheme*.
- 18.5.9 G The *operator* will still have to comply with other *COBS* provisions as a result of the reclassification of a *participant* as a *retail client*, for example, the requirement to provide *periodic statements to participants* who are *retail clients* in an *unregulated collective investment scheme* (see the rule on periodic statements for an unregulated collective investment scheme (*COBS* 18.5.11R)).

Adequate information

- 18.5.10 E
- (1) In order to provide adequate information to describe how the operation of the *scheme* is governed, an *operator* of an *unregulated collective investment scheme* should include in the scheme documents a provision about each of the items of relevant information set out in the following table (Content of scheme documents).
 - (2) Compliance with (1) may be relied on as tending to establish compliance with *COBS* 18.5.5R.
 - (3) Contravention of (1) may be relied on as tending to establish contravention of *COBS* 18.5.5R.

Table: Content of scheme documents

Content of scheme documents

The scheme documents should include provision about:	
(1)	Regulator The <i>firm</i> statutory status in accordance with <i>GEN 4 Annex 1</i> (Statutory status disclosure);
(2)	Services the nature of the services that the <i>operator</i> will provide in relation to the <i>scheme</i> ;
(3)	Payments for services details of any payment for services payable by the <i>scheme</i> or from the property of the <i>scheme</i> or <i>participants</i> in the <i>scheme</i> to the <i>operator</i> , including where appropriate:
	(a) the basis of calculation;
	(b) how it is to be paid and collected;
	(c) how frequently it is to be paid; and
	(d) whether or not any other payment is receivable by the <i>operator</i> (or to its knowledge by any of its <i>associates</i>) in connection with any transactions effected by the <i>operator</i> with or for the <i>scheme</i> , in addition to or in lieu of any fees;
(4)	Commencement when and how the <i>operator</i> is appointed;
(5)	Accounting the arrangements for accounting to the <i>scheme</i> or <i>participants</i> in the <i>scheme</i> for any transaction effected;
(6)	Termination method how the appointment of the <i>operator</i> may be terminated;
(7)	Complaints procedure how to complain to the <i>operator</i> and a statement that the <i>participants</i> in the <i>scheme</i> may subsequently complain direct to the <i>Financial Ombudsman Service</i> ;
(8)	Compensation whether or not compensation may be available from the <i>compensation scheme</i> should the <i>operator</i> be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained;
(9)	Investment objectives

	the investment objectives for the portfolio of the <i>scheme</i> ;	
(10)	Restrictions	
	(a)	any restrictions on:
	(i)	the types of <i>investments</i> or property which may be included in the portfolio of the <i>scheme</i> ;
	(ii)	the markets on which <i>investments</i> or property may be acquired for the portfolio of the <i>scheme</i> ;
	(iii)	the amount or value of any one <i>investment</i> or asset, or on the proportion of the portfolio of the <i>scheme</i> which any one <i>investment</i> or asset or any particular kind of <i>investment</i> or asset may constitute; or
	(b)	that there are no such restrictions;
(11)	Holding scheme assets	
	(a)	if it is the case, that the <i>operator</i> will:
	(i)	hold <i>money</i> on behalf of the <i>scheme</i> or be the <i>custodian</i> of <i>investments</i> or other property of the <i>scheme</i> ; or
	(ii)	arrange for some other <i>person</i> to act in either capacity and, if so, whether that <i>person</i> is an <i>associate</i> of the <i>operator</i> identifying that <i>person</i> and describing the nature of any association; and
	(b)	in either case:
	(i)	how any <i>money</i> is to be deposited;
	(ii)	the arrangements for recording and separately identifying registrable <i>investments</i> of the <i>scheme</i> and, where the registered holder is the <i>operator's</i> own nominee, that the <i>operator</i> will be responsible for the acts and omissions of that <i>person</i> ;
	(iii)	the extent to which the <i>operator</i> accepts liability for any loss of the <i>investment</i> of the <i>scheme</i> ;
	(iv)	the extent to which the <i>operator</i> or any other <i>person</i> mentioned in (11)(a)(ii), may hold a lien or security interest over <i>investments</i> of the <i>scheme</i> ;
	(v)	where <i>investments</i> of the <i>scheme</i> will be registered collectively in the same name, a statement that the entitlements of the <i>scheme</i> may not be identifiable by separate certificates or other physical documents of title, and that, should the <i>operator</i> default, any shortfall in

			<i>investments</i> of the <i>scheme</i> registered in that name may be shared proportionately among all <i>schemes</i> and any other <i>customers</i> of the <i>operator</i> whose <i>investments</i> are so registered;
		(vi)	whether or not <i>investments</i> or other property of the <i>scheme</i> can be lent to, or deposited by way of collateral with, a third party and whether or not <i>money</i> can be borrowed on behalf of the <i>scheme</i> against the security of those <i>investments</i> or property and, if so, the terms upon which they may be lent or deposited;
		(vii)	the arrangements for accounting to the <i>scheme</i> for <i>investments</i> of the <i>scheme</i> , for income received (including any interest on <i>money</i> and any income earned by lending <i>investments</i> or other property) of the <i>scheme</i> , and for rights conferred in respect of <i>investments</i> or other property of the <i>scheme</i> ;
		(viii)	the arrangements for determining the exercise of any voting rights conferred by <i>investments</i> of the <i>scheme</i> ; and
		(ix)	where <i>investments</i> of the <i>scheme</i> may be held by an eligible <i>custodian</i> outside the <i>United Kingdom</i> , a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those <i>investments</i> , may apply;
(12)	Clients' money outside the United Kingdom if it is the case, that the <i>operator</i> may hold the <i>money</i> of the <i>scheme</i> in a <i>client bank account</i> outside the <i>United Kingdom</i> ;		
(13)	Exchange rates if a liability of the <i>scheme</i> in one currency is to be matched by an asset in a different currency, or if the services to be provided to the <i>operator</i> for the <i>scheme</i> may relate to an <i>investment</i> denominated in a currency other than the currency in which the <i>investments</i> of the <i>scheme</i> are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the <i>investments</i> of the <i>scheme</i> ;		
(14)	Stabilised investments if it is the case, that the <i>operator</i> is to have the right under the <i>scheme documents</i> to effect transactions in <i>investments</i> the prices of which may be the subject of stabilisation;		
(15)	Conflict of interest and material interest if it is the case, that the <i>operator</i> is to have the right under the agreement or <i>instrument constituting the scheme</i> to effect transactions on behalf of the <i>scheme</i> in which the <i>operator</i> has directly or		

	indirectly a material interest (except for an interest arising solely from the participation of the <i>operator</i> as agent for the <i>scheme</i>), or a relationship of any description with another party which may involve a conflict with the <i>operator's</i> duty to the <i>scheme</i> , together with a disclosure of the nature of the interest or relationship;
(16)	Use of dealing commission if the <i>operator</i> receives goods or services in addition to the <i>execution</i> of its <i>customer orders</i> in accordance with the section on the use of dealing commission, the prior disclosure required by the <i>rule</i> on prior disclosure (see <i>COBS 11.6.2R</i>);
(17)	Acting as principal if it is the case, that the <i>operator</i> may act as <i>principal</i> in a transaction with the <i>scheme</i> ;
(18)	Stock lending if it is the case, that the <i>operator</i> may undertake <i>stock lending activity</i> with or for the <i>scheme</i> specifying the type of assets of the <i>scheme</i> to be lent, the type and value of <i>relevant collateral</i> from the borrower and the method and amount of payment due to the <i>scheme</i> in respect of the lending;
(19)	Transactions involving contingent liability investments
	(a) if it is the case, that the agreement or <i>instrument constituting the scheme</i> allows the <i>operator</i> to effect transactions involving <i>contingent liability investments</i> for the account of the portfolio of the <i>scheme</i> ;
	(b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and
	(c) if applicable, that the <i>operator</i> has the authority to effect transactions involving <i>contingent liability investments</i> otherwise than under the rules of a <i>recognised investment exchange</i> or <i>designated investment exchange</i> and in a contract traded thereon;
(20)	Periodic statements
	(a) the frequency of any <i>periodic statement</i> (this should not be less than once every 12 months) except where a <i>periodic statement</i> is not required (see <i>COBS 18.5.13R</i>); and
	(b) whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;
(21)	Valuation

	the bases on which assets comprised in the portfolio of the <i>scheme</i> are to be valued;
(22)	Borrowings if it is the case, that the <i>operator</i> may supplement the funds in the portfolio of the <i>scheme</i> and, if it may do so:
	(a) the circumstances in which the <i>operator</i> may do so;
	(b) whether there are any limits on the extent to which the <i>operator</i> may do so and, if so, what those limits are; and
	(c) any circumstances in which such limits may be exceeded;
(23)	Underwriting commitments if it is the case, that the <i>operator</i> may for the account of the portfolio of the <i>scheme</i> underwrite or sub-underwrite any issue or offer for sale of <i>securities</i> , and:
	(a) whether there are any restrictions on the categories of <i>securities</i> which may be underwritten and, if so, what these restrictions are; and
	(b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
(24)	Investments in other collective investment schemes whether or not the portfolio may contain <i>units</i> in a <i>collective investment scheme</i> either operated or advised by the <i>operator</i> or by an <i>associate</i> of the <i>operator</i> or in a <i>collective investment scheme</i> which is not a <i>regulated collective investment scheme</i> ;
(25)	Investments in securities underwritten by the operator whether or not the portfolio may contain <i>securities</i> of which any issue or offer for sale was underwritten, managed or arranged by the <i>operator</i> or by an <i>associate</i> of the <i>operator</i> during the preceding 12 months.

Periodic statements for an unregulated collective investments scheme

- 18.5.11 R An *operator* of an *unregulated collective investment scheme* must, subject to the exceptions from the requirement to provide a *periodic statement*, provide to *participants* in the *scheme*, promptly and at suitable intervals, a statement in a *durable medium* which contains adequate information on the value and composition of the portfolio of the *scheme* at the beginning and end of the period of the statement.

Promptness, suitable intervals and adequate information

- 18.5.12 E (1) An *operator* should act in accordance with the provisions in the right hand column of the periodic statements table (see *COBS 18.5.15E*) to

fulfil the requirement to prepare and issue *periodic statements* indicated in the left hand column against these provisions.

- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue periodic statements.
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue periodic statements.

Exceptions from the requirement to provide a periodic statement

- 18.5.13 R (1) An *operator* of an *unregulated collective investment scheme* need not provide a *periodic statement*:
- (a) (i) to a *participant* in the *scheme* who is a *retail client* ordinarily resident outside the *United Kingdom*; or
 - (ii) to a *participant* in the *scheme* who is a *professional client*;
- if the *participant* has so requested or the *operator* has taken reasonable steps to establish that the *participant* does not wish to receive it; or
- (b) if it would duplicate a statement to be provided by someone else.
- (2) For a *firm* acting as an *outgoing ECA provider*, the exemption for *retail client participants* ordinarily resident outside the *United Kingdom* applies only to a *participant* in the *scheme* who is a *retail client* ordinarily resident outside the *EEA*.

Record keeping requirements

- 18.5.14 R An *operator* of an *unregulated collective investment scheme* must make a copy of any *periodic statement* it has provided in accordance with the requirement to prepare and issue *periodic statements* to *participants* in the *scheme*. The record must be retained for a minimum period of three years.

- 18.5.15 E Table: Periodic statements

This table belongs to *COBS 18.5.12E*.

Periodic statements			
Suitable intervals	(1)	A <i>periodic statement</i> should be provided at least:	
	(a)	six-monthly; or	
	(b)	once in any other period, not exceeding 12 months, which has been mutually agreed	

			between the <i>operator</i> and the <i>participant</i> in the <i>scheme</i> .		
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:		
			(i)	(A)	The information set out in the table of general contents of a <i>periodic statement</i> ;
				(B)	where the portfolio of the <i>scheme</i> includes uncovered open positions in <i>contingent liability investments</i> , the additional information in the table listing the contents of a <i>periodic statement</i> (see <i>COBS 18.5.18E</i>) in respect of contingent liability investments; or
			(ii)		such information as a <i>participant</i> who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i> , or a <i>professional client</i> , has on his own initiative agreed with the <i>operator</i> as adequate.
		(b)	For a <i>firm</i> acting as an <i>outgoing ECA provider</i> , the words ' <i>United Kingdom</i> ' is replaced by ' <i>EEA</i> '		

18.5.16 G Examples of uncovered open positions include:

- (1) selling a call *option* on an *investment* not held in the portfolio;
- (2) unsettled sales of call *options* on currency in amounts greater than the portfolio's holding of that currency in cash or in *readily realisable investments* denominated in that currency; and
- (3) transactions having the effect of *selling* an index to an amount greater than the portfolio's holdings of *investments* included in that index.

18.5.17 E Table: General contents of a periodic statement

This table belongs to *COBS 18.5.15E*.

General contents of periodic statements			
1	Contents and value		
	(a)	As at the beginning of the account period, the total value of the portfolio of the <i>scheme</i> , being either:	
		(i)	the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately

			preceding period of account is made up; or
		(ii)	in the case of the first <i>periodic statement</i> , the value of the assets comprised in the portfolio on the date on which the <i>operator</i> assumed responsibility for the management of the portfolio.
	(b)	As at the end of the account period:	
		(i)	the number, description and value of each <i>investment</i> held on behalf of the <i>scheme</i> ;
		(ii)	the amount of cash held on behalf of the <i>scheme</i> ; and
		(iii)	the total value of the portfolio of the <i>scheme</i> .
2	<p>Basis of valuation</p> <p>A statement of the basis on which the value of each <i>investment</i> has been calculated and, if applicable, a statement that the basis for valuing a particular <i>investment</i> has changed since the previous <i>periodic statement</i>. Where any <i>investments</i> are shown in a currency other than the usual one used for valuation of the portfolio of the <i>scheme</i>, the relevant currency exchange rates must be shown.</p>		
3	Details of any assets loaned or charged		
	(a)	A summary of those <i>investments</i> (if any) which were, at the closing date, loaned to any third party and those <i>investments</i> (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the <i>scheme</i> ; and	
	(b)	the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.	
4	<p>Transactions and changes in composition</p> <p>Except in the case of a portfolio which aims to track the performance of an external index:</p>		
	(a)	a statement that summarises the transactions entered into for the portfolio of the <i>scheme</i> during the period; and	
	(b)	the aggregate of <i>money</i> and a summary of all investments transferred into and out of the portfolio of the <i>scheme</i> during the period; and	
	(c)	the aggregate of any interest payments, dividends and other benefits received by the <i>operator</i> for the portfolio of the <i>scheme</i> during that period.	
5	Charges and remuneration		

	If not previously advised in writing, a statement for the account period:	
	(a)	of the aggregate charges of the <i>operator</i> and its <i>associates</i> ; and
	(b)	of any <i>remuneration</i> received by the <i>operator</i> or its <i>associates</i> or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the <i>scheme</i> .
6	<p>Movement in value of portfolio</p> <p>A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following:</p>	
	(a)	the aggregate of assets received from <i>participants</i> of the <i>scheme</i> and added to the portfolio of the <i>scheme</i> ;
	(b)	the aggregate of the value of assets transferred, or of amounts paid, to the <i>scheme</i> ;
	(c)	the aggregate income received on behalf of the <i>scheme</i> in respect of the portfolio; and
	(d)	the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the <i>scheme</i> .
<p>Notes:</p> <p>For the purposes of Item 1, where the <i>scheme</i> is a <i>property enterprise trust</i>, it will be sufficient for the <i>periodic statement</i> to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the <i>scheme</i>, rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless an <i>operator</i> could show that different bands were justifiable in the circumstances.</p> <p>The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the <i>scheme</i>.</p> <p>An <i>operator</i> may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.</p>		

18.5.18 E Table: Contents of a periodic statement in respect of contingent liability investments

This table belongs to COBS 18.5.15E.

Contents of a periodic statement in respect of contingent liability investments	
(1)	<p>Changes in value</p> <p>The aggregate of <i>money</i> transferred into and out of the portfolio of the <i>scheme</i> during the account period.</p>

(2)	<p>Open positions</p> <p>In relation to each open position in the portfolio of the <i>scheme</i> at the end of the account period, the unrealised profit or loss to the portfolio of the <i>scheme</i> (before deducting or adding any <i>commission</i> which would be payable on closing out).</p>
(3)	<p>Closed positions</p> <p>In relation to each transaction effected during the account period to close out a position of the <i>scheme</i>, the resulting profit or loss to the portfolio of the <i>scheme</i> after deducting or adding any <i>commission</i>.</p> <p>(Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the <i>scheme</i> in each contract)</p>
(4)	<p>Aggregate of contents</p> <p>The aggregate of each of the following in, or relating to, the portfolio of the <i>scheme</i> at the close of business on the valuation date:</p>
	(a) cash;
	(b) <i>collateral</i> value;
	(c) management fees; and
	(d) <i>commissions</i> attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the <i>participant</i> .
(5)	Option account valuations
	In respect of each open <i>option</i> comprising the portfolio of the <i>scheme</i> on the valuation date:
	(a) the <i>share, future</i> , index or other <i>investment</i> or asset involved;
	(b) (unless the valuation statement follows the statement for the period in which the <i>option</i> was opened) the trade price and date for the opening transaction;
	(c) the market price of the contract; and
	(d) the exercise price of the contract.
	<i>Options</i> account valuations may show an average trade price and market price in respect of an <i>option</i> series where a number of contracts within the same series have been purchased on behalf of the <i>scheme</i> .

18.6 Lloyd's

Application

18.6.1 R This section applies to a *firm* when it carries on *Lloyd's market activities*.

COBS rules that apply to Lloyd's market activities

18.6.2 R Only *COBS 3* (Client categorisation) and the *financial promotion rules* apply when a *firm* is carrying out *Lloyd's market activities*.

18.6.3 G *Firms* are reminded that *syndicate* business plans may be used in ways that bring them within the definition of a *financial promotion*.

Definitions and modifications

18.6.4 R When a *firm* is carrying on *Lloyd's market activities*, any reference in *COBS* to the term:

(1) *designated investment* is to be taken to include the following specified investments:

(a) the *underwriting capacity* of a *Lloyd's syndicate*;

(b) *membership of a Lloyd's syndicate*; and

(c) *rights to or interests in the specified investments* in (a) or (b);

(2) *designated investment business* is to be taken to include the following *regulated activities*:

(a) *advising on syndicate participation at Lloyd's*;

(b) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*; and

(c) *agreeing to carry on the regulated activities* in (a) or (b).

The Principles and Lloyd's market activities

18.6.5 G Whilst *COBS* has limited application to *Lloyd's market activities*, *firms* conducting *Lloyd's market activities* are reminded that they are required to comply with the *Principles*.

18.7 Depositories

18.7.1 R Only the *COBS* provisions in the table apply to a *depository* when acting as such, when carrying on business which is not *MiFID* or *equivalent third country business*:

COBS	Description
2.1	Acting honestly, fairly and professionally
2.3	Inducements, except <i>COBS</i> 2.3.1R(2)(b) and <i>COBS</i> 2.3.2R
4	Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving</i> a <i>financial promotion</i>
11.7	Personal account dealing

18.8 OPS firms – non scope business

18.8.1 R *COBS* applies to an *OPS firm* when it carries on business which is not *MiFID* or equivalent third country business, with the following modifications:

- (1) references to *client* are to be taken to be references to the *OPS* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on;
- (2) if an *OPS firm* is required by any *COBS rule* to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* for whom that *firm* is acting; and
- (3) *COBS* is modified by the addition of the *rules* in the table below:

Additional COBS rules applicable to an OPS firm	
COBS	Description
16.2.6R (4)	If an <i>OPS firm</i> carries on <i>OPS activity</i> for an <i>OPS trustee</i> who is a <i>professional client</i> and who is habitually resident in the <i>United Kingdom</i> , it may rely upon the exceptions in <i>COBS</i> 16.2.1.R(2) or <i>COBS</i> 16.2.6R(1) only if it provides a <i>periodic statement</i> to the <i>professional client</i> containing the information required by <i>COBS</i> 18.8.2.R

18.8.2 R Where an *OPS firm* conducts *OPS activity* and is obliged to provide a *periodic statement*, the *periodic statement* must contain the information in the table below.

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity	
(1)	Investment objectives
	A statement of any investment objectives governing the mandate of the portfolio of the <i>occupational pension scheme</i> as at the

	closing and starting date of the <i>periodic statement</i> .
(2)	Details of any asset loaned or charged
	<p>(a) a summary of any <i>investments</i> that were, at the closing date, lent to a third party and any <i>investments</i> that were at that date charged to secure borrowings made on behalf of the portfolio; and</p> <p>(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.</p>
(3)	<i>Transactions</i> and changes in composition
	<p>(a) a summary of the <i>transactions</i> entered into for the portfolio during the period and a comparison with the previous period;</p> <p>(b) the aggregate of <i>money</i> and a summary of all <i>investments</i> transferred into and out of the portfolio during the period; and</p> <p>(c) the aggregate of any interest payments, dividends and other benefits received by the firm for the portfolio during that period and a comparison with the previous period.</p>
(4)	<i>Charges</i> and <i>remuneration</i>
	<p>If not previously advised in writing, a statement for the period of account:</p> <p>(a) of the aggregate <i>charges</i> of the <i>firm</i> and its <i>associates</i>; and</p> <p>(b) of any <i>remuneration</i> received by the <i>firm</i> or its <i>associates</i> or both from a third party in respect of the <i>transactions</i> entered into, or any other services provided, for the portfolio.</p>
(5)	Movement in value of portfolio
	<p>A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:</p> <p>(a) the aggregate of assets received from the <i>occupational pension scheme</i> and added to the portfolio;</p> <p>(b) the aggregate of the value of assets transferred, or of amounts paid, to the <i>client</i>;</p> <p>(c) the aggregate income received on behalf of the <i>client</i> in respect of the portfolio; and</p> <p>(d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.</p>

18.8.3

R *COBS 8 (Client agreements)* does not apply to an *OPS firm*, where the *OPS firm* is carrying on *designated investment business* as part of its *OPS activity*

in relation to an *occupational pension scheme* of which it is a *trustee*.

18.9 ICVCs

- 18.9.1 R Only the *financial promotion rules* in *COBS* apply to an *ICVC*.
- 18.9.2 G *Firms* should note that the *operator* of an *ICVC* when it is undertaking *scheme management activity* will be subject to *COBS* 18.5.2R.

18.10 UCITS qualifiers and service companies

- 18.10.1 R The *COBS* provisions in the table apply to a *UCITS qualifier* and a *service company*:

COBS	Description
4	Communications to clients, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-Commerce
12.4	Investment Research recommendations: required disclosures

18.11 Authorised professional firms

- 18.11.1 R *COBS* applies to an *authorised professional firm*, except that its application in relation to *non-mainstream regulated activities* and *financial promotion* is modified as set out below.
- 18.11.2 R *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:
- (1) the *fair, clear and not misleading rule* applies;
 - (2) the *financial promotion rules* apply as modified below;
 - (3) *COBS* 7 (Insurance mediation) applies but only if the *designated professional body* of the *firm* does not have rules approved by the *FSA* under section 332(5) of the *Act* that implement articles 12 and 13 of the *Insurance Mediation Directive* and that apply to the *firm*; and
 - (4) *COBS* 8.1.3R (Client agreements) applies, except for the requirement to provide information on conflicts of interest.
- 18.11.3 R The *financial promotion rules* do not apply to an *authorised professional firm* in relation to the *communication* of a *financial promotion* if:

- (1) the *firm's* main business is the practice of its profession (see *IPRU(INV) 2.1.2R(3)*);
- (2) the *financial promotion* is made for the purposes of and incidental to the promotion or provision by the *firm* of its professional services or its *non-mainstream regulated activities*; and
- (3) the *financial promotion* is not *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business;

however, a *firm* may use the exemptions for promoting *unregulated collective investment schemes* in *COBS 4* (Communicating with clients, including financial promotions) if it wishes.

18.11.4 G The *rules* on *approving financial promotions* continue to apply.

19 Pensions supplementary provisions

19.1.4 R When a *firm* compares the benefits likely to be paid under a *defined benefits pension* scheme with the benefits afforded by a *personal pension scheme* or *stakeholder pension scheme* (*COBS 19.1.2R(1)*), it must:

(1) assume that:

(a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity (cross reference to follow later in <i>COBS 13 Annex 2 3.1R(6)</i>) or the rate for annuities in payment (if less)	
(b) the retail prices index is	2.5%
(c) the average earnings index and the rate for section 21 orders is	4.0%
(d) the pre-retirement limited price indexation revaluation is	2.5%
(e) the post-retirement limited price increases at	2.5%
(f) the index linked pensions rate is the intermediate rate of return in cross reference to follow later <i>COBS 13 Annex 2 3.1R(6)</i> for annuities linked to the retail prices index;	

or use more cautious assumptions;

(2) ...

...

19.2 Personal pensions, FSAVCs, and AVCs

Financial promotions

19.2.1 R *A financial promotion for an AVC or a FSAVC should contain a prominent warning that, as an alternative:*

- (1) ~~(for AVC promotions) FSAVCs are available;~~
- (2) ~~(for FSAVC promotions) an AVC arrangement exists, and that details can be obtained from the scheme administrator (if that is the case).~~

...

19.3 Product disclosure to members of occupational pension schemes

19.3.1 R (1) ~~When a firm sells, personally recommends or arranges the sale of a new group or master life policy, the first in a series of individual life policies or the first units in a particular key features scheme or simplified prospectus scheme to or for the trustees of an occupational pension scheme for an AVC, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the AVC and any alternative personal pension schemes and stakeholder pension schemes available~~ the payment of an AVC contribution by a member of an occupational pension scheme to be secured by a packaged product purchased by the scheme trustees, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the AVC and any alternative personal pension schemes and stakeholder pension schemes available.

(2) ...

...

COBS TP 1: Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
1.1	COBS 3	G	... <u>(6) COBS TP 3.9 contains transitional categorisation provisions in relation to</u>	From 1 November 2007 indefinitely	1 November 2007

			<u>clients of a firm that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is not MiFID or equivalent third country business.</u>		
...
<u>1.9</u>	<u>COBS 3</u>	<u>R</u>	<p><u>(1) A new client that could have been correctly categorised as an intermediate customer under the rules in force on 31 October 2007:</u></p> <p><u>(a) may be treated as an elective professional client if it could have been categorised as an expert private customer that had been categorised as an intermediate customer in accordance with COB 4.1.9R on the basis of its experience and understanding; or</u></p> <p><u>(b) otherwise may be treated as a per se professional client, subject to (3) below.</u></p> <p><u>(2) A firm may categorise as an eligible counterparty or a per se professional client any new client that could have been correctly categorised as an market counterparty under the rules in force on 31 October 2007, provided that the firm may only treat the client as an eligible counterparty for the purposes of eligible counterparty business.</u></p> <p><u>(3) Clients categorised under COBS TP 3.9 must be dealt with in</u></p>	<u>From 1 November 2007 to 30 June 2008</u>	<u>1 November 2007</u>

			accordance with the relevant procedures and notifications in <i>COBS 3</i> .		
--	--	--	--	--	--

COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
<u>2.-1</u>	<u>COBS 4</u>	<u>R</u>	<p><u>A firm communicating other than in relation to <i>MiFID business</i> is not required to comply with the <i>financial promotion rules</i> in relation to any <i>financial promotion</i> that:</u></p> <p><u>(1) is in writing and was designed to be <i>communicated</i> for longer than three months in similar form;</u></p> <p><u>(2) was subject to, and complied with, the relevant <i>rules</i> in <i>COB 3</i> that were in force on or before 31 October 2007 (or was exempt from them); and</u></p> <p><u>(3) continues to be fair, clear and not misleading.</u></p>	<u>1 November 2007 to 31 October 2008</u>	<u>1 November 2007</u>
...					
<u>2.4 A</u>	<u>COBS 11.2</u>	<u>R</u>	<p><u><i>COBS 11.2</i> (Best execution) does not apply to an order from an <i>ISA manager</i> when acting as such which is not a <i>MiFID investment firm</i> or a <i>third country investment firm</i> for the purchase of or sale of <i>units</i> in a <i>regulated collective investment</i></u></p>	<u>From 1 November 2007 to 31 October 2008</u>	<u>1 November 2007</u>

			<i>scheme from or to the operator of that scheme.</i>		
<u>2.4B</u>	<u>COBS 11.2</u>	<u>R</u>	<u>COBS 11.2 (Best execution) does not apply to a client order for the purchase of or sale of units in a regulated collective investment scheme directly from or to the operator of that scheme.</u>	<u>From 1 November 2007 to 31 October 2008</u>	<u>1 November 2007</u>
<u>2.4C</u>	<u>COBS 12.2 and COBS 12.3</u>	<u>R</u>	<u>COB 7.16, as it was in force on 31 October 2007, continues to apply to a firm which is not a MiFID investment firm or a third country investment firm which prepares investment research for publication or distribution to its clients, or that publishes or distributes investment research to its clients unless the firm decides to comply with COBS 12.2 and 12.3 sooner than 1 May 2008.</u>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.4 D</u>	<u>COBS 12.2 and COBS 12.3</u>	<u>G</u>	<u>The effect of TP 2.4CR is that for a firm which is not a MiFID investment firm or third country investment firm carrying on the activities set out in the transitional rule TP 2.4CR COB 7.16 will continue to apply until 1 May 2008, unless the firm decides to comply with COBS 12.2 and 12.3 sooner than 1 May 2008. From 1 May 2008 a firm to which TP 2.4CR applies must comply with the investment research provisions in COBS 12.2 and 12.3.</u>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.4E</u>	<u>COBS 12.2 and COBS 12.3</u>	<u>R</u>	<u>If a firm carrying out the activities set out in TP 2.4CR decides to comply</u>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>

			<p><u>with COBS 12.2 and 12.3 sooner than 1 May 2008:</u></p> <p><u>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</u></p> <p><u>(2) from the effective date it must comply with COBS 12.2 and 12.3</u></p>		
2.5	COBS 13	R	<p><u>(1) A firm is not required to prepare a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information document</i> for a product if:</u></p> <p><u>(1a) the rules would have required the <i>firm</i> to prepare <i>key features</i> for the product if they were still in force; and</u></p> <p><u>(2b) the <i>firm</i> prepares <i>key features</i> in accordance with the rules as if they were still in force.</u></p> <p><u>(2) A firm is not required to prepare a <i>standardised deterministic projection</i> or an <i>alternative projection</i> for a product in accordance with COBS 13.5.1R or 13.5.2R if the <i>firm</i> prepares its <i>projections for life policies, key features schemes, simplified prospectus schemes</i> and <i>stakeholder pension schemes</i> in accordance with the rules as if they were still in force.</u></p> <p><u>(3) For these purposes of this rule, ‘the rules’ are the <i>rules</i> on product disclosure and the customer’s right to cancel or withdraw (COB 6) that were in force on 31</u></p>	From 1 November 2007 until 31 October 2008	1 November 2007

			October 2007.		
2.6	<i>COBS</i> 14.1 and <i>COB</i> 14.2	R	<p>A <i>firm</i> is not required to provide a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information document</i> for a product if:</p> <p>(1) ...</p> <p>...</p>	From 1 November 2007 until 31 October 2008	1 November 2007
2.8 A	<i>COBS</i> 18	R	<p><i>COB</i>, as it was in force on 31 October 2007, continues to apply to the following activities and <i>firms</i> in relation to business which is not <i>MiFID</i> or equivalent third country business and <i>COBS</i> does not apply during the transitional period unless the <i>firm</i> decides to comply with <i>COBS</i> sooner than 1 May 2008:</p> <p>(1) <i>Energy market activity</i> and <i>oil market activity</i>;</p> <p>(2) activities referred to in the <i>general application rule</i> related to:</p> <p>(a) <i>commodity futures</i>;</p> <p>(b) <i>commodity options</i>;</p> <p>(c) <i>contracts for differences</i> related to an underlying <i>commodity</i>; or</p> <p>(d) other <i>futures</i> or <i>contracts for differences</i> which are not related to <i>commodities</i>, <i>financial instruments</i> or <i>cash</i>.</p>	From 1 November 2007 to 30 April 2008	1 November 2007

			<p><u>which is not energy market activity or oil market activity;</u></p> <p><u>(3) corporate finance business;</u></p> <p><u>(4) a firm which is an operator of a collective investment scheme;</u></p> <p><u>(5) Lloyd's market activities;</u></p> <p><u>(6) depositaries;</u></p> <p><u>(7) OPS firms</u></p>		
<u>2.8B</u>	<u>COBS 18</u>	<u>G</u>	<p><u>The effect of TP 2.8AR is that for firms carrying on the activities set out in the transitional rule TP 2.8AR COB will continue to apply until 1 May 2008, unless the firm decides to comply with COBS sooner than 1 May 2008. From 1 May 2008 a firm to which TP 2.8AR applies must comply with COBS as set out in COBS 18.</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.8C</u>	<u>COBS 18</u>	<u>R</u>	<p><u>If a firm carrying out the activities set out in TP 2.8AR decides to comply with COBS sooner than 1 May 2008:</u></p> <p><u>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</u></p> <p><u>(2) subject to TP 2.8AR, from the effective date it must comply with COBS as set out in the relevant parts of COBS 18.</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.8D</u>	<u>COBS 18</u>	<u>G</u>	<p><u>In accordance with transitional rules TP 2.8AR and TP 2.8CR, the following provisions of COB will continue to apply to a firm carrying out the activities set out in</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>

			<p><u>TP 2.8AR that decides to comply with COBS before 1 May 2008:</u></p> <p><u>(1) COB 2.4 (Chinese walls);</u></p> <p><u>(2) COB 5.10 (Corporate finance business issues);</u> and</p> <p><u>(3) COB 7.1 (Conflicts of interest and material interest)</u></p>		
<u>2.8E</u>	<u>COBS 18</u>	<u>R</u>	<p><u>A decision by a firm carrying out activities set out in TP 2.8AR to comply with COBS before 1 May 2008 must be made in relation to all the COBS provisions applicable to it. The firm may not 'cherry pick'.</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
...					
<u>2.12</u>	<u>COBS</u>	<u>R</u>	<p><u>COB 2.4 (Chinese walls) and COB 7.1 (Conflicts of interest) as they were in force on 31 October 2007 continue to apply to designated investment business carried on by a firm which is not MiFID or equivalent third country business.</u></p>	<u>From 1 November 2007 indefinitely</u>	<u>1 November 2007</u>
<u>2.13</u>	<u>COBS</u>	<u>R</u>	<p><u>COB 5.10 (Corporate finance business issues) as it was in force on 31 October 2007 continues to apply to corporate finance business carried on by a firm which is not MiFID or equivalent third country business.</u></p>	<u>From 1 November 2007 indefinitely</u>	<u>1 November 2007</u>

Annex N

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

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

- 1.1.1 G ~~ICOB applies to every firm as specified~~ in accordance with the rules in the remainder of this chapter.
- 1.1.2 G ...
- (2) ICOB implements, in part, provisions in a number of EC directives, including:
- ...
- 1.2.12 R ICOB does not apply to a *service company*, except for:
- (1) ~~ICOB 1.4 (Application in respect of electronic commerce activities and communications);~~ [deleted]
- ...
- Pure protection contracts: election to apply ~~COB~~ COBS rules
- 1.2.17 R ...
- Incoming e-commerce activities
- 1.3.8 R ~~The territorial scope of this sourcebook is modified by ECO in relation to electronic commerce activities and electronic commerce communications.~~
- This sourcebook does not apply to an incoming ECA provider acting as such, except that the rules on financial promotion continue to apply for incoming electronic commerce activities carried on by an insurer unless its country of origin applies rules of like effect.
- 1.3.9 G ~~ICOB 1.4 contains guidance on how this sourcebook is modified by ECO.~~ [deleted]
- 1.3.10 R ...
- (3) Notwithstanding the other *rules* in this section, the only provisions in *ICOB* that apply to an *incoming EEA firm* carrying on *passported activities* under the *IMD* in the *United Kingdom* are:
- (a) ~~ICOB 1.3.8 R (Electronic commerce activities and communications) and ICOB 3 (Financial promotion)~~
- ...

Delete 1.4 in its entirety. The deleted text is not shown struck through.

1.4 [deleted]

...

1 Annex 2G Summary of Handbook provisions for insurance intermediaries

...

	Module	Application
...		
Business Standards	...	
	Market conduct, <i>MAR</i>	<p>Does not apply to a <i>firm</i> when doing either (1) or (2). However, certain chapters of <i>MAR</i> will apply if:</p> <p>(a) the <i>insurance intermediary</i> also engages in <i>behaviour</i> in relation to <i>qualifying investments</i> traded on prescribed markets - then <i>MAR 1</i> applies;</p> <p>(b) the <i>insurance intermediary</i> undertakes or is concerned with offers of securities that may involve price stabilising activity - then <i>MAR 2</i> applies;</p> <p>(c) the <i>insurance intermediary</i> carries on <i>inter professional business</i> - then <i>MAR 3</i> applies; (d) the <i>insurance intermediary</i> carries on <i>designated investment business</i> - then <i>MAR 4</i> applies.</p>
	Conduct of Business sourcebook, <i>COB</i> <u><i>COBS</i></u>	<p>Does not apply to an <i>insurance intermediary</i> when doing (1) or (2) unless it opts to provide <i>key features</i> a <i>key features document</i> instead of a policy summary (see <i>ICOB 5.5.4R</i>). However, <i>COB</i> <u><i>COBS</i></u> may apply to an <i>insurance intermediary</i> if it also carries on any other <i>regulated activity</i> or <i>communicates</i> or <i>approves a financial promotion</i> not relating to <i>non-investment insurance contracts</i> or <i>qualifying credit</i>.</p>

	...	
...		
Specialist Sourcebooks	...	
	Electronic Commerce Directive, <i>ECO</i>	Applies to an <i>insurance intermediary</i> doing (1) or (2).
	...	
...		

After ICOB 2.6 insert the following new section. The inserted text is not underlined.

...

2.6A E-Commerce

Application

2.6A.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

2.6A.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *FSA register* and includes its *FSA register* number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:

- (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

- 2.6A.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

- 2.6A.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

- 2.6A.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 2.6A.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and before the order is placed by

the recipient of the service:

- (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors before the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
 - (4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors before the placing of an order.

[**Note:** articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

- 2.6A.7 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

- 2.6A.8 R The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** article 10(4) and 11(3) of the *E-Commerce Directive*]

...

- 3.4.1 R This chapter applies to a *firm* ~~only~~ in relation to the communication, or approval, of a non-investment financial promotion to:

- (1) ~~the communication of a non-investment financial promotion to a person inside in the United Kingdom;~~ and
- (2) ~~the approval of a non-investment financial promotion for~~

communication to a person inside the United Kingdom; (if the financial promotion is an electronic commerce communication made from an establishment in the United Kingdom) a person in an EEA State other than the United Kingdom.

subject to ~~ICOB 3.4.3R (Exceptions to territorial scope)~~.

- 3.4.2 G ...
- (2) The exemptions in *ICOB 3.3.6R (Application: what?; Exemptions)* also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act (Restrictions on financial promotion)*) (see *ICOB 3.3.6R(2)*) and *PERG 8.12.2G (Financial promotions to overseas recipients (article 12))*, the exemptions for overseas communicators (see *ICOB 3.3.6R(3)*) and the exemption for ~~incoming~~ electronic commerce communications made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom (see *PERG 8.12.38G (Incoming electronic commerce communication (article 20B))*).
- (3) ~~In the context of the provision of an electronic commerce activity to an EEA ECA recipient, the scope of ICOB 3 is extended by ECO 2.2.3R (Financial promotion.) This means that ICOB 3 will apply for communications to EEA ECA recipients. [deleted]~~

Extensions to territorial scope

- 3.4.3 R ~~The Notwithstanding ICOB 3.4.1R, the following parts of this chapter apply without any territorial limitation if a firm approves a non-investment financial promotion:~~
- (1) *ICOB 3.1 to ICOB 3.6 (Application, Purpose and General); and*
- (2) *ICOB 3.8.1R(1) (Non-investment financial promotions: clear, fair and not misleading: comparisons).*

ICOB 4 **Initial disclosure document ("IDD")**

Annex 1

ICOB 4 **Combined initial disclosure document ("CIDD") [deleted - see ~~COB-4~~ Annex 5 COBS 6 Annex 2G]**

Annex 2

...

- 5.5.4 R ~~A firm may provide key features that meet the requirements of ~~COB-6~~ COBS 13 and 14 on the content of the key features, instead of a policy summary, except that a firm is not required to include the title "key features of the [name of product]". The key features must include the information~~

required in *ICOB 5.5.5R(6), (10) and (13)* (cross-references from significant or unusual exclusions or limitations to related sections of the *policy document*, a telephone number or address for notification of *claims* and the key facts logo), in addition to that required by ~~COB-6~~ COBS 13 and 14, but this *rule* does not require a *firm* to meet the requirements of ~~COB 6.5.12R or COB 6.5.38R~~.

Annex O

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, except where otherwise indicated.

Electronic commerce activities and communications

- 1.3.3 R ~~The territorial scope of this sourcebook is modified by ECO in relation to electronic commerce activities and electronic commerce communications. This sourcebook does not apply to an incoming ECA provider acting as such.~~

Related investment advice

- 2.2.5 G *Firms* are reminded that they should follow the relevant ~~rules~~ in ~~COB-5~~ COBS 6 and ~~COB-6~~ COBS 13 relating to advice and disclosure on *investments* if they are *advising the customer* on an *investment* such as an annuity associated with an *equity release transaction* or an *ISA* used as a *repayment vehicle*.

After MCOB 2.7 insert the following new section. The text is not underlined.

2.7A E-Commerce

Application

- 2.7A.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* or another *EEA state*, in relation to a *home finance transaction*.

Information about the firm and its products or services

- 2.7A.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:
- (1) its name;
 - (2) the geographic address at which it is established;
 - (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;

- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *FSA register* and includes its *FSA register* number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where the professional title was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

- 2.7A.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

- 2.7A.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

- 2.7A.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 2.7A.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and before the order is placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors before the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
 - (4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors before the placing of an order.

[**Note:** articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

- 2.7A.7 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

- 2.7A.8 R The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** article 10(4) and 11(3) of the *E-Commerce Directive*]

...

- 3.3.1 R This chapter applies to a *firm* ~~only~~ in relation to:
- (1) the *communication* of a *financial promotion* to a person ~~inside in~~ the United Kingdom;
 - (2) the *communication* of an *unsolicited real time financial promotion* of *qualifying credit* or ~~of a home reversion plan~~, unless: it is made from a place, and for the purposes of a business which is only carried on, outside the United Kingdom;
 - (a) ~~it is made from a place outside the United Kingdom~~;
 - (b) ~~it is made for the purposes of a business which is carried on outside the United Kingdom and which is not carried on in the United Kingdom; and~~
 - (3) the approval of a *non-real time financial promotion* of *qualifying credit* or a *home reversion plan* for *communication* to a person ~~inside~~ the United Kingdom; and

subject to ~~MCOB 3.3.3R (Exceptions to territorial scope: rules without territorial limitation) and MCOB 3.3.5R (Exceptions to territorial scope: distance contracts)~~.

- (4) the *communication* or approval for *communication* of a *financial promotion* that is an *electronic commerce communication* to a person in an EEA state other than in the United Kingdom.

- 3.3.2 G
- (1) ...
 - (2) The exemptions in *MCOB 3.2.5R* (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see *MCOB 3.2.5R(4)*), ~~and~~ the exemptions for overseas communicators (see *MCOB 3.2.5R(4)*) and the exemption for ~~incoming~~ *electronic commerce communications made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom* (see *PERG 8.12.38G* (Incoming electronic commerce communication (article 20B))).
 - (3) ~~In the context of the provision of an *electronic commerce activity* to an *EEA ECA recipient*, the scope of *MCOB* is extended by *ECO 2.2.3R* (Financial promotion). This means that *MCOB 3* will apply for *communications* to *EEA ECA recipients*. [deleted]~~

4 Annex 1 Initial disclosure document ("IDD")

...

4 Annex 2 **Combined initial disclosure document (~~'CIDD'~~) [deleted - see ~~COB 4 Annex 5R~~ COBS 6 Annex 2G]**

5.6.52 R Where all or part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*:

...

(3) if the *illustration* includes a quotation for the payments that would need to be made into the *repayment vehicle* by the *customer*:

... ...

(d) the *illustration* must refer the *customer* to the individual product disclosure documentation required by the Conduct of Business sourcebook (COBS).

8 Annex 1 **Initial disclosure document (~~'IDD'~~)**

...

8 Annex 2 **Combined initial disclosure document (~~'CIDD'~~) [deleted]**

Annex P

Amendments to the Client Assets sourcebook (CASS)

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

- 1.3.4 R CASS does not apply to an incoming ECA provider acting as such.
Appointed representatives and tied agents
- 1.4.5 G (1) Although CASS does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the *Act*). In determining whether a *firm* has complied with any provision of CASS, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the *Act*). Equally, CASS does not apply directly to tied agents. A MiFID investment firm will be fully and unconditionally responsible for the acts and omission of the tied agents that it appoints.
- (2) *Firms* should also refer to SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives and tied agents*.
- 1.4.8 R ~~In relation to a trustee firm which is not a depositary, when acting as such, and which falls within COB 11.5.1 R(1):~~
- (1) CASS does not apply to a trustee firm which is not a depositary or the trustee of a personal pension scheme or stakeholder pension scheme, except for the *MiFID custody chapter*, the *MiFID client money chapter* and the *mandate rules*; ~~and~~.
- (2) In the MiFID custody chapter, the MiFID client money chapter and the mandate rules, 'client' means 'trustee', 'trust', 'trust instrument' or 'beneficiary', as appropriate.
- Application to electronic media ~~and E-Commerce~~
- 1.5.1 G ...
~~Modification of CASS resulting from the E-Commerce Directive~~
- 1.5.4 G ~~The application of CASS may be modified by ECO (as a result of the E-Commerce Directive implementation). These modifications will only apply to a firm which carries on electronic commerce activity. Firms should consult ECO for details. [deleted]~~

- 2.1.9 R The *custody rules* do not apply to:
- ...
- (4) a *MiFID investment firm* or a *third country investment firm* that has opted to act in accordance with the *MiFID custody chapter* in respect of *designated investments* that it safeguards and administers which are subject to the opt-in to the *MiFID custody chapter*.
- 2.1.10A G *Firms* that safeguard and administer *designated investments* including *financial instruments* and that are subject to both sets of *custody rules*, should refer to CASS 6.1.17R (Opt-in to the MiFID custody rules) which contains a provisions enabling these ~~firms~~ *firms* to opt to comply solely with the *MiFID custody chapter*. This is also relevant to the *equivalent business of a third country investment firm*.
- 2.3.2 R Before a *firm* provides safe custody services to a *client*, unless CASS 2.3.5R applies, the *firm* must notify the *client* as to the appropriate terms and conditions which apply to this service, including, where applicable, those covering:
- ...
- (3) the circumstances in which the *firm* may realise a *safe custody investment* held as *collateral* to meet the *client's* liabilities (see ~~COB 7.8~~) (~~Realisation of a private customer's assets CASS 2.3.2AR~~);
- 2.3.2A R A *firm* must not realise a *retail client's* assets unless it is legally entitled to do so and it has either:
- (1) set out in a client agreement provided to the *retail client*:
- (a) the action it may take to realise any assets of the *retail client*;
- (b) the circumstances in which it may do so; and
- (c) each asset (if relevant) or type or class of asset over which it may exercise the right; or
- (2) give the *retail client* notice (oral or written) of its intention to exercise its rights at least three *business days* before it does so.
- 2.3.18 R A *firm* may include the information required by CASS 2.3.17R in any statement provided by the *firm* to the *client* in accordance with ~~COB 8.2~~ (~~Periodic statements~~), the rules on periodic reporting in COBS 16.3, or by other separate *documents*, as long as they are prepared in relation to the same date and delivered to the *client* within a reasonable period of one another.

Stock lending

- 2.5.4 R A *firm* must not undertake or otherwise engage in *stock lending activity* with or for a *customer* unless:
- (1) the *firm* has obtained the consent of the *customer*; and
 - (2) the *stock lending activity* is subject to appropriate terms and conditions, which includes a provision that, in the case of a *retail client*, the *firm* may undertake *stock lending* with or for the *retail client* (if that is the case), specifying the assets to be lent, the type and value of the *relevant collateral* from the borrower and the method and amount of payment due to the *retail client* in respect of the lending.
- 2.5.5 E [deleted]
- 4.1.2 R This chapter does not apply with respect to:
- ...
- (4) ~~money held by *depositories* which are regulated by COB 11 to which chapter 11 (Trustee and depositary activities) of COB applied, or would have applied, on 31 October 2007; or~~
 - (6) *client money* held by a *firm* which:
 - (a) receives or holds *client money* in relation to *designated investment business* other than *MiFID business*; but which
 - (b) in relation to such *client money* elects to act in accordance with the *MiFID client money chapter* under the opt-in to that chapter (CASS 7.1.3R(4)).
- 4.1.2C G *Firms* that hold *client money* in the course of, or in connection with, *designated investment business* that is not *MiFID business* and also in the course of, or in connection with, *MiFID business* (and are therefore subject to the *non-directive client money chapter* and the *MiFID client money chapter*), should refer to CASS 7.1.3R(4) (Opt-in to the *MiFID client money rules*) which contains ~~a provisions~~ enabling these *firms* to opt to comply solely with the *MiFID client money chapter*. This is also relevant to the *equivalent business of a third country investment firm*.
- 4.1.24 G When a *firm* realises *client collateral* to meet liabilities of that *client*, it should do so in accordance with the relevant terms and conditions and other requirements (see CASS 2.3.2R to CASS 2.3.6R), ~~and for a *retail client*, in accordance with COB 7.8 (Realisation of a private customer's assets).~~
- 5.1.8 G *Firms* which carry on *designated investment business* which may, for example, involve them handling *client money* in respect of life assurance business should refer to the *non-directive client money chapter* which includes provisions enabling *firms* to elect to comply solely with that chapter or with the *insurance client money chapter* in respect of that

business. *Firms* that also carry on ~~MiFID business~~ MiFID or equivalent third country business may elect to comply solely with the *MiFID client money chapter* with respect of *client money* in respect of which the *non-directive client money chapter* or the *insurance client money chapter* apply.

Application

- 6.1.1 R This chapter (the *custody rules*) applies to:
- (1) a *MiFID investment firm*:
 - (1) (a) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*; or
 - (2) (b) that opts to comply with the *custody rules* under this chapter in accordance with CASS 6.1.17R(1) (Opt-in to the MiFID custody rules); and
 - (2) a third country investment firm that opts to comply with the custody rules under this chapter in accordance with CASS 6.1.17R(2) (Opt-in to the MiFID client money rules).

Opt-in to the MiFID custody rules

- 6.1.17 R (1) A *firm* that holds *financial instruments* to which this chapter applies and assets in respect of which the *non-directive custody chapter* applies, may elect to comply with the provisions of this chapter in respect of all assets so held and if it does so, this chapter applies as if all such assets were *financial instruments* that the *firm* receives and holds in the course of, or in connection with, its *MiFID business*.
- (1A) A third country investment firm that holds designated investments belonging to a client in the course of its equivalent business may elect to comply with the provisions of this chapter in respect of the assets it holds to which the non-directive custody chapter applies. If it does so, this chapter applies as if all such assets were assets that the firm receives and holds in the course of, or in connection with, MiFID business.
- ...
- 6.1.20 G A *firm* (other than a *third country investment firm*) that is only subject to the *non-directive custody chapter* may not choose to comply with this chapter.
- 6.1.20A G The information requirements concerning the safeguarding of financial instruments belonging to a client (see COBS 6.1.7R) apply to a firm that has elected to comply with this chapter with respect of all assets to which the election applies.

Application

- 7.1.1 R This chapter (the *client money rules*) applies to:
- (1) a *MiFID investment firm*:
 - (1) (a) that holds *client money*; or
 - (2) (b) that opts to comply with this chapter in accordance with CASS 7.1.3R(1) (Opt-in to the MiFID client money rules); and
 - (2) a third country investment firm that opts to comply with this chapter in accordance with CASS 7.1.3R(2) (Opt-in to the MiFID client money rules);

unless otherwise specified in this section.

Opt-in to the MiFID client money rules

- 7.1.3 R ...
- (1A) A third country investment firm that receives or holds money from, for or on behalf of a client in the course of, or in connection with, its equivalent business of a third country investment firm may elect to comply with the provisions of this chapter in respect of the money it holds to which the non-directive client money chapter or the insurance client money chapter applies. If it does so, this chapter applies as if all such money were money that the firm receives and holds in the course of, or in connection with, MiFID business.

...

- 7.1.4 G The opt-in to the client money rules in this chapter does not apply in respect of *money* that a *firm* holds outside of the scope of the *non-directive client money chapter* or the *insurance client money chapter*, such as *money* falling within the scope of the opt-out for ~~non-IMD designated investment business~~ non-IMD designated investment business (see CASS 4.1.11R).

- 7.1.6 R A *firm* (other than a third country investment firm) that is only subject to the *non-directive client money chapter* or the *insurance client money chapter* may not opt to comply with this chapter.

- 7.1.7A G The information requirements concerning the safeguarding of client money (see COBS 6.1.7R) apply to a firm that has elected to comply with this chapter with respect of all client money to which the election applies.

Appointed representatives, tied agents, field representatives and other agents

- 7.4.24 G (1) Pursuant to the *MiFID client money segregation requirements*, a *firm* operating the normal approach should establish and maintain procedures to ensure that *client money* received by its *appointed representatives*, tied agents, field representatives or other agents is:

...

...

- 7.4.25 G The *firm* should ensure that its *appointed representatives, tied agents, field representatives* or other agents keeps *client money* separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.
- 7.4.26 G A *firm* that operates a number of small branches, but holds or accounts for all *client money* centrally, may treat those small branches in the same way as *appointed representatives and tied agents*.

Commodity Futures Trading Commission Part 30 exemption order

- 7.4.32 G United States (US) legislation restricts the ability of non-US firms to trade on behalf of US customers on non-US futures and options exchanges. The relevant US regulator (the CFTC) operates an exemption system for firms authorised by the FSA. The FSA sponsors the application from a firm for exemption from Part 30 of the General Regulations under the US Commodity Exchange Act in line with this system. The application forms and associated information can be found on the FSA website in the "Forms" section.
- 7.4.33 G A firm with a Part 30 exemption order undertakes to the CFTC that it will refuse to allow any US customer to opt not to have his money treated as client money if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an "eligible contract participant" as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. The MiFID client money chapter does not have the option of allowing the firm or the client to choose whether money belonging to the client is subject to the client money rules.
- 7.4.34 R A firm must not reduce the amount of, or cancel a letter of credit issued under, an LME bond arrangement where this will cause the firm to be in breach of its Part 30 exemption order.
- 7.4.35 R A firm must notify the FSA immediately it arranges the issue of an individual letter of credit under an LME bond arrangement.

7 Annex 1

...

12 In determining the *client money* requirement under paragraph 6, a *firm*:

...

- (3) need not include *client money* in the form of *client* entitlements which are not required to be segregated (see CASS 7.4.27G) nor include *client money* forwarded to the

firm by its appointed representatives, tiered agents, field representatives and other agents, but not received (see CASS 7.4.24G);

...

...

17A. A firm with a Part 30 exemption order which also operates an LME bond arrangement for the benefit of US-resident investors, should exclude the client equity balances for transactions undertaken on the London Metal Exchange on behalf of those US-resident investors from the calculation of the margined transaction requirement.

...

TP1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	CASS 2 to CASS 4	R	COB TP 1 to COB TP 4 apply to provisions in CASS in the same way as they did to the equivalent provisions included in COB 9 before 1 January 2004. [deleted]	Indefinite	1 January 2004
...					
2A			If a waiver granted before 1 January 2004 refers to a provision in COB 9 it will continue to be effective in relation to the equivalent provision in CASS. [deleted]		

CASS Sch 1.3

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS	Record of	Record of	Date of the	5 years (from

7.1.3R(23)	election to comply with the <i>MiFID client money chapter</i>	election to comply with the <i>MiFID client money chapter</i> , including the date from which the election is to be effective	election	the date the <i>firm</i> ceases to use the election)
...				

Annex Q

Amendments to the Market Conduct sourcebook (MAR)

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

1.3.15 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is dutiful execution of an order on behalf of another, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of ~~*COB COBS*~~ ~~or *MAR 3*~~, or their equivalents in the relevant jurisdiction; or

...

1.10.2 G There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*. Some *rules* contain a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse*:

- (1) ~~*COB 2.4.4R*~~ (1) (Chinese walls) (see ~~*COB 2.4.4R*~~(4)) the control of information rule (*SYSC 10.2.2R* (1) (see *SYSC 10.2.2R*(4))); and

...

Trade data monitors

7.2.14 G The *FSA* considers that a *firm* will satisfy its obligations under *MAR 7.2.12EU* if:

- (1) in assessing the arrangements, the *firm* follows the guidelines published on the *FSA*'s website at www.fsa.gov.uk <http://www.fsa.gov.uk/Pages/About/What/International/EU/fsap/mifid/documents/index.shtml>; and

...

A “trade data monitor” is a provider of such arrangements which has been assessed by the *FSA* or an external auditor as having the capability to provide services and facilities to *firms* in accordance with the guidelines published on the *FSA*'s website at www.fsa.gov.uk <http://www.fsa.gov.uk/Pages/About/What/International/EU/fsap/mifid/documents/index.shtml>.

[The amendment to *MAR 7.2.14G* is based on amendments made in *FSA 2007/54* which have not yet come into force.]

Annex R

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

- 2.1.1 R (1) *A firm* must not assess...
- (2) *A firm* may assess an *employee* who is subject to, but has not satisfied, an appropriate examination requirement as competent to the extent that:
- (a) that *employee* works in a *branch* in an *EEA State* other than the *United Kingdom*;
 - (b) the *employee* is engaging in *MiFID business*; and
 - (c) there is no appropriate examination or equivalent in that *EEA State*.

Annex S

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 November 2007

- 1.1.2 G The *Act* requires the *FSA* to "maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act, or by any directly applicable Community regulation made under *MiFID*, are complying with them" (paragraph 6(1) of Schedule 1 to the *Act*).
- 3.1.2 R ...
Note 2A = For this purpose, *designated investment business* does not include either or both:
- (a) ...
- (b) ...
- (i) ...
- (ii) ...
- having regard to article 4(4) of the *Regulated Activities Order* (Specified activities: ~~general: core investment services by investment firms~~).
- 3.6.6 G In complying with *SUP* 3.6.1R, a *firm* should take reasonable steps to ensure that each of its *appointed representatives* or, where applicable, *tied agents* gives the *firm's* auditor the same rights of access to the books, accounts and vouchers of the *appointed representative* or *tied agent* and entitlement to information and explanations from the *appointed representative's* or *tied agent's* officers as are given in respect of the *firm* by section 341 of the *Act* (see also *SUP* 12.5.5R(3)).
- 4.3.16A R An *actuary* appointed to perform the *with-profits actuary function* must:
- ...
- (4) in respect of each financial year, make a written report addressed to the relevant classes of the *firm's with-profits policyholders*, to accompany the *firm's* annual report under ~~*COB* 6.11.9 R~~ *COBS* 20.4.7R, as to whether, in his opinion and based on the information and explanations provided to him by the *firm*, and taking into account where relevant the *rules* and *guidance* in ~~*COB* 6.12~~ *COBS* 20, the annual report and the discretion exercised by the *firm* in respect of the period covered by the

report may be regarded as taking, or having taken, the interests of the relevant classes of the *firm's with-profits policyholders* into account in a reasonable and proportionate manner;

...

5.3.9A G [deleted]

5.5.10 G In providing reasonable assistance under *SUP 5.5.9R*, a *firm* should take reasonable steps to ensure that, when reasonably required by the *skilled person*, each of its *appointed representatives* or, where applicable, *tiered agents* waives any duty of confidentiality and provides reasonable assistance as though *SUP 5.5.1R (3)* and *SUP 5.5.9R* applied directly to the *appointed representative* or *tiered agent*.

6.3.8 G (1) ...

(a) make an application to the *FSA* for an internal transfer of an *approved person*, Form E (Internal transfer), or make an application to the *FSA* for an individual to perform additional *controlled functions*, the relevant Form A (Application); see *SUP 10.13.3D* to *SUP 10.13.5G*;

...

...

6.4.22 G In deciding whether to cancel a *firm's Part IV permission*, the *FSA* will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

...

(3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* (including instructions set out in an agreement entered into in accordance with *CASS 2.3.2R* (Custody: client agreement)) and *COBS 76.1.7R* (Information concerning safeguarding of designated investments belonging to clients and client money);

6 Annex 4.2 G 2 ... A *firm* must also cease to hold or ~~control~~ control *custody assets* in accordance with instructions received from *clients* (including instructions set out in an agreement entered into in accordance with *CASS 2.3.2R* (Custody: client agreement) and *COBS 76.1.7R* (Information concerning safeguarding of designated investments belonging to clients and client money))...

8.1.4 G This chapter explains how the regime for the ~~waiver or modification~~ waiver of *rules* works.

10.1.13B G If an *incoming EEA firm* carries on *designated investment business* which consists of ~~both *MiFID business* only, the *EEA investment business oversight function* and the *compliance oversight function* will not apply to that *firm*. and other *regulated activities*, *SUP 10.1.13R(1)* and (2) will apply to that *firm*, but~~

only in relation to that part of the business that is not *MiFID business*.

10.1.13C G If an incoming EEA firm carries on designated investment business which consists of both MiFID business and other regulated activities, the EEA investment business oversight function and the compliance oversight function (SUP 10.1.13R(1) and (2)) will apply to that firm, but only in relation to that part of the business which is not MiFID business.

10.1.16 R The descriptions of the following *controlled functions* apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to a *firm*:

(1) the *governing functions* subject to SUP 10.1.16AR and except for a tied agent of an EEA MiFID investment firm; and

...

10.6.8 R (1) ...

(2) If a *firm* is a *long-term insurer*, the *non-executive director function* is also the function of acting in the capacity of an individual (other than an individual performing the *director function* or the *non-executive director function* under (1)) who, as a member of a committee having the purpose of a ~~With profits Committee~~ *with-profits committee* (see ~~COB 6.11.6 G (1)~~), has responsibility in relation to governance arrangements for *with-profits business* under ~~COB 6.11 (Reporting to with-profits policyholders on compliance with PPFM)~~ COBS 20.3 (Principles and Practices of Financial Management).

10.7.2A G In requiring someone to apportion responsibility, a common platform firm should not apply for that person or persons to be approved to perform the apportionment and oversight function (see SUP 10.7.1R, SYSC 2.1.3R and SYSC 1.1.3R(5)).

10.10.7A R The *customer function* is the function of:

...

(5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with or for, or in connection with customers where the *dealing* or *arranging deals* is governed by ~~COB 7~~ COBS 11 (Dealing and managing);

...

10.11.2 G Approved persons forms

<u>the relevant Form A</u>	SUP 10 Ann 4D	Application to perform controlled functions under the approved persons regime
...		

10.11.5 G Forms B, C, D and E can only be submitted in respect of an *approved person* by the *firm* that submitted an *approved person's* original application (that is,

the relevant Form A).

- 10.11.6 G Copies of Forms A, B, C, D and E may be obtained from the *FSA* website or from the Individuals, ~~CIS and~~ Mutuals and Policy Department. To contact the Individuals, ~~CIS and~~ Mutuals and Policy Department for general enquiries:
- (1) telephone 020 7066 0019; or
 - (2) fax 020 7066 0017; or
 - (3) write to:

Individuals, ~~CIS and~~ Mutuals and Policy Department
The Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON E14 5HS; or
 - (4) e-mail iva@fsa.gov.uk
- 10.12.2 D An application by a *firm* for the *FSA* 's approval under section 59 of the *Act* (Approval for particular arrangements) must be made by completing the Form A which relates to the particular type of firm, that is, a UK firm, overseas firm or incoming EEA firm.
- 10.13.2 G The relevant Form A must be used to apply for an *individual* to perform further *controlled functions* for a *firm* for which he already performs a *controlled function* as an *approved person* (see *SUP* 10.12.2D). It is not mandatory to complete all parts of the form. See the notes ~~attached~~ relevant to ~~the~~ each form for full details.
- 10.13.5 G In certain circumstances, when the *FSA* already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes ~~attached~~ relevant to ~~the~~ each form for full details.
- 10.13.12 R (1) ...
- (2) ...
- ...
- (c) section 5 of the relevant Form A in *SUP* 10 Annex 4 (Application to perform controlled functions under approved persons regime);
- ...
- 10.13.18 R ...
- (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP* 10 Annex 4), any of the details in section 3.01 (Arrangements and controlled functions) are to change, the *firm* must notify the *FSA*

on Form D.

- (2) ...
- (3) Paragraphs (1) and (2) also apply to a *firm* in respect of an *approved person*, to whom the grandfathering arrangements applied as if the *firm* had completed a the relevant Form A for that *person*.

10.14.2 G If the *firm* or its advisers have further questions, they should contact the FSA's Individuals, CIS and Mutuals and Policy Department (see *SUP* 10.11.6G).

SUP 10 Annex 1 Frequently asked questions

G	Question	Answer
	Requirements of the regime	
...		
8	...	The <i>firm</i> should contact the Individuals, CIS and Mutuals <u>and Policy</u> Department. See <i>SUP</i> 10.11.6G.
...		
10	...	Before the <i>firm</i> submits <u>the relevant</u> Form A, it must verify the information contained in it. As part of this verification, the Form provides for the <i>candidate</i> to confirm the accuracy of the information given by the <i>firm</i> so far as it relates to him.
...		
11A	...	...(see section Question 5.01a of <u>the relevant</u> Form A (Application to perform controlled functions under the approved persons regime)). ...
...		
16	...	These can either be ordered through the Individuals, CIS and Mutuals <u>and Policy</u> Department or obtained from the <i>FSA</i> website at www.fsa.gov.uk . There is no charge for an application form.
...		

11.3.9 D If a relevant controllers form, or an Application to perform *controlled functions* under the *approved persons* regime (the relevant Form A in *SUP* 10

Annex 4) in respect of ...

- 12.2.7 G (1) ...
- (a) ...
- ...
- (h) ~~providing~~ providing basic advice ~~on~~ on stakeholder products (article 52B of the *Regulated Activities Order*);
- 12.2.8 G (1) ...
- (2) ...
- (a) ...
- ...
- (d) *advising on investments, ~~providing~~ providing basic advice ~~on~~ on stakeholder products, advising on a home finance transaction or other activity that might reasonably lead a customer to believe that he had received basic advice or advice on investments or on home finance transactions or that the introducer appointed representative is permitted to ~~provide~~ give basic advice or give ~~advice on investments~~ personal recommendations on investments or on home finance transactions.*
- 12.2.11 G If an *introducer appointed representative* is an individual in business on his own, then he will also be an *introducer* (see SUP 12.2.13G). This has certain implications in *COBS* (see ~~COB 5 (Advising and selling)~~).
- 12.4.4 G ...
- (1) ...
- (2) the fitness and propriety (including good character and competence) and financial standing of the *controllers, directors, partners, proprietors and managers* of the *person; firms* seeking guidance on the information which they should take reasonable steps to obtain and verify should refer to *FIT* and the questions in the relevant Form A (Application to perform controlled functions under the approved person regime) in SUP 10 Ann 4.
- 12.4.5E G (1) Under the relevant Advising and Selling ~~chapters of COB~~ provisions in COBS, ICOB and MCOB, the *customer* will receive details of how to complain to the *appointed representative* and, when a product is purchased, details of the complaints procedure for the *product provider, insurer or home finance provider*.
- 12.5.2 G (1) ...
- (2) ...

(a) ...

...

(g) ~~provides~~ provides basic advice ~~on~~ on stakeholder products.

Notification of appointment of an appointed representative

12.7.1 R [delete current rule and replace with the following, which is not underlined]

(1) This *rule* applies to a *firm* which intends to appoint:

(a) an *appointed representative* to carry on *insurance mediation activities*; or

(b) a *tied agent*.

(2) This *rule* also applies to a *firm* which has appointed an *appointed representative*.

(3) A *firm* in (1) must complete and submit the form in SUP 12 Ann 3 before the appointment.

(4) A *firm* in (2) must complete and submit the form in SUP 12 Ann 3 within ten *business days* after the commencement of activities.

12.7.5 R To contact the Individuals, ~~CIS and~~ Mutuals and Policy Department:

(1) telephone 020 7066 ~~4000~~ 0019; fax 020 7066 ~~0017~~ 1099; or

(2) write to: Individuals, ~~CIS and~~ Mutuals and Policy Department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, LONDON E14 5HS; or

(3) e-mail ~~apprepsiva~~ apprepsiva@fsa.gov.uk

SUP 12 Annex 3R Appointed representative appointment form



Add an Appointed Representative or tied agent Form
Notification under SUP 12.7.1R (i.e. the form in SUP 12 Ann 3)

...

Firm name (i.e. the principal firm)

("The Firm")

...

NOTES

This form should be used to notify the FSA of a new appointed representative to the firm or tied agent. It is the form required by SUP 12.7.1R which is set out in SUP 12 Ann 3.

For the purposes of this form, references to 'appointed representative' include 'tied agent' unless the context otherwise requires.

Personal Details Section A

1 Contact Name for this form (this is not necessarily the same person making the declaration at the end of the form)

*

2 Contact's Details:

a Position in the firm

*

b Daytime telephone number

*

c E-mail address

d Individual reference number (IRN), if applicable

[Redacted]

New Appointed Representative Details **Section B**

...

8 Legal status of the appointed representative *

- | | | | |
|---|--------------------------|--|--------------------------|
| Private L imited C ompany | <input type="checkbox"/> | Public L imited C ompany | <input type="checkbox"/> |
| Partnership | <input type="checkbox"/> | Limited P artnership | <input type="checkbox"/> |
| Limited L iability P artnership | <input type="checkbox"/> | Unincorporated A ssociation | <input type="checkbox"/> |
| Sole T rader | <input type="checkbox"/> | Other, please specify below | <input type="checkbox"/> |

[Redacted]

9 ~~Date of commencement of agreement with your firm~~
appointment (if an appointed representative carrying on insurance mediation activities) or commencement of activities (if any other kind of appointed representative or tied agent)

* / /

10 ...

...

13 ~~Will the appointed representative undertake designated investment business activities? *~~
Is the application in respect of:

- | | | |
|---|--------------------------|--------------------------|
| (1) <u>an appointed representative who will carry on insurance mediation activities; or</u> | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) <u>a tied agent?</u> | <input type="checkbox"/> | <input type="checkbox"/> |

Declaration and signature **Section C**

Warning

Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided.

Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA.

It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection

...

Declaration

...

Signature

Name of signatory

Date

Name of signatory

Position in firm

Individual Registration Number (if applicable)

Signature

SUP 12 Annex 4 Appointed representative notification form



<p>Appointed Representative or tied agent - Exchange Details</p>
<p>Notification under SUP 12.7.7R (i.e. the form in SUP 12 Ann 4)</p>

...

Firm name (i.e. the principal firm)

("The Firm")

...

...

NOTES

This form should be used to change the details of an existing appointed representative or tied agent. It is the form required by SUP 21.7.7R which is set out in SUP 12 Ann 4.

For the purposes of this form, references to 'appointed representative' include 'tied agent' unless the context otherwise requires.

...

Personal Details Section A

1 Contact Name for this form (this is not necessarily the same person making the declaration at the end of the form)

*

2 Contact's Details:

a Position in the firm

*

b ~~D~~aytime telephone number

*

c ~~E~~-mail address

d ~~I~~ndividual reference number (IRN), if applicable

Change Details of an Existing Appointed Representative

Section B

...

~~What is this Appointed Representative's Firm Reference Number?
(If not known, this can be found on the FSA Register on our website at www.fsa.gov.uk)~~

What is this Appointed Representative's Firm Reference Number?
(If not known, this can be found on the FSA Register on our website at www.fsa.gov.uk)

...

1 a. ...

...

3a a. Do you wish to change the legal status of the appointed representative?

If 'Yes', What is the new legal status of the appointed representative?

- | | | | |
|---|--------------------------|--|--------------------------|
| Private L imited C ompany | <input type="checkbox"/> | Public L imited C ompany | <input type="checkbox"/> |
| Partnership | <input type="checkbox"/> | Limited P artnership | <input type="checkbox"/> |
| Limited L iability P artnership | <input type="checkbox"/> | Unincorporated A ssociation | <input type="checkbox"/> |
| Sole T rader | <input type="checkbox"/> | Other, please specify below | <input type="checkbox"/> |

...

Yes No N/A

3e b. Has the name change been approved by Companies House?

~~Note that~~ **N.B.** if the appointed representative is a UK registered company or LLP, the name of the appointed representative can only be changed if the change has already been approved by Companies House.

...

5 ...

...

If 'Yes', please provide details below. If you wish to amend a trading name please ~~delete this name~~ enter the name to be deleted in the box on the left and add the new one below: in the box on the right.

~~Please detail the trading name(s) to be deleted below:~~

~~Please detail the trading name(s) to be deleted below:~~

Please detail the trading name(s) to be deleted below:

Please detail the trading name(s) to be added below:

--	--

...

11 ~~Does the appointed representative undertake insurance mediation?~~

~~Do you wish to change this? Please provide details below:~~

--

Yes No

Do you wish to change the details of the Main ...

12 ...

--

...

Yes No

15 Is the change in respect of an appointed representative who is carrying on insurance mediation activities or a tied agent?

If so please provide details below:

16 Please enter the date on which these changes take effect: * / /

Declaration and signatures Section C

Warning

Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided.

Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA.

It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection

...

Declaration

...

Signature

Name of signatory

Date

Name of signatory

Position in *firm*

Individual Reference Number (if applicable)

Signature

- 13A.4.3A G Guidance on the matters that are reserved to a firm's Home State regulator is located in SUP 13A Annex 2G.
- 13A.6.1 G (1) SUP 13A Annex 1G summarises how the *Handbook* applies to *incoming EEA firms*.
- (2) SUP 13A Annex 2G summarises the matters that are reserved to a firm's Home State regulator.
- 13A.6.5 G SUP 13A Annex 1G does not apply to *incoming ECA providers acting as such*. ~~Such persons should refer to ECO for information on how the *Handbook* applies to them.~~

After SUP 13A.8, insert the following new section. All text is new and is not underlined.

13A.9 The precautionary measure rule for incoming EEA firms

Application

- 13A.9.1 R (1) The precautionary measure rule (SUP 13A.9.2R) applies to an *incoming EEA firm* which:
- (a) is authorised by a *home state regulator* with respect to its *MiFID business*; or
- (b) has a *top-up permission* which covers *MiFID business*;
- but which is not subject to provisions adopted by the *Home State* which transpose, in full, *MiFID* or the *MiFID implementing Directive*.
- (2) The precautionary measure rule applies:
- (a) with respect to the *regulated activities* carried on by the *firm* in the *United Kingdom*; and
- (b) to the extent that the *firm* is not subject to provisions which are comparable to provisions transposing *MiFID* or the *MiFID implementing Directive*.
- (3) This section (SUP 13A.9) is effective from 1 November 2007 until 31 October 2008.

The precautionary measure rule

- 13A.9.2 R (1) A *firm* must comply with standards which are comparable to those required by the provisions of *MiFID* and the *MiFID implementing Directive* specified in rows (1) and (4) of the table in SUP 13A.9.3R.
- (2) An *MTF* must also comply with standards in row (2).
- (3) The following *firms* must also comply with standards in row (3):

- (a) a *systematic internaliser*;
- (b) a *firm*, which, either on its own account or on behalf of *clients*, concludes *transactions* in shares *admitted to trading* on a *regulated market* outside a *regulated market* or *MTF* (see *MAR 7.1.2R*).

13A.9.3 R Table: MiFID provisions for incoming EEA firms

	Articles of MiFID or the MiFID implementing directive
1	Articles 13(3) and (6), 18 to 22 and 24 and Annex II of <i>MiFID</i>
2	Articles 12, 14, 26, 29 and 30 of <i>MiFID</i>
3	Articles 27 and 28 of <i>MiFID</i>
4	All related Articles of <i>MiFID</i> and the <i>MiFID implementing Directive</i>

13A.9.4 E (1) A *firm* should comply with the provisions of the *Handbook* which transpose the provisions of *MiFID* and the *MiFID implementing Directive* referred to in *SUP 13A.9.3R* (even if they are expressed not to apply to an *incoming EEA firm*).

(2) Compliance with (1) may be relied upon as tending to establish compliance with the precautionary measure rule.

13A.9.5 G (1) The purpose of the precautionary measure rule is to ensure that an *incoming EEA firm* is subject to the standards of *MiFID* and the *MiFID implementing Directive* to the extent that the *Home State* has not transposed *MiFID* or the *MiFID implementing Directive* by 1 November 2007. It is to ‘fill a gap’.

(2) The *rule* is made in the light of the duty of the *United Kingdom* under Article 62 of *MiFID* to adopt precautionary measures to protect investors.

(3) The *rule* will be effective for 12 months only; it reflects the scope of the *Regulated Activities Order* (including, for example, the overseas persons exclusion); and it allows for the possibility of a partial transposition by the *Home State*.

(4) An indication of the *Handbook* provisions which transpose *MiFID* and the *MiFID implementing Directive* can be found in the websites <http://www.hm-treasury.gov.uk/media/C/7/transfinal1b120707.pdf> and <http://www.hm-treasury.gov.uk/media/C/E/transfinal2b120707.pdf>. For the purposes of the precautionary measure rule, the principal provisions are the *rules* in *COBS* (including in particular those relating to inducements in *COBS 2.3*) and the conflicts and record keeping provisions in *SYSC*.

- (5) The provisions applying to an *incoming EEA firm* are set out in SUP 13A Annex 1G. The effect of SUP 13A.9.4E(1) is that some of the provisions which are expressed as not applying may need to be applied by a *firm* in order to meet a *MiFID* standard.

...

SUP 13A Annex 1 G Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the *Handbook* to an *incoming EEA firm*. Where the table indicates that a particular module of the *Handbook* may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to COBS 1 Ann 1 Part 3 section 7 ECO 1 for *guidance* on how the *Handbook* COBS applies to them.

2. In some cases, the application of the *Handbook* depends on whether responsibility for a matter is reserved under a European Community instrument to the *incoming EEA firm's Home State regulator*. *Guidance* on the reservation of responsibility is contained in SYSC App 1 SUP 13A Ann 2 (Matters reserved to a Home State regulator). Guidance on the territorial application of MiFID is contained in PERG 13.6 and 13.7 and SUP 13A Anex 2G.

3. ...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
<i>PRIN</i>	...	...
...		
SYSC	<p>SYSC 1 contains ...</p> <p><u>The common platform requirements in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG.</u></p> <p><u>SYSC 1.3.1BG states that whilst the common platform requirements do not generally apply to incoming EEA firms, EEA MiFID investment firms must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.</u></p> <p><u>SYSC 9 applies to activities carried on from an establishment in the United Kingdom,</u></p>	<p><u>The common platform requirements in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG.</u></p> <p><u>SYSC 9 does not apply.</u></p>

	<p><u>unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that rule (SYSC 1.3.10AR).</u></p> <p><u>SYSC 11 applies to an incoming EEA firm which:</u></p> <p>(1) <u>is a full BCD credit institution; and</u></p> <p>(2) <u>has a branch in the United Kingdom (SYSC 11.1.1R(3)).</u></p> <p><u>SYSC 12 does not apply (SYSC 12.1.3R).</u></p> <p><u>SYSC 13 does not apply (SYSC 13.1.1G).</u></p> <p><u>SYSC 14 does not apply (SYSC 14.1.1R).</u></p> <p><u>SYSC 15 does not apply (SYSC 15.1.1G).</u></p> <p><u>SYSC 16 does not apply (SYSC 16.1.1G).</u></p> <p><u>SYSC 17 does not apply (SYSC 17.1.1G).</u></p> <p><u>SYSC 18 applies.</u></p>	<p><u>SYSC 11 – 17 do not apply.</u></p> <p><u>SYSC 18 applies.</u></p>
...		
<i>FIT</i>	<p><i>FIT</i> applies to a firm wishing to establish a branch in the United Kingdom or to apply for a top-up permission in respect of any application that it makes for the approval of a person to perform a controlled function (<i>FIT</i> 1.1). See under <i>SUP</i> 10 below as to whether such approval is required.</p> <p><u><i>FIT</i> applies in a limited way in relation to an incoming MiFID investment firm (see <i>FIT</i> 1.2.4AG).</u></p>	Does not apply.
<i>GEN</i>	<p><i>GEN</i> applies ...</p> <p><u><i>GEN</i> 4 does not apply in relation to MiFID or equivalent third country business (see <i>GEN</i> 4.1.1R).</u></p>	<p><i>GEN</i> 4 does not apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom (see <i>GEN</i> 4.1.1R).</p> <p>Otherwise, as column (2).</p>
...		
<i>COB</i>	[deleted]	[deleted]
<u><i>COBS</i></u>	<u>Guidance on the territorial application of <i>COBS</i> is contained in <i>COBS</i> 1 Ann 1 Part 3.</u>	<u>Guidance on the territorial application of <i>COBS</i> is contained</u>

		in <u>COBS 1 Ann 1 Part 3.</u>
<i>ICOB</i>	As column (3) plus, in the case of a <i>distance contract</i> with a <i>retail customer</i> <i>consumer</i> , unless the <i>firm's Home State</i> imposes measures which implement or correspond to obligations of the <i>DMD</i> <u><i>Distance Marketing Directive</i></u> : (1)	Only the following provisions of <i>ICOB</i> apply: ... (4) <i>ICOB 5.5.20R(4) to (15) and (22)</i> , but only in respect of <i>non-investment insurance contracts</i> which are <i>pure protection contracts</i> where the <i>habitual residence</i> of the <i>customer</i> , other than an <i>EEA ECA recipient</i> <u><i>present in an EEA State other than the United Kingdom</i></u> , is in the <i>United Kingdom</i> ; (5) <i>ICOB 6 (Cancellation)</i> , but only in respect of <i>non-investment insurance contracts</i> which are <i>pure protection contracts</i> where the <i>habitual residence</i> of the <i>customer</i> , other than an <i>EEA ECA recipient</i> <u><i>present in an EEA State other than the United Kingdom</i></u> , is in the <i>United Kingdom</i> ; (6) unless the <i>firm's Home State regulator</i> has implemented articles 12 and 13 of the <i>IMD</i> <u><i>Insurance Mediation Directive</i></u> for those activities: (a)
...		
<i>MAR</i>	<i>MAR 1 ...</i>	<i>MAR 1 ...</i>

	<i>MAR 3 (Inter-professional conduct)</i> Applies (<i>MAR 3.1.4R</i>).	<i>MAR 3 (Inter-professional conduct)</i> Does not apply <i>MAR 3.1.4R</i>.

...		

<i>SUP</i>	<i>SUP 1</i>	<i>SUP 1</i>
	[Delete the entry for SUP 17 and replace it with the following] <u><i>SUP 17 (Transaction reporting)</i></u> <u><i>Applies to UK branches of incoming EEA firms which are MiFID investment firms in respect of reportable transactions executed in the course of services provided, whether within in the United Kingdom and outside. (SUP 17.1.2G and SUP 17.1.3AG)</i></u>	<i>SUP 17 (Transaction reporting)</i> Does not apply (<i>SUP 17.1.1R(2)(a)</i>) . <u><i>Applies as appropriate to incoming EEA firms which are MiFID investment firms in respect of reportable transactions. (SUP 17.1.1R and SUP 17.1.4R)</i></u> .
...		
<i>DISP</i>	Applies (<i>DISP 1.1.1G</i>) <u>and applies in a limited way in relation to <i>MiFID business</i></u> .	Does not apply (<i>DISP 1.1.1G</i>).
...		
<i>ECO</i> [deleted]	[deleted]	[deleted]
...		

In the following Annex all text is new and is not underlined.

SUP 13A Annex 2G: Matters reserved to a Home State regulator

Introduction

1. The application of certain provisions in the *Handbook* to an *incoming EEA firm* or *incoming Treaty firm* depends on whether responsibility for the matter in question is reserved to the *firm's Home State regulator*. This annex contains *guidance* designed to assist such *firms* in understanding the application of those provisions. This annex is not concerned with the *FSA's* rights to take enforcement action against an *incoming EEA firm* or an *incoming Treaty firm*, which are covered in the *Enforcement Guide (EG)*, or with the position of a *firm* with a *top-up permission*.

Requirements in the interest of the general good

2. The *Single Market Directives*, and the *Treaty* (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the *Home State regulator*. To summarise, the *FSA*, as *Host State regulator*, is entitled to impose requirements with respect to activities carried on within the *United Kingdom* if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the *Single Market Directives*:
 - (1) the *Single Market Directives* expressly reserve responsibility for the prudential supervision of a *MiFID investment firm*, *BCD credit institution*, *UCITS management company* or passporting *insurance undertaking* to the *firm's Home*

State regulator. The *Insurance Mediation Directive* reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the *FSA*, as *Host State regulator*, is entitled to regulate only the conduct of the *firm's* business within the *United Kingdom*;

- (2) there is no "general good" provision in *MiFID*. Rather, *MiFID* states exactly what the *Host State regulator* regulates (see paragraphs 8 - 10);
 - (3) for a *BCD credit institution*, the *FSA*, as *Host State regulator*, is jointly responsible with the *Home State regulator* under article 41 of the *Banking Consolidation Directive* for supervision of the liquidity of a *branch* in the *United Kingdom*;
 - (4) for a *MiFID investment firm* including a *BCD credit institution* which is a *MiFID investment firm*), the protection of *clients' money* and *clients' assets* is reserved to the *Home State regulator* under *MiFID*; and
 - (5) responsibility for participation in compensation schemes for *BCD credit institutions* and *MiFID investment firm* is reserved in most cases to the *Home State regulator* under the *Deposit Guarantee Directive* and the *Investor Compensation Directive*.
3. It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the "general good". To summarise, to satisfy the general good test, *Host State* rules must come within a field which has not been harmonised at a Community level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the *firm* is subject in its *Home State*.

Application of SYSC 2 and SYSC 3

4. *SYSC 2* and *SYSC 3* do not apply to a *UK MiFID investment firm*. They only apply to an *EEA MiFID investment firm* on a limited basis. This is explained more fully in *PERG 13.7 Q. 70* (systems and controls). See paragraph 8 below for a discussion of how the *common platform requirements* apply to an *EEA MiFID investment firm*. The *FSA* considers that it is entitled, in the interests of the general good, to impose the requirements in *SYSC 2.1.3R* to *SYSC 2.2.3G* (in relation to the allocation of the function in *SYSC 2.1.3R (2)*) and *SYSC 3* on an *incoming EEA firm* and an *incoming Treaty firm*; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the *firm's Home State regulator*.
5. Should the *FSA* become aware of anything relating to an *incoming EEA firm* or *incoming Treaty firm* (whether or not relevant to a matter for which responsibility is reserved to the *Home State regulator*), the *FSA* may disclose it to the *Home State regulator* in accordance with any applicable directive and the applicable restrictions in Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation).
6. This Annex represents the *FSA's* views, but a *firm* is also advised to consult the relevant European Community instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).

7. Examples of how the FSA considers that SYSC 3 will apply in practice to an *incoming EEA firm* are as follows:
- (1) The Prudential Standards part of the *Handbook* (with the exception of *INSPRU* 1.5.33R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (*IPRU (INS)*) (rules 3.6 and 3.7) do not apply to an *insurer* which is an *incoming EEA firm*. Similarly, SYSC 3 does not require such a *firm*:
 - (a) to establish systems and controls in relation to financial resources (SYSC 3.1.1R); or
 - (b) to establish systems and controls for compliance with that Prudential Standards part of the *Handbook* (SYSC 3.2.6R); or
 - (c) to make and retain records in relation to financial resources (SYSC 3.2.20 R).
 - (2) The Conduct of Business sourcebook (*COBS*) applies to an *incoming EEA firm*. Similarly, SYSC 3 does require such a *firm*:
 - (a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of *COBS* (SYSC 3.1.1R);
 - (b) to establish systems and controls for compliance with the applicable sections of *COBS* (SYSC 3.2.6R); and
 - (c) to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20R).

See also Question 12 in SYSC 2.1.6G for *guidance* on the application of SYSC 2.1.3R (2)

Application of the common platform requirements in SYSC

8. Whilst the *common platform requirements* (located in SYSC 4 - 10) do not generally apply to *incoming EEA firms*, *EEA MiFID investment firms* must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.

Requirements under MiFID

9. Article 31(1) of *MiFID* prohibits *Member States* from imposing additional requirements on a *MiFID investment firm* in relation to matters covered by *MiFID* if the *firm* is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.
10. Article 32 of *MiFID* requires the FSA as the *Host State regulator* to apply certain obligations to an *incoming EEA firm* with an establishment in the *UK*. In summary, these are Articles:
 - (1) 19 (conduct of business obligations);
 - (2) 21 (execution of orders on terms most favourable to the client);

- (3) 22 (client order handling);
- (4) 25 (upholding the integrity of markets, reporting transactions and maintaining records);
- (5) 27 (making public firm quotes); and
- (6) 28 (post-trade disclosure).

The remaining obligations under *MiFID* are reserved to the *Home State regulator*.

- 11. *MiFID* is more highly harmonising than other *Single Market Directives*. Article 4 of the *MiFID implementing Directive* permits Member States to impose additional requirements only where certain tests are met. The *FSA* has made certain requirements that fall within the scope of Article 4. These requirements apply to an *EEA MiFID investment firm* with an establishment in the *United Kingdom* as they apply to a *UK MiFID investment firm*.
- 12. Further *guidance* on the territorial application of the *Handbook* can be found at *PERG* 13.6 and 13.7.

15.1.5 G *Firms* are reminded that:

- (1) unless expressly stated otherwise, where a *rule* or *guidance* includes a reference to a *firm* this includes all *UK* and overseas branches and representative offices of that *firm*, whether or not those branches or offices carry on any *regulated activities*; ~~and~~
- (2) ~~*ECO 1.1.6R* has the effect that this chapter does not apply to an *incoming ECA provider* acting as such.~~

15.1.6 R This chapter does not apply to an *incoming ECA provider* acting as such.

15.3.11 R (1) A *firm* must notify the *FSA* of:

- (a) ...
- ...
- (c) the bringing of a prosecution for, or a conviction of, any offence under the *Act*; ~~or~~
- (d) a breach of a directly applicable provision in the *MiFID Regulation*; or
- (e) a breach of any requirement in regulation 4C(3) (or any successor provision) of the *Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007*;

by (or as regards (c) against) the *firm* or any of its *directors, officers, employees, approved persons, or appointed representatives, or, where applicable, tied agents*.

(2) ...

15.3.11A G SUP 15.3.11R(1)(e) relates to the standard requirement in the *permission of those firms which fall outside MiFID because of the Treasury's implementation of Article 3 of MiFID. Guidance on how the Treasury has exercised the Article 3 exemption for the United Kingdom is given in Q48 and the following questions and answers in PERG 13.5 (Exemptions from MiFID).*

15.6.2 G SUP 15.6.1R applies also in relation to *rules* outside this chapter, and even if they are not *notification rules*. Examples of *rules* and chapters to which SUP 15.6.1R is relevant, are:

(1) ...

...

(5) any *notification rule* (see Schedule 2 which contains a consolidated summary of such *rules*); ~~and,~~

(6) ~~DISP 1.5 (Record keeping and reporting)~~ 1.9 (Complaints record rule); and

(7) DISP 1.10 (Complaints reporting rule).



Application number
 (for FSA use only)

...

Form F

Changes in notified persons

FSA Handbook Reference: SUP 15 Annex 2R

...

Employment history for past 5 years Section 4

Note: ALL gaps must be accounted for

4.01 Employment details (1)

a Period (mm/yyyy) From / To /

...

h Is / was employer an *appointed representative/tied agent* Yes No If yes, of which *firm*?

...

4.02 Employment details (2)

a Period (mm/yyyy) From / To /

...

h Is / was employer an *appointed representative/tied agent* Yes No If yes, of which *firm*?

...

4.03 Employment details (3)

a Period (mm/yyyy) From / To /

...

h Is / was employer an *appointed representative/tied agent* Yes No If yes, of which *firm*?

...

4.04 Employment details (4)

a Period (mm/yyyy)

From / To /

...

h Is / was employer an *appointed representative/tied agent*

Yes No If yes, of which *firm*?

...

4.05 Employment details (5)

a Period (mm/yyyy)

From / To /

...

h Is / was employer an *appointed representative/tied agent*

Yes No If yes, of which *firm*?

...

16.1.5 G [deleted]

16.1.6 G [deleted]

16.7.6D G The *RMAR* comprises sections relating both to financial reporting and other sections (e.g. Training and Competence and *COBS* data).

16.8.8 R A persistency report or data report must report on a *life policy* or stakeholder pension if:

(1) ...

...

(3) the *person* who sold it or who was responsible for its promotion was, in so doing, subject to *rules* in *COBS* or (before *commencement*) conduct of business rules made by a *previous regulator*.

16.8.13 R A persistency or data report must not report on any of the following:

(1) a *life policy* or stakeholder pension that was cancelled from inception whether or not this was as a result of service of a notice under ~~*COB* 6.7 (Cancellation and withdrawal)~~ the *rules* on cancellation (*COBS* 15);

16.8.22 G (1) ...

...

(3) [deleted]

SUP App 2.1.3 G *SUP* App 2.15 applies to an *insurer* carrying on *with-profits business*, but only if ~~COB 6.12.94R~~ COBS 20.2.53R (Ceasing to effect new contracts of insurance in a with-profits fund) also applies.

SUP App 2.15.1 G The run-off plan required by ~~COB 6.12.94R(2)~~ COBS 20.2.53R should include the information described in *SUP* App 2.15.2G to *SUP* App 2.15.13G in respect of the relevant *with-profits fund*.

App 2.15.7 G A *firm's* run-off plan should include:

- (1) ...
- ...
- (7) details of any new deductions to be made from the *firm's* surrender payments, together with an explanation as to how those deductions are consistent with:
 - (a) ...
 - (b) ~~COB 6.12.39R to COB 6.12.45R~~ COBS 20.2.11G to COBS 20.2.16R (Amounts payable under with-profits policies: Surrender payments);
- ...
- (9) details of the information that the *firm* gives to its *with-profits policyholders* about their ~~*open market options*~~ when its *pension policies* vest right (if any) to use the proceeds of a *personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity contract or pension buy-out contract to purchase an annuity on the open market when the relevant contracts or schemes vest or mature* and any changes that will be made to that information as a result of the closure;

App 3.3.12 G [deleted]

App 3.9 Mapping of MiFID, Banking Consolidation Directive, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.4 G Activities set out in Annex I of the BCD

Table 1: BCD activities		Part II RAO Activities	Part III RAO Investments
...			
Note 1. The <i>BCD</i> activity of trading for account of customers does not extend			

~~to the regulated activity of making arrangements with a view to transactions in investments under article 25(2) of the Regulated Activities Order unless the arrangements bring about or would bring about particular transactions.~~

Note 2 1: The services and activities provided for in Sections A and B of Annex I of *MiFID* when referring to the *financial instruments* provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the *BCD* from 1 November 2007. ~~Please refer to~~ See the table at SUP App 3.9.5G below for mapping of *MiFID investment services and activities*. For further details relating to this residual category, please see the "Banking Consolidation Directive" section of the passporting forms entitled "Notification of intention to establish a branch in another EEA State" and "Notification of intention to provide cross border services in another EEA State".

App
3.9.5

G Services set out in Annex I to MiFID

Table 2: <i>MiFID investment services and activities</i>		Part II RAO Investments	Part III RAO Investments
...			
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25 (see Note 1)	Article 76-81, 83-85, 89
...			
4.	Portfolio management	Article 37 (14, 21, 25 – see Note 1 2)	Article 76-81, 83-85, 89
...			
<p>Note 1. The <i>MiFID</i> service of receiving and transmitting orders does not extend to the regulated activity of making arrangements with a view to transactions in investments under article 25(2) of the <i>Regulated Activities Order</i> unless the arrangements bring about or would bring about particular transactions. This is the case, whether or not the bringing about arises or would arise as a result of the person who makes the arrangements receiving and transmitting orders in relation to particular transactions or in any other way.</p> <p>Note 1. A firm may also carry on these other activities when it is <i>managing investments</i>.</p>			

Sch 2.2 G ...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 10.12.2D	...	<i>Approved persons</i> <u>the relevant Form A Application to perform controlled functions under the approved persons regime (see <i>SUP</i> 10 Annex 4)</u>	...	...
...				
<i>SUP</i> 15.3.11R	Notifications - breaches of <i>rules</i> and other requirements in or under the <i>Act</i>	(1) information about any circumstances relevant to the breach or offence; (2) identification of the <i>rule</i> or <i>requirement</i> or offence; and (3) information about any steps which a <i>firm</i> or other <i>person</i> has taken or intends to take to rectify or remedy the breach or prevent any future <u>future</u> potential occurrence.	Becoming aware, or having information which reasonably suggests, that any of the following matters has occurred, may have occurred or may occur in the foreseeable future as regards the <i>firm</i> , any of its <i>directors</i> , officers, <i>employees</i> , <i>approved persons</i> , or <i>appointed representatives</i> , <u>or tied agents</u> : (a)...	Immediately
<i>SUP</i> 16.8	Reporting - persistency reports from <i>insurers</i>	Persistency report. The report must report on every <i>life policy</i> which was promoted subject to <i>rules</i> in <i>COB</i> or <i>COBS</i> , or conduct of business rules made by a previous regulator , is not a <i>life policy</i> of a type listed in <i>SUP</i>	Annually	By 30 April each year

		16.8.13R or <i>SUP</i> 16.8.14R, and which: (1) ...		
--	--	---	--	--

Part 2: Comes into force on 5 November 2007

17 Transaction Reporting

17.1.3 G A In line with guidance from CESR, the FSA acknowledges that, from a practical point of view, it would be burdensome for *branches of investment firms* to be obliged to report their *transactions* to two *competent authorities*. Therefore, all *transactions* executed by *branches* may be reported to the *competent authority* of the *Host State*, if the *investment firm* elects to do so. In these cases *transaction reports* should follow the rules of the *competent authority* to which the report is made. However, where an *investment firm* chooses to report to two *competent authorities*, this choice will not be challenged by the FSA.

Where?

17.1.5 R ~~This chapter applies in respect of transactions executed in the United Kingdom.~~ This chapter applies in respect of *transactions* which are to be reported to the FSA.

...

~~Transactions made through trade matching or reporting systems~~ Approved reporting mechanisms, regulated markets or MTFs

17.2.3 R A firm is relieved of its obligation to make a ~~transaction report~~ report if the *transaction* is instead reported directly to the FSA by a ~~trade matching or reporting system approved by the FSA~~ an approved reporting mechanism, or by a *regulated market* or *MTF* through whose systems the *transaction* was completed.

[Note: article 25(5) of MiFID)

17.2.3 G A The regulated markets and MTFs that report transactions undertaken on their systems to the FSA are listed on the FSA's website at:
http://www.fsa.gov.uk/Pages/Doing/Regulated>Returns/mtr/regulated_market/index.shtml.

Compliance by ~~trade matching or reporting systems~~ approved reporting mechanisms or MTFs with the provisions of this Chapter

17.2.5 R (1) The operator of a ~~trade matching or reporting system approved by the FSA~~ an approved reporting mechanism, or the operator of an *MTF* or a *market operator* through whose systems a reportable *transaction* is to be completed and which has, pursuant to SUP 17.2.3R, agreed to make ~~transaction reports~~ reports to the FSA on behalf of a *firm*, must:

(1) (a) make reports to the FSA in respect of each *transaction* to which

the agreement relates;

- ~~(2)~~ (b) ensure such reports conform with the requirements of this chapter (both as to time limits for making reports and as to content) as if it were the transacting firm contain the reporting fields specified in SUP 17 Ann 1, where applicable; and
- ~~(3)~~ (c) ensure that, once received from the reporting firm, such reports are submitted to the FSA within the time limit for making reports.
- (2) The obligations of the operator under this Rule do not affect the liability of the reporting firm for ensuring the accuracy of the information contained in the transaction report that it submits to the operator.

17.3.2 G ~~A firm that proposes reporting to the FSA either directly or through a third party that is an approved reporting mechanism, should notify the FSA of its intention to do so, in order for the FSA to be able in particular to verify that the firm's or third party's technical arrangements for the submission of reports are consistent and compatible with the FSA's arrangements. [deleted]~~

17.3.4 G ~~The approved trade matching and reporting systems that have been approved by the FSA approved reporting mechanisms are [Note: These systems will be listed following the approval of a trade matching or trade reporting system.]~~ listed on the FSA's website at:

<http://www.fsa.gov.uk/pages/Doing/Regulated>Returns/mtr/arms/index.shtml>.

...

SUP 17 Ann 1 EU: Minimum content of a transaction report

Table 1: List of fields for reporting purposes

[Note: This table includes information required under *MiFID* Article 25(4) and contains additional *FSA* requirements permitted under Articles 13(3) and (4) of the *MiFID Regulation*]

Where appropriate, *firms* ~~Firms~~ should complete these fields in the formats described, or these formats must be contained in the fields that their *approved reporting mechanism* will use when sending a *transaction report* to the *FSA* on behalf of a *firm*.

Field Identifier	Description
EU	1. Reporting Firm Identification
G	<p>A unique code to identify the <i>firm</i> which executed the <i>transaction</i>. This code should be the FSA reference number of the firm or the Swiss Bank Identifier Code (BIC).</p> <p><u>This code should be the <i>FSA</i> reference number of the <i>firm</i> or the Swift Bank Identifier Code (BIC).</u></p>
EU	2. Trading Day
EU	3. Trading Time
G	<p>The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the transaction will be reported and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours <u>London local time</u>. The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.</p> <p><u>The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.</u></p>
EU	4. Buy/Sell Indicator
EU	5. Trading Capacity

	-	on its own account (either on its own behalf or on behalf of a <i>client</i>) (that is as principal);
	-	for the account and on behalf of a <i>client</i> (that is as agent);
	-	in an agency cross capacity; (that is where the <i>firm</i> has acted as agent for both the selling and the buying counterparties) <u>where the <i>firm</i> has and chosen to submit a the single report made to the FSA represents <u>representing</u> both of these <i>transactions</i></u>);
<u>G</u>		<u>Where a <i>firm</i> has executed a <i>transaction</i> in an agency cross capacity, it may submit two reports rather than a single report, in which case this field should indicate that the <i>firm</i> is acting on behalf of a <i>client</i>.</u>
<u>EU</u>	-	in a principal cross capacity (that is where the <i>firm</i> has acted simultaneously for two counterparties as principal in a single product at the same price and quantity) <u>where the <i>firm</i> and the has chosen to submit a single report made to the FSA represents <u>representing</u> both of these <i>transactions</i></u>).
<u>G</u>		<u>Where a <i>firm</i> has executed a transaction in a principal cross capacity, and prefers to submit two reports rather than a single report, this field should indicate that the <i>firm</i> is acting on its own account.</u>

<u>EU</u>	6. Instrument Identification	This shall consist in of:
	-	an ISO 6166 ISIN a unique code, decided by the <i>FSA</i> , <u>identifying the <i>financial instrument</i> which is the subject of the <i>transaction</i></u> ;
<u>G</u>		<u>The unique code should be an ISO 6166 ISIN. This code must always be used for, but is not limited to, reporting transactions in warrants.</u>
<u>EU</u>	-	or, where if a the <u><i>financial instrument</i> in question which does not have a unique identification code, the report must include the name of the instrument or, in the case of is an over the counter a derivative contract is the subject of the <i>transaction</i>, the name of the underlying <i>financial instrument</i> and, the characteristics of the <i>financial instrument</i> in a separate description field <u>derivative</u>.</u>
<u>G</u>		<u>The FSA considers that where the financial instrument in question (which includes derivatives) is admitted to trading on a market where the ISO 6166 ISIN is not the industry method of identification, it will be sufficient to</u>

<p><u>EU</u></p> <p><u>G</u></p>		<p><u>insert in this field the code assigned to the instrument by that market.</u></p> <p>- <u>or, in the case of an <i>OTC derivative</i>, the characteristics of the <i>OTC derivative</i>.</u></p> <p><u>Where an <i>OTC derivative</i> is the subject of the <i>transaction</i> a full description of the <i>OTC derivative</i> should be provided.</u></p>
<p><u>EU</u></p> <p><u>G</u></p>	<p><u>7. Instrument code type</u></p>	<p><u>The code type used to report the instrument.</u></p> <p><u>Where the subject of the <i>transaction</i> is a <i>financial instrument admitted to trading</i> on a market this field should indicate whether that <i>financial instrument</i> has been identified using an <u>ISO 6166 ISIN</u> or, where the ISIN is not the industry method of identification for that market, a code assigned to that <i>financial instrument</i> by that market.</u></p>
<p><u>EU</u></p> <p><u>G</u></p>	<p><u>78. Underlying Instrument Identification</u></p>	<p><u>The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security included within article 4(1)(18(c)) of <i>MiFID</i>. An ISO 6166 ISIN should be used.</u></p> <p><u>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. Where the <i>financial instrument</i> is an <i>over the counter derivative</i> this field will only be mandatory where the underlying is single equity or single debt.</u></p> <p><u>This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> and the underlying is a <u>single equity or single debt <i>financial instrument admitted to trading</i> on a regulated market or prescribed market.</u></u></p>
<p><u>EU</u></p> <p><u>G</u></p>	<p><u>9. Underlying instrument identification code type</u></p>	<p><u>The code type used to report the underlying instrument.</u></p> <p><u><i>Firms</i> do not need to complete this field since the <i>FSA</i> already has access to this information.</u></p>
<p><u>EU</u></p>	<p><u>810. Instrument Type</u></p>	<p><u>The harmonised classification of the financial instrument that is the subject of the transaction. This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</u></p> <p><u>This field will be mandatory where the <i>financial instrument</i></u></p>

G	<p>is an <i>over the counter derivative</i> and must be used to indicate the instrument type of the underlying <i>financial instrument</i>, e.g. equity, bond, index, or other.</p> <p>This field is only mandatory when the <i>transaction involves an OTC derivative or a financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification. This field must be used to indicate the instrument type of the underlying <i>financial instrument</i>, e.g. equity, bond, index, or other.</p>
EU	<p>911. Maturity Date</p> <p>The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract.</p> <p>This field is not mandatory when the <i>transaction is in a financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument is an over the counter derivative</i> where applicable.</p>
G	<p>This field is only mandatory when the <i>transaction involves an OTC derivative or a financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification.</p>
EU	<p>4012. Derivative Type</p> <p>The harmonised description of the derivative type. This field is not mandatory when the <i>transaction is in a financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument is an over the counter derivative</i>, where applicable, and must indicate the derivative type, e.g. option, future, contract for difference, warrant, spreadbet, credit default swap or other swap.</p>
G	<p>This field is only mandatory when the <i>transaction involves an OTC derivative or a financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification, and must indicate the derivative type, e.g. option, future, contract for difference, warrant, spreadbet, credit default swap or other swap.</p>
EU	<p>4413. Put/Call</p> <p>Specification whether an option or any other <i>financial instrument</i> is a put or call.</p> <p>This field is not mandatory when the <i>transaction is in a financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument is an over the counter derivative</i>.</p>
G	<p>This field is only mandatory when (i) the <i>transaction</i></p>

		<u>involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative type</i> is option or warrant.</u>
<u>EU</u>	<u>4214. Strike Price</u>	The strike price of an option or other <i>financial instrument</i> . This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i>.
<u>G</u>		<u>This field is only mandatory when (i) the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative type</i> is option or warrant.</u>
<u>EU</u>	<u>4315. Price Multiplier</u>	The number of units of the <i>financial instrument</i> in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract. This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i>.
<u>G</u>		<u>This field is only mandatory where the transaction involves an <i>OTC derivative</i>.</u>
<u>EU</u>	<u>4416. Unit Price</u>	The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
<u>EU</u>	<u>4517. Price Notation</u>	The currency in which the price is expressed. If, in the case of a bond or other form of securitized debt, the price is expressed as a percentage, that percentage shall be included. The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence). If the price is expressed as a percentage of nominal value then the ISO 4217 currency code of the nominal value must be used.
<u>G</u>		<u>The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence). If the price is expressed as a percentage of nominal value then the</u>

		ISO 4217 currency code of the nominal value must be used.
EU	4618. Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the <i>transaction</i> .
EU	<u>19. Quantity notation</u>	<u>An indication as to whether the quantity is the number of units of <i>financial instruments</i>, the nominal value of bonds, or the number of derivative contracts.</u>
G		<u>Firms do not need to complete this field since the FSA already has access to this information.</u>
EU	4720. Counterparty	<p>Identification of the counterparty to the <i>transaction</i>. That identification shall consist in of:</p> <p>where an FSA reference number or a Swift Bank Identification Code (BIC) exists one of these codes must be used, or in the case that a firm has neither an FSA reference code or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.;</p>
		- where the counterparty is a <i>MiFID investment firm</i> , a unique code for that firm, to be determined by the FSA; or
		- where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the competent authority of the <i>home Member State</i> of that entity in accordance with Article 13(2).
G		The FSA has determined that where an <i>FSA reference number</i> or a <i>Swift Bank Identification Code (BIC)</i> exists for the counterparty, one of these codes must be used, or in the case that a counterparty has neither an <i>FSA reference number</i> or a <i>BIC</i> , a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.
EU	4821. Venue Identification	<p>Identification of the venue where the <i>transaction</i> was executed. That identification shall consist in:</p>
		- where the venue is a trading venue or an MTF the four

<u>G</u>		character <u>Swift Market Identifier Code ISO 10383 must be used. : its unique harmonised identification code,</u>
		<u>Where the venue is a regulated market, prescribed market or an MTF (or, where appropriate, an equivalent venue outside the EEA), the four character Swift Market Identifier Code ISO 10383 must be used. However, where the venue has been identified as a systematic internaliser, a Swift Bank Identification Code (BIC) should be used.</u>
	<u>EU</u>	<u>:- If where the transaction is made off market or over the counter the subject of the transaction is an OTC derivative then this must should be made clear.</u>

<u>EU</u>	<u>1922. Transaction Reference Number</u>	<u>A unique identification number for the transaction provided by the MiFID investment firm or a third party reporting on its behalf.</u>
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<u>EU</u>	<u>2023. Cancellation Flag</u>	<u>An indication as to whether the transaction was cancelled.</u>
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<u>EU</u>	<u>2124. Customer/Client Identification</u>	<u>This field contains the identification of the client or customer on whose behalf the reporting firm was acting. and should be completed as follows:</u> <u>For agency transactions a customer/client identifier is required to identify the client on whose behalf the transaction has been conducted.</u> <u>Where an FSA reference number or, a Swift Bank Identification Code (BIC) exists one of these codes must be used, or in the case that a firm has neither an FSA reference number or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.</u>
<u>G</u>		<u>For agency transactions a customer/client identifier is required to identify the client on whose behalf the transaction has been conducted. Where an FSA reference number or a Swift Bank Identification Code (BIC) exists, one of these codes must be used or, in the case that a customer/client has neither an FSA reference number or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.</u>

EU

2225. Any other fields	Any other mandatory fields required by the reporting system.
------------------------	--

...

Annex T

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

1.1.1A R This sourcebook does not apply to an *incoming ECA provider* acting as such.

...

4.2.5R Table: contents of the prospectus

This table belongs to *COLL 4.2.2R* (Publishing the prospectus).

...	
Investment objectives and policy	
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :
	...
(o)	information concerning the historical performance of the <i>scheme</i> presented in accordance with <i>COB 3.8.11R</i> (Specific non-real time financial promotions: past performance) <u><i>COBS 4.6.2R</i></u> (the rules on <u>past performance</u>);
	...
...	

Contents of the simplified prospectus

4.6.8 R This table belongs to the rule on production and publication of a simplified prospectus (*COLL 4.6.2R* and *COLL 4.6.6R*)

Contents of simplified prospectus

...	
(14)	details of any entry and exit commissions relating to the <i>scheme</i> and details of the <i>scheme's</i> other possible expenses or fees, distinguishing between those to be paid by the <i>unitholder</i> and

	those to be paid from the <i>scheme's</i> or the <i>sub-fund's</i> assets, including:		
Notes:	...		
	5.	[Intentionally left blank] <u>Details of entry and exit commissions relating to the <i>scheme</i> and details of the <i>scheme's</i> other possible expenses or fees, must be presented in the <i>simplified prospectus</i> in the form required by <i>COLL</i> 4.6.9R (Charges and reduction in yield).</u>	
...			

~~[Intentionally blank]~~ Charges and reduction in yield

- 4.6.9 R (1) ~~[Intentionally blank]~~ In disclosing the information required by paragraph 14 of *COLL* 4.6.8R (Table: Contents of the simplified prospectus), a *firm* must include an effect of charges table and a reduction in yield figure prepared in accordance with the *rules* in sections 2 (Effect of charges table) and 3 (Reduction in yield) of *COBS* 13 Annex 3.
- (2) ~~[Intentionally blank]~~ This *rule* does not apply to a *simplified prospectus* for *units* in a *simplified prospectus scheme* that will be marketed and sold in another *EEA State* or exclusively to those who are not *retail clients*.
- (3) Note (5) to paragraph (14) of *COLL* 4.6.8R, and *COLL* 4.6.9 cease to have effect on 30 June 2009, unless remade.
- 4.6.12 R An *authorised fund manager* must ensure that its *financial promotions* which contain an invitation to purchase *units* in a *UCITS scheme* indicate that a *simplified prospectus* and a full *prospectus* exist, and the places where they may be obtained by the public or how the public may have access to them.

Use of the "keyfacts" logo within a simplified prospectus

- 4.6.13 R A *simplified prospectus* may include the "keyfacts" logo if:
- (1) the "keyfacts" logo is situated in a prominent position at the top of the document; and
- (2) The *document* also contains the following statement in a prominent position:

“The Financial Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference”.

Conflicts of interest: guidance

- 6.6.18 G (1) The effect of COBS TP 2.12R is that COB 7.1 (Conflict of interest and material interest) (as it was in force on 31 October 2007) continues to apply for *scheme management activity* and contains *rules* on the fair treatment of *customers* where a *firm* has a conflict of interest in relation to a transaction. *COLL 6.6.17R(1)* provides *rules* for specific circumstances where *COB 7.1* would not be appropriate for an *authorised fund*.
- (2) ...

Payments out of scheme property: guidance

- 6.7.5 G (1) ...
- (2) An *authorised fund manager* should consider ~~COB 5.6.3R (Charges to a private customer) in determining~~ whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) ...

Prohibition on promotional payments

- 6.7.12 R (1) ...
- (2) Paragraph (1) ~~shall~~ does not apply to the costs of an authorised fund incurs preparing and printing the *simplified prospectus*, ~~or key features document or key features illustration of the authorised fund~~, provided the *prospectus* states, in accordance with *COLL 4.2.5R(13)* and (14) (Table: contents of the prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

Qualified investor schemes: eligible investors

- 8.1.3 R (1) The *authorised fund manager* of a *qualified investor scheme* must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for ~~the categories of person to whom it can be promoted under COB 3 Annex 5 (Permitted promotion of unregulated collective investment schemes and qualified investor schemes)~~ a person that falls into one or more of the categories set out

in COLL 8 Annex 1R (Qualified Investor Scheme: eligible investors).

(2) ...

Qualified investor schemes - explanation

8.1.4 G (1) *Qualified investor schemes* are authorised funds which may only be sold ~~or marketed~~ to sophisticated investors. Therefore, the *authorised fund manager* must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to the *client* types set out in ~~COB 3 Annex 5~~ COLL 8 Annex 1R. ~~COB 3.11.6 R (Promotion of qualified investor schemes) also restricts promotion of qualified investor schemes to the categories of person set out in COB 3 Annex 5.~~

(2) ...

Insert COLL 8 Annex 1R as follows. The text is new and not underlined.

COLL 8 Annex 1R

This Annex belongs to *COLL 8.1.3R (Qualified Investor Schemes: eligible investors)*.

Qualified investor schemes: eligible investors

For the purposes of the *rule* on qualified investor schemes: eligible investors (*COLL 8.1.3R*) a *firm* must only record ownership of *units* in the register of a *qualified investor scheme* in accordance with the following table:

	Issue or transfer of units to:	Issue or transfer of units (see Note 1) in a qualified investor scheme which is:
	<p>Category 1 person</p> <p><i>A person:</i></p> <p>(1) who is already a <i>participant</i> in an <i>unregulated collective investment scheme</i> or a <i>qualified investor scheme</i>; or</p> <p>(2) who has been, in the last 30 months, a <i>participant</i> in an <i>unregulated collective investment scheme</i> or a <i>qualified investor scheme</i>.</p>	<p>(1) that <i>collective investment scheme</i>; or</p> <p>(2) any other <i>collective investment scheme</i> whose underlying property and risk profile are both 'substantially similar' (see Note 2) to those of that <i>collective investment scheme</i>; or</p> <p>(3) a <i>collective investment scheme</i> which is intended to absorb or take over the assets of that <i>collective investment scheme</i>; or</p> <p>(4) a <i>collective investment scheme</i>, <i>units</i> in which are being offered by its <i>operator</i> as an alternative to cash on the liquidation of that <i>collective</i></p>

		<i>investment scheme.</i>
Category 2 person	that <i>collective investment scheme.</i>	
<p><i>A person:</i></p> <p>(1) for whom the <i>authorised fund manager</i> or an <i>associate</i> has taken reasonable steps to ensure that <i>investment</i> in the <i>collective investment scheme</i> is suitable; and</p> <p>(2) who is an 'established' or 'newly accepted' <i>client</i> of the <i>authorised fund manager</i> or of an <i>associate</i> (see Notes 3 & 4).</p>		
Category 3 person	any such <i>collective investment scheme</i>	
<p><i>A person</i> who is eligible to participate in a scheme constituted under:</p> <p>(1) the Church Funds Investment Measure 1958;</p> <p>(2) section 24 of the Charities Act 1993; or</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964.</p>		
Category 4 person	(1) <i>A collective investment scheme</i> of which the <i>instrument constituting the scheme:</i>	
<p>An eligible employee, that is, a <i>person</i> who is:</p> <p>(1) an officer;</p> <p>(2) an <i>employee</i>;</p> <p>(3) a former officer or <i>employee</i>; or</p> <p>(4) a member of the immediate family of any of (1)-(3);</p> <p>of an employer which is (or is in the same <i>group</i> as) the <i>firm</i>, or which has accepted responsibility</p>	<p>(a) restricts the <i>scheme property</i>, apart from cash and near cash, to:</p> <p>(i) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of the <i>company</i> or any other connected <i>company</i> (see Note 5);</p> <p>(ii) (in any case), any property, provided that the <i>scheme</i> takes the form of a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than <i>charges</i>) for <i>investment</i> transactions earlier entered into, which the eligible employee was not aware of at the time</p>	

	<p>for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</p>	<p>he entered into them; and</p> <p>(b) (in a case falling within A(1) above) restricts participation in the <i>scheme</i> to eligible employees, the employer and any connected <i>company</i>.</p> <p>(2) Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(a) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); and/or</p> <p>(b) with one or more <i>clients</i> of such a <i>company</i>.</p>
	<p>Category 5 person</p> <p>An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the <i>Act</i> (Exemption of appointed representatives)) if the <i>issue</i> or transfer of <i>units</i> relates to a <i>regulated activity</i> in respect of which the <i>person</i> is exempt from the <i>general prohibition</i>.</p>	<p>Any <i>collective investment scheme</i>.</p>
	<p>Category 6 person</p> <p>An <i>eligible counterparty</i> or a <i>professional client</i>.</p>	<p>Any <i>collective investment scheme</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i>.</p>
	<p>Category 7 person</p> <p>A <i>person</i>:</p> <p>(1) in relation to whom the <i>authorised fund manager</i> or an <i>associate</i> has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the <i>person</i> is capable of making his own investment decisions and understanding the risks involved;</p>	<p>Any <i>collective investment scheme</i> covered by the assessment.</p>

	(2) to whom the <i>authorised fund manager</i> or an <i>associate</i> has given a clear written warning of the protections he may lose; and (3) who has stated in writing, in a separate <i>document</i> from the contract, that he is aware of the consequences of losing such protections.	
The following Notes explain certain words and phrases used in the table above.		
Note 1	Issue or transfer of <i>units</i> to a category of <i>person</i> includes any <i>nominee company</i> acting for such a <i>person</i> .	
Note 2	The risk profile of a <i>scheme</i> will be substantially similar to that of another <i>scheme</i> only if there is such similarity in relation to both liquidity and volatility.	
Note 3	A <i>person</i> is an 'established client' of another <i>person</i> if he has been and remains an actual <i>client</i> of that <i>person</i> in relation to <i>designated investment business</i> done with or through that other <i>person</i> .	
Note 4	A <i>person</i> is a 'newly accepted' <i>client</i> of a <i>firm</i> if:	
	(1)	a written agreement relating to <i>designated investment business</i> exists between the <i>client</i> and the <i>firm</i> (or, if the <i>client</i> is normally resident outside the <i>United Kingdom</i> , an oral or written agreement); and
	(2)	that agreement has been obtained without any contravention of any <i>rule</i> in <i>COBS</i> applying to the <i>firm</i> or (as far as the <i>firm</i> is reasonably aware) any other <i>authorised person</i> .
Note 5	A <i>company</i> is 'connected' with another <i>company</i> if:	
	(1)	they are in the same <i>group</i> ; or
	(2)	one <i>company</i> is entitled either alone or with another <i>company</i> in the same <i>group</i> , to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other <i>company</i> or of its holding <i>company</i> .

Annex U

Amendments to the Credit Unions sourcebook (CRED)

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

2.6.2 G ... For example, the third paragraph of the second section of the first chapter in the Conduct of Business sourcebook, if it were a *rule*, would be COBS 1.2.3GR. If there were two further sub-paragraphs, it would be COBS 1.2.3R(1)(a).

6.3.11 G ~~SUP 10.10.11R gives guidance on forms and procedures relating to approved persons. [deleted]~~

Conduct of business

11.1.1 G The Conduct of Business sourcebook (COBS) sets out *rules* and *guidance* for *firms* ...

11.1.2 G (1) The *rules* and *guidance* set out in COBS mainly apply to *designated investment businesses* and, ~~as stated in COB 1.3.2 G (2)~~, have limited application to *deposits*.

(2) The only parts of COBS that set out *rules* and *guidance* on *deposits*, other than for a *cash deposit ISA* or *cash deposit CTF*, are ~~those relating to the financial promotion rules in COB 3~~ and those relating to distance contracts for *accepting deposits* in COBS 2.6 5 (General provisions related to distance Distance contracts); and COBS 6.7 15 (Cancellation) and withdrawal), ~~COB 6.4.25 (Entering into a distance contract for accepting deposits)~~...

Electronic commerce activities

11.1.5 G ~~The E-Commerce Directive sourcebook (ECO) COBS 5.2 (E-Commerce)~~ contains *rules* and *guidance* applicable to a *credit union* which carries on an *electronic commerce activity*; that is, a *credit union* which *accepts deposits*, or carries on certain other activities, by way of an *information society service*. ~~An information society service is, generally speaking and subject to certain exclusions, a service that:~~

- ~~(1) is normally provided for remuneration;~~
- ~~(2) is provided at a distance;~~
- ~~(3) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; and~~
- ~~(4) is so provided at the individual request of a recipient of the service.~~

11.1.6 G ~~In particular, a credit union which carries on an electronic commerce~~

~~activity needs to be aware of the minimum information requirements in ECO 3.2 (Minimum information requirements). [deleted]~~

CTF providers

- 11.1.7 G A *credit union* which acts as a *CTF provider* needs to be aware of the requirements relating to *CTFs* in *COBS*, in particular *COBS* Chapters 3, 4, ~~5, 6 and 8~~, and 9 Annex 1, 10, 13, 14 and 15 ...
- 11.2.3 G Where a *financial promotion* relates to a *deposit* (other than a *cash deposit ISA* or *cash deposit CTF*) only certain parts of ~~COB 3~~ the *financial promotion rules* apply. These are ~~COB 3.1 COB 3.5 and COB 3.8.4 R~~ to ~~COB 3.8.6 G and COB 3.14~~ COBS 4.2.1R, COBS 4.5.2R, COBS 4.5.7R, COBS 4.6.2R, COBS 4.6.6R, COBS 4.6.7R, COBS 4.7.1R, COBS 4.10.2R, COBS 4.10.4R, COBS 4.10.5R and COBS 4.10.10R.
- 11.2.4 G In addition to the limited application of ~~COB 3~~ the *financial promotion rules*, a number of exemptions ~~from the rules and guidance on financial promotions~~ are listed in ~~COB 3.2.5 R~~. Some exemptions are particularly relevant to *credit unions* namely exemptions (2), (4) and (5) within the defined term *excluded communication* are relevant. In particular, paragraphs (a) and (e) of the definition provide further limitations on the application of the *financial promotion rules* in relation to *credit unions*:
- (1) Exemption (2a): ~~A *financial promotion* which can lawfully be communicated by an unauthorised communicator without approval. A *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were communicated by an unauthorised person, or which originates outside the United Kingdom and is not capable of having an effect in the United Kingdom.~~
 - (2) Exemption (4e): A "one off" ~~non-real time *financial promotion* or a "one-off" solicited *real time financial promotion* that is not a *cold call*. ...~~
 - (3) ~~[deleted]~~
- 11.2.5 G Despite the limited application of *COBS* to *deposits* and the exemptions mentioned in *CRED* 11.2.4G, ~~COB 3.2.8 G(1)~~ reminds *firms* that *financial promotions* (including those which are exempt) may be subject to more general *rules* including *Principle 7* (Communications with clients) and *SYSC 3* (Systems and controls) and the *fair, clear and not misleading rule* ~~COB 2.1.3 R~~ (Clear, fair and not misleading *communication*)).
- 11.2.6 G The requirement on a *firm* under ~~COBS 3.8.4R(1)~~ 4.2.1R(1) is that it ~~should be able to show that it has taken reasonable steps to~~ must ensure that a *non-real time financial promotion* is *fair*, clear, ~~fair~~ and not misleading. This is supported by ~~an evidential provision COB 3.8.5 E~~ further detailed rules including *COBS 4.5.2R*:

(1) [delete and replace with the following]

A firm must ensure that information for a retail client:

- (a) includes the name of the firm;
- (b) is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;
- (c) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (d) does not disguise, diminish or obscure important items, statements or warnings.

(2) [deleted]

11.4.1 G Those parts of *COBS* that relate to *distance contracts for accepting deposits* will have limited application to a *credit union*. This is because the ~~DMD~~ *Distance Marketing Directive* only applies where there is "an organised distance sales or service-provision scheme run by the supplier" (Article 2(a)). ... A one-off transaction dealt with by distance means in order to deal with a particular contingency or emergency will not fall under the *COBS* provisions.

11.4.2 G For those *credit unions* to which the provisions in *COBS* will apply, the provisions which are of particular relevance concern the distance communications ~~general~~ provisions (*COBS* 2.6 5), pre-contract information (*COBS* 6.4.256, 13 and 14), cancellation rights (*COBS* 6.7 15) and ~~the financial promotion~~ *financial promotion rules* (discussed at *CRED* 11.2). If the *credit union* provides *cash deposit ISAs* or *cash deposit CTFs* further rules may apply.

Pre-contract disclosure requirements

11.4.3 G ~~*COBS* 6.4.25 5.1~~ sets out the basic requirement that applies before a *credit union* enters into a *distance contract for accepting deposits* or, ...

11.4.4 G The required information is the contractual terms and conditions and the other information set out in *COBS* ~~App 1 5~~ Ann 1R, ...

Exemptions

11.4.5 G The exemptions referred to in *CRED* 11.4.3G are set out in ~~*COB* 6.4.27R to *COB* 6.4.31R~~ *COBS* 5.1. They are relevant:

- (1) where the contract is concluded by telephone and the ~~retail customer~~ *consumer* gives explicit consent to receiving a more limited range of

information. ~~COBS 6.4.27R (1)~~ 5.1.12R sets out the information to be provided in such cases. Full information has to be provided, in a *durable medium*, immediately after conclusion of the *distance contract* (~~COBS 6.4.27R (2)~~ 5.1.13R);

- (2) ... in this case full information must also be provided in a *durable medium* immediately after conclusion of the *distance contract* (~~COBS 6.4.29R~~ 5.1.13R);
- (3) where there is an initial service agreement and the contract is in relation to a successive or separate operation of the same nature under that agreement, or there is no initial service agreement and the contract is in relation to a successive or separate operation of the same nature and is being performed no more than one year from the date of performance of the last operation (~~COBS 6.4.30R~~ 5.1.8R, 5.1.9R and COBS 5.1.10R to ~~COB 6.4.31R~~; and see ~~COB 1.10.2G~~).

- 11.4.6 G ~~The other provisions in COB which relate to the disclosure requirements and are of relevance to credit unions entering into a distance contract for accepting deposits are in COB 2.6 (General provisions related to distance contracts). [deleted]~~
- 11.4.7 G ...The right to cancel has to be exercised within 14 days of the day of the conclusion of the contract or the day on which he received the contractual terms and conditions, if later (~~COBS 6.7.10~~ 15.2.1R).
- 11.4.8 G The only exemptions from the right to cancel are when:
 - ...
 - (3) the *credit union* has an initial service agreement with the ~~retail customer~~ consumer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see ~~COBS 4.9.2 G (3)~~ 15.2.1R).
- 11.4.9 G The effects of cancellation are set out in ~~COBS 6.7.51R to COB 6.7.52R~~ 15.4 (Effects of cancellation). ...
- 11.4.10 G If there are other ancillary *distance contracts* related to the first, those ancillary contracts may also be cancelled automatically when a ~~retail customer~~ consumer exercises a right to cancel (see ~~COBS 6.7.51~~ 15).
- 11.4.11 G This *guidance* is not a substitute for, and should be read in conjunction with, the requirements contained in the relevant parts of COBS.
- 14.1.3 The *Act* requires the *FSA* to "maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act ... are complying with them" (paragraph 6(1) of Schedule 1 to the *Act*).

17.4.2 G *DISP* 2.6 sets out the activities which come under the jurisdiction of the *Financial Ombudsman Service*, as follows:

...

(5) the provision of ancillary banking services;

(6) consumer credit activities;

or activities ancillary to them (see *DISP* 2.6.2R).

...

Appendix 1 Contents of the Handbook

1.1 This is the table referred to in *CRED* 2.2.2G

1.1.1 Table

	Sourcebook or manual	Reference code
...		
Business standards	...	...
	Conduct of business	<i>COBS</i>
	...	
Specialist Sourcebooks	...	
	<u>E-commerce Directive</u>	<i>ECO</i>
	...	

Annex V

Amendments to the Electronic Money sourcebook (ELM)

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

1.1.5 G (1) *ELM* 1.4A sets out certain minimum requirements under the *Distance Marketing Directive* in respect of a *customer's* cancellation rights. These *rules* are supplemented by the requirements in *COBS* ~~6.7.42R~~ 15.2 (~~Exercising the~~ The right to cancel); *COBS* ~~6.7.47R~~ 15.3 (~~Cancellation notices served out of time~~ Notice of exercise) and *COBS* ~~6.7.51R to COB 6.7.53R~~ 15.4 (Effects of cancellation) which all apply to *e-money firms*.

(2) As set out in *ELM* 6.8, *COBS* ~~6.4.25R~~ 15 applies to *e-money firms* as if references to '~~issuing~~ accepting deposits' and 'deposits' were references to 'issuing e-money' and '*e-money*' respectively.

1.4A.1 R A ~~retail customer~~ consumer has a right to cancel a *distance contract* the making or performance of which by the *firm* constitutes, or is part of, *issuing e-money* unless:

...

(2) the *firm* has an initial service agreement with the ~~customer~~ consumer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see *COBS* ~~4.11.3R~~ 15 Annex 1 1.11R), in which case the right to cancel applies only to the initial agreement.

1.4A.2 R The right to cancel referred to in *ELM* 1.4A.1R starts on the later of:

...

(2) the day on which the ~~retail customer~~ consumer receives the contractual terms and conditions and other information required by *ELM* 6.8 (Information);² and lasts for 14 calendar days.

Failure to give information on cancellation rights

1.4A.3 R If a *firm* does not give a ~~retail customer~~ consumer notice of his cancellation rights in accordance with *ELM* 6.8.2AR and *COBS* ~~6.4.25R~~ 15.2.4G, the contract remains cancellable and the ~~retail customer~~ consumer is not liable for any *shortfall*.

1.4A.4 R A ~~retail customer~~ consumer may, without giving any reason, cancel the contract by serving notice upon the *firm*, before expiry of the relevant cancellation period, in accordance with the instructions for exercising that right provided to the ~~customer~~ consumer in accordance with *ELM* 6.8.2AR, and *COBS* ~~6.4.25R~~ 15.3.1R and *COBS* 15.3.2R.

1.4A.5 R The following *rules* also apply as if *issuing e-money* were *accepting deposits*: ~~COBS 6.7.47R~~ 15.3.4R (Record keeping); ~~COBS 6.7.48R~~ 15.3.1R (Cancellation notices served out of time Notice of exercise) and ~~COBS 6.7.51R to COB 6.7.53R~~ 15.4 (Effects of cancellation).

1.5.2 G Table Application of other parts of the Handbook to ELMIs

Block	Module	Application
...		
Business standards	Conduct of Business sourcebook (COBS)	<p>The effect of :</p> <p>(1) <i>ELM</i> 6.8.2AR is that COBS 2.6 5 (General provisions in relation to <u>Distance contracts</u>) applies to <u>a firm issuing e-money</u>;</p> <p>(2) <i>ELM</i> 1.4A.5R is that COBS 6.7.47R 15.3.4R, COBS 6.7.48R 15.3.1R and COBS 6.7.51R to COB 6.7.53R <u>15.4</u> apply; and</p> <p>(3) <u>[deleted]</u></p> <p>Otherwise, <u>COBS</u> does not apply to an <i>ELMI</i> when <i>issuing e-money</i> and. As explained in <i>PERG 3</i>, the <i>rules</i> in <u>COBS</u> about <i>financial promotions</i> do not usually apply to <i>e-money</i>, but may do so in certain situations.</p>
...		
Specialist sourcebooks other than <i>ELM</i>	...	
	E-Commerce Directive sourcebook (ECO)	<u>Applies to every <i>ELMI</i> that carries on electronic commerce activities. Also applies to every <i>ELMI</i> in relation to a financial promotion which is an outgoing electronic commerce communication.</u>
...		

6.8.2A R ~~COBS 2.6 5.1~~ (General provisions related to distance contracts The distance marketing disclosure rules) and ~~COB 6.4.25R~~ (Entering into a distance

~~contract for accepting deposits) applies~~ apply to a firm issuing e-money as if references to 'accepting deposits' and 'deposits' were references to 'issuing e-money' and 'e-money' respectively.

Additional rules for e-commerce

- 6.8.7 GR ~~{deleted}~~ A firm carrying on an electronic commerce activity from an establishment in the United Kingdom with or for a person in the United Kingdom or another EEA state, in relation to e-money, must also comply with the e-commerce rules (COBS 5.2).

Annex W

Amendments to the Professional Firms sourcebook (PROF)

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

- 1.1.1A R This sourcebook does not apply to an *incoming ECA provider* acting as such.
- 5.3.2 G COBS 18.11 ~~COB 1.2.1R(4)~~ provides that COBS does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:
- (1) ~~COB 2.1 (Clear, fair and not misleading communication), COB 3 (Financial promotion) and COB 4.2.1R to COB 4.2.6G, COB 4.2.9R and COB 4.2.11E (Content of terms of business); and the *fair, clear and not misleading rule*;~~
- (1A) the *financial promotion rules*, but only in limited circumstances;
- (2) (where these are *insurance mediation activities*) COBS 7 (Insurance mediation) the *IMD implementation provisions* and COB 4.3.19R to COB 4.3.25R as if they also applied to a *firm* carrying out the activities in COB 4.3.19R(1)(a)-(e) with or on behalf of *private customers*, unless:
- (a) the *designated professional body* of the *firm* has made rules which implement some or all of articles 12 and 13 of the *Insurance Mediation Directive IMD*;
- (b) those rules have been approved by the *FSA* under section 332(5) of the *Act*; and
- (c) the *firm* is subject to the rules in the form in which they were approved;
- in which case they are disappplied to the extent that articles 12 and 13 of the *IMD* are implemented by the rules of the *designated professional body*.
- (3) ~~COB 1.2.1AG provides that the effect of COB 1.2.1R(4)(d) is that if the relevant *designated professional body* of an *authorised professional firm* does not make rules implementing articles 12 and 13 of the *IMD* applicable to *authorised professional firms*, those *firms* will need to comply with the *IMD implementation provisions* and COB 4.3.19R to COB 4.3.25R as if they also applied to a *firm* carrying out the activities in COB 4.3.19(1)(a)-(e) with or on behalf of *private customers*.~~ COBS 8.1.3R (Client agreements), except for the requirement to provide information on conflicts of interest.

- 5.3.6 G *DISP* 1.1.5R (3) provides that *DISP* 1 (Treating complainants fairly) ~~does not apply~~ only applies to an *authorised professional firm* in so far as its ~~non mainstream regulated activities~~ mainstream regulated activities are concerned. ...
- 5.3.9 G *CASS* 1.2.4R provides that with the exception of *CASS* 1 and the *insurance client money chapter*, *CASS* 2, *CASS* 3 and *CASS* 4 does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. *CASS* 1.2.5R further provides that if the *non-mainstream regulated activities* are *insurance mediation activity*, *CASS* 5 (the *insurance client money chapter*) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which implement the ~~IMD~~ *Insurance Mediation Directive* and which are in the form approved by the *FSA* under section 332(5) of the *Act*.
- 5.4.1 R (1) In addition to those provisions of the *Distance Marketing Regulations* which apply directly (see ~~*COB* 1.9.2 G (3)~~), an *authorised professional firm* must, with respect to its *non-mainstream regulated activities*, comply with regulations 7 to 11 and 15 of the *Distance Marketing Regulations*. ...

...

Annex X

Amendments to the Listing Rules (LR)

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

LR Appendix 1 Relevant definitions

1.1 Relevant definitions

1.1.1 ...

...

COBS the Conduct of Business ~~S~~sourcebook, from 1 November 2007.

employee an individual:

(a) ...

(b) ...

but excluding an *appointed representative* or, where applicable, a *tied agent* of that *person*.

regulated market [delete existing definition and replace with the following:]

a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of *MiFID*.

transferable security (as defined in section 102A of the *Act*) anything which is a transferable security for the purposes of ~~the investment services directive~~ *MiFID*, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.

Annex Y

Amendments to the Prospectus Rules (PR)

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

	PR Appendix 1	Relevant definitions
1.1	...	
...		
Investment Services Directive		[deleted]
ISD		[deleted]
<u>MiFID</u>		<u>The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).</u>
		<u>See also MiFID Regulation and MiFID implementing Directive.</u>
<i>regulated market</i>		[delete existing definition and replace with the following] <u>a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID.</u>
<i>transferable security</i>		(as defined in section 102A of the Act) anything which is a transferable security for the purposes of the investment services directive <u>MiFID</u> , other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.

Annex Z

Amendments to the Perimeter Guidance manual (PERG)

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

- 2.4.3 G ...
- (1) ...
- ...
- (5) The fifth case, inserted by the *ECD Regulations* is, in effect, where an *electronic commerce activity* is carried on, from an *establishment* in the *United Kingdom*, in another *EEA State*. ~~The *ECO* includes rules and guidance that apply to *ECA providers* based in the *United Kingdom*.~~
- 2.9.14 G In broad terms ... debentures under the scheme. They do not apply to the activities of a person who is neither such a company nor such a trustee (for example, a third party administration service provider).
- 2.9.18 G (1) ...
- (2) The *Regulated Activities Order* was amended ... falling under the *Insurance Directives* (see *PERG 2.8.3G*). However, services provided off-line in the *United Kingdom* (that is, other than as an *electronic commerce activity*) by such a firm which amount to *regulated activities* still require *authorisation*. ~~*ECO* provides includes guidance and sets out rules that are relevant to both *incoming* and *outgoing ECA providers*. *Incoming ECA providers* have also to comply with any *authorisation* requirements in the *country of origin* of the services.~~
- 2.9.22 G [deleted]
- 2.11 What to do now?
- 2.11.2 G As part of its application for *Part IV permission*, an applicant may wish to apply for certain *limitations* (details of which are given in the application pack).
- 2.11.3 G An example of *limitations* which may be applied for or imposed include a limit on the types of *client* that a *firm* may deal with including:
- (1) retail (investment);
- (2) professional;
- (3) eligible counterparty;
- These limitations correspond to the *Glossary* terms *retail client*, *professional*

client and eligible counterparty.

E-Commerce Directive

- 4.11.21 G The *E-Commerce Directive* removes ~~Further guidance is contained in the FSA's E-Commerce Directive sourcebook (ECO).~~
- 5.12.15 G The *E-Commerce Directive* removes ... ~~Further guidance is contained in ECO.~~
- 8.12.18 G The purpose of these exemptions ... the mere conduit to make the communication. Neither does it apply where the *financial promotion* is an ~~outgoing~~ electronic commerce communication that is, or will be, communicated from an establishment in the United Kingdom to a person in an EEA State other than the United Kingdom. A person ...
- 8.12.38 G Article 20B gives effect to the provisions of the *E-Commerce Directive* by exempting ~~incoming~~ electronic commerce communications made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom. However, article 20B does not apply to the following communications:

...

- 9.1.6 G [deleted]

13.4 Financial Instruments

Q34. Are there any other derivatives subject to MiFID regulation?

There is a miscellaneous category of derivatives in C10, which is supplemented by articles 38 and 39 of the *MiFID Regulation*. These relate to:

- climatic variables;
- freight rates;
- emission allowances;
- inflation rates or other official economic statistics;

...

- 13.6 **Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?**

...

... You will be subject to the relevant ongoing requirements in the Interim Prudential Sourcebook for Investment Businesses relating to ~~securities and futures firms and personal investment firms and securities and futures firms~~, as appropriate (see ~~IPRU(INV) 13.1A.6R~~ 13.1A.13R and ~~IPRU(INV) 9.2.8R~~ 9.2.9R).

If you are an exempt CAD firm which has opted into MiFID legislation (see Q52), you will need to consider whether you are subject to the audit requirements of

companies legislation (see Part VII of the Companies Act 1985 and Part 16 of the Companies Act 2006). You can benefit from the auditing exemption for small companies in companies legislation if you fulfil the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2007. In other words, if you continue to meet the conditions of the article 3 MiFID exemption (notwithstanding that you are an exempt CAD firm), you can benefit from the auditing exemption for small companies, as provided for in companies legislation. For further details, see The Markets in Financial Instruments Directive (Consequential Amendments) Regulations 2007 (SI 2007/2932) . The same regulations also contain a transitional regime which has the effect of exempting exempt CAD firms from statutory audit requirements in relation to a financial year beginning before 1 November 2007 and ending on or after that date, where the exempt CAD firm was not an ISD investment firm.

After PERG 13.6 insert the following new section. The text is not underlined.

The territorial application of MiFID

13.7 Q67. What is the territorial application of MiFID?

If a firm is established in one Member State, and carries on all its investment business in that state, that state has responsibility for the entire financial services regulation of the firm.

If, however, the firm provides investment services or activities in another Member State, or establishes a branch in another Member State, the questions arise ‘Whose rules apply?’ and ‘Which regulator has responsibility for enforcing them?’.

The general principle is that prudential regulation is the responsibility of the Home State but conduct of business regulation is the responsibility of the Host State.

A Host State may also impose requirements relating to matters that fall outside of the scope of the directive - for example, market abuse, anti-money laundering controls and the conditions for cold calling.

We have added further guidance in PERG on the ability of a Host State to impose conduct of business requirements (see Q67).

Q68. What is ‘prudential regulation’ and ‘conduct of business regulation’ in this context?

Prudential regulation relates primarily to the capital adequacy of a firm and its systems and controls. In general terms, this means every aspect of a firm’s activities relating to financial services except those areas where the firm is concerned with a client. So provisions, for example, relating to communicating with clients, client agreements, best execution and order handling are seen as ‘conduct of business’ requirements and are not prudential.

Q69. What does this mean for my firm?

MiFID is about the regulation of markets in financial instruments – it is not about setting capital standards. It does, however, contain provisions about systems and controls and conduct of business. It also contains other market specific provisions which allocate the responsibilities between the home and host Member States.

If a firm establishes a branch in another Member State, the competent authority of the State where the branch is located has responsibility for the services and activities provided by the branch within that territory. As article 32(7) of MiFID provides, that authority has responsibility for ensuring compliance with the rules referred to in column 1 of the table below. The location of those rules is set out in column 3.

	Subject matter	Location
1	Conduct of business obligations to clients	<i>COBS</i> generally but see Notes 1 and 2
2	Best execution	<i>COBS</i> 11.2 (Best execution)
3	Client order handling	<i>COBS</i> 11 (Dealing and managing)
4	Market integrity, transaction reporting and maintaining records	<i>SUP</i> 17 (Transaction reporting)
5	Making public firm quotes (transparency)	<i>MAR</i> 6 (Systematic internalisers)
6	Post-trade disclosure	<i>MAR</i> 7 (Disclosure of information on certain trades undertaken outside a regulated market or MTF)

Notes:

1. Further guidance on the territorial scope of *COBS* is given in *COBS* 1 Annex 1, Part 3 and in *SUP* 13A Annex 2.
2. The *MiFID* conduct of business rules in article 19 are implemented in:
 - (a) *COBS* 2.1 (Acting honestly, fairly and professionally)
 - (b) *COBS* 2.2 (Information disclosure before providing services)
 - (c) *COBS* 4.2 (Fair, clear and not misleading communications)
 - (d) *COBS* 4.3 (Financial promotions to be identifiable as such)
 - (e) *COBS* 8.1 (Client agreements: designated investment business)

- (f) COBS 9.2 (Assessing suitability)
- (g) COBS 10.2 (Assessing appropriateness: the obligations)
- (h) COBS 10.3 (Warning the client)
- (i) COBS 10.4 (Assessing appropriateness: when it need not be done) ,
and
- (j) COBS 16 (Reporting information to clients).

Q70. How are the high level standards, like the Principles, affected by MiFID?

The position is summarised in the table below.

	Subject matter	References	Summary
1	The Principles	PRIN 3.1.6R (Who?)	A firm is not subject to the Principles to the extent that it would be contrary to MiFID (and the other Single Market Directives).
2		PRIN 4.1.2G (Where?)	The territorial scope of some Principles has been extended and others narrowed according to the type of firm.
3	Systems and controls	<p>SYSC 1.1.1R(6) and SYSC 1.3.9R to SYSC 1.3.11R</p> <p>SYSC 1.1.1R(1)(a), SYSC 1.1.7R and SYSC 1.3.10AR</p>	<p>A UK MiFID investment firm is a common platform firm. It is subject to the common platform requirements in SYSC 4 to SYSC 10 and is not subject to the requirements in SYSC 2 and 3. The common platform requirements generally apply in relation to activities conducted from an establishment in the United Kingdom or another EEA State. However, this is subject to some modification, for example in relation to requirements on record keeping and financial crime. Most of the common platform requirements also apply in a prudential context to the activities of a UK MiFID investment firm from an establishment outside the EEA.</p> <p>An EEA MiFID investment firm is not a common platform firm and is therefore not subject to the common platform requirements. However, it is subject to the common platform record keeping requirements. Some provisions in SYSC 2 and 3 will apply to the UK establishment of an EEA MiFID investment firm but only in respect of matters that are not reserved to the Home State</p>

			regulator. This is particularly relevant to the provisions on systems and controls concerning financial crime and money laundering in SYSC 3.
4	Approved persons	SUP 10.1, APER 1.1.4G and APER 2.1.1AP	The territorial scope of some of the controlled functions under the approved persons regime and of the application of the Statements of Principle is modified as a result of MiFID.
5	The threshold conditions	COND 1.1.4G (Where?)	The guidance indicates that the threshold conditions apply in relation to all the regulated activities of a firm wherever they are carried on except, for example, in relation to incoming EEA firms in certain cases. MiFID has not affected this.

Q71. What is the position in relation to record keeping in branches?

The effect of article 13(9) of MiFID is also to shift the default position (of regulation by the Home State) to regulation by the Host State for the record-keeping requirements imposed on a branch (see SYSC 1.3.10AR).

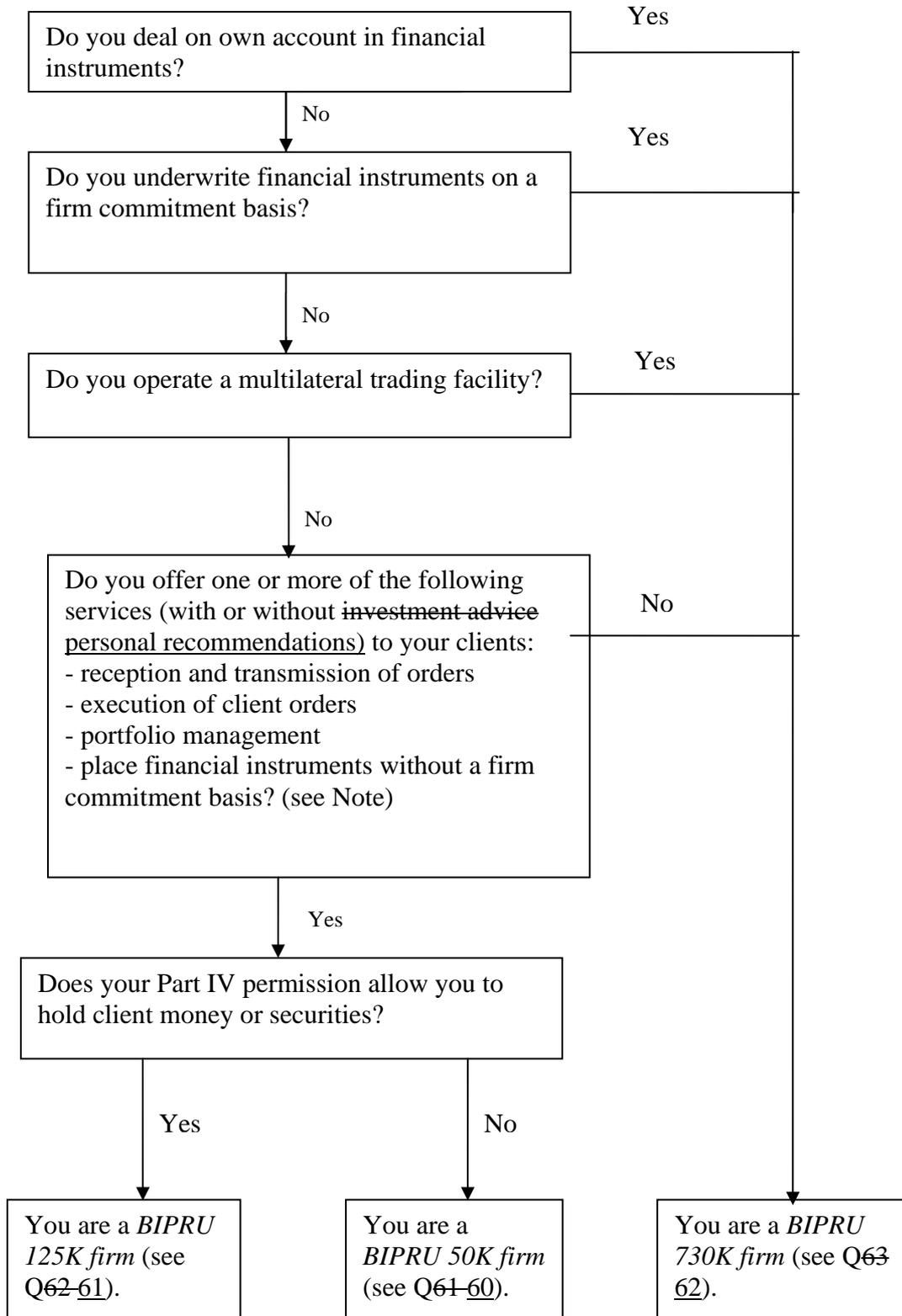
Q72. Will a branch need to report to the competent authority of the Member State where it is located?

For some purposes, yes. Article 61 of MiFID gives a Host Member State the power to require reports for statistical purposes and to require branches to provide information necessary for monitoring compliance with the standards of the Host Member State (see SUP 16.7 (Financial reports)). These standards are the ones referred to in Article 32(7) as set out in Q69.

PERG 13 Annex 3

Flow chart 2 – CAD investment firms (excluding UCITS investment firms)

Are we a BIPRU 50K firm, a BIPRU 125K firm or a BIPRU 730K firm?



ADDENDUM

MIFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In Annex O to this instrument amend Chapter 2 of MCOB as follows:

2.1.2 R Table

This table belongs to *MCOB 2.1.1R*

(1) Category of firm	(2) Applicable section
...	...
<i>home purchase provider</i>	... , <i>MCOB 2.7A</i> and <i>MCOB 2.8.6G</i>
...	...
<i>a firm that communicates or approves a financial promotion of qualifying credit or of a home reversion plan</i>	... , <i>MCOB 2.7A</i> and <i>MCOB 2.8</i> (except <i>MCOB 2.8.6G</i>)
<i>a firm that communicates or approves a financial promotion of a home purchase plan</i>	... , <i>MCOB 2.7A</i> and <i>MCOB 2.8.6G</i>

Addendum

25 October 2007

ERRATA

Amendments to the Conduct of Business sourcebook (COBS)

Underlining indicates new text and striking through indicates deleted text.

The '*Explanations of changes*' shown below do not form part of the legislative text.

Amend COBS 18 as shown.

Explanation of changes

COBS 18.11.2R applies the relevant COBS rules to authorised professional firms in respect of their non-mainstream regulated activities. The text omitted a provision extending the application to the e-commerce rules in COBS 5.2. The text we are publishing now corrects this.

18 Specialist Regimes

...

18.11 Authorised professional firms

...

- 18.11.2 R *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:
- (1) the *fair, clear and not misleading rule* applies;
 - (2) the *financial promotion rules* apply as modified below;
 - (3) *COBS 7* (Insurance mediation) applies but only if the *designated professional body* of the *firm* does not have rules approved by the *FSA* under section 332(5) of the *Act* that implement articles 12 and 13 of the *Insurance Mediation Directive* and that apply to the *firm*; ~~and~~
 - (4) *COBS 8.1.3 R* (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and
 - (5) *COBS 5.2* (E-commerce) applies.

Amend COBS TP 1 as shown.

Explanation of changes

COBS TP 1.9 is a transitional rule designed to allow firms other than MiFID firms and equivalent third country firms to continue to use the pre-1 November client classification provisions in relation to new clients for a limited period. The text of TP 1.9 omitted a sub heading and a paragraph that make this clear and there is a risk that the scope of the provision could be misunderstood. The text we are publishing now corrects this.

COBS TP 1: Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
1.1	COBS 3	G	... (6) COBS TP 31.9 contains...	From 1 November 2007 indefinitely	1 November 2007
...
			<u>Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)</u>		
1.9	COBS 3	R	(1) A new <i>client</i> that could have been correctly categorised as an <i>intermediate customer</i> under the <i>rules</i> in force on 31 October 2007: (a) may be treated as an <i>elective professional client</i> if it could have been categorised as an expert <i>private customer</i> that had been categorised as an <i>intermediate customer in accordance with COB 4.1.9R</i> on the basis of its experience and understanding; or (b) otherwise may be treated as a <i>per se</i>	From 1 November 2007 to 30 June 2008	1 November 2007

		<p><i>professional client</i>, subject to (3) below.</p> <p>(2) A <i>firm</i> may categorise as an <i>eligible counterparty</i> or a <i>per se professional client</i> any new <i>client</i> that could have been correctly categorised as a an <i>market counterparty</i> under the <i>rules</i> in force on 31 October 2007, provided that the <i>firm</i> may only treat the <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>eligible counterparty business</i>.</p> <p>(3) <i>Clients</i> categorised under <i>COBS TP 3.9</i> must be dealt with in accordance with the relevant procedures and notifications in <i>COBS 3</i>.</p> <p><u>(4) This rule only applies in relation to business that is not <i>MiFID</i> or equivalent third country business.</u></p>		
--	--	---	--	--

1 November 2007

**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 2) INSTRUMENT
2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Parts 1 to 6 of the Annex come into force on 1 January 2008; and
 - (2) Parts 7 and 8 of the Annex come into force on 30 June 2008.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Amendment No 2) Instrument 2007.

By order of the Board
25 October 2007

Annex A

Amendments to the Supervision manual (SUP)

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

Part 1

SUP 16

...

Reporting requirement

16.12.3 R (1) Any *firm* ~~permitted to carrying~~ on any of the activities within each of the RAGs set out in column (1) of the table in SUP 16.12.4R must:

- (a) (i) unless (ii) applies, submit to the FSA the duly completed *data items* or other items applicable to the *firm* as set out in the provision referred to in column (2) of that table;
- (ii) to the extent that a *firm* is required to submit completed *data items* in respect of more than one RAG, the *firm* must only submit the *data item* of the same name and purpose in respect of the lowest numbered RAG applicable to it;
- (iii) (ii) does not apply to any *data items* relating to the FSA fees or FOS or FSCS levy, or threshold conditions, which must be submitted in respect of each RAG;
- (iv) in the case of a non-EEA bank, or an EEA bank (whether or not it has permission to accept deposits) other than one with permission for cross border services only, any data items submitted should, unless indicated otherwise, only cover the activities of the branch operation in the United Kingdom;
- in the format specified as applicable to the *firm* in the provision referred to in column (2);

(b) ...

...

16.12.3 G The following is designed to assist *firms* to understand how the reporting requirements set out in this chapter operate when the circumstances set out in SUP 16.12.3R(1)(a)(ii) apply.

A

(1) Example 1

A UK bank that undertakes activities in both RAG 1 and RAG 7

Overlaying the requirements of RAG 1 (data items) with the requirements of RAG 7 shows the following:

<u>RAG 1 (SUP 16.12.6R) data items</u>	<u>RAG 7 (SUP 16.12.22AR) data items</u>
<u>Annual accounts</u>	<u>Annual accounts</u>
<u>Audited accounts of the <i>mixed-activity holding company</i></u>	<u>Annual accounts of the <i>mixed-activity holding company</i> (note 10)</u>
<u>Solvency statement</u>	<u>Solvency statement</u>
<u>Balance sheet</u>	<u>Balance Sheet</u>
<u>Income statement</u>	<u>Income Statement</u>
<u>Capital adequacy</u>	<u>Capital Adequacy</u>
<u>Credit risk</u>	<u>Credit risk</u>
<u>Market risk</u>	<u>Market risk</u>
<u>Market risk - supplementary</u>	<u>Market risk - supplementary</u>
<u>Operational risk</u>	<u>Operational risk</u>
<u>Large exposures</u>	<u>Large exposures</u>
<u>UK integrated group large exposures</u>	<u>UK integrated group large exposures</u>
<u>Liquidity (other than stock)</u>	
<u>Liquidity – stock</u>	
<u>Forecast data</u>	
<u>Solo consolidation data</u>	<u>Solo consolidation data</u>
	<u>Pillar 2 questionnaire</u>
<u>Interest rate gap report</u>	
<u>Non-EEA sub-group</u>	<u>Non-EEA sub-group</u>
	<u>Professional indemnity insurance</u>
	<u>Threshold Conditions</u>
	<u>Training and Competence</u>
	<u>COB data</u>
	<u>Supplementary product sales data</u>
	<u>Client money and client assets</u>
	<u>Fees and levies</u>

From this, the additional reports that are required are:

- (a) Pillar 2 questionnaire (FSA019), but the note that applies to the data item for RAG 7 firms (note 8) makes clear this only applies to *BIPRU investment firms* (so it should not be completed by a RAG 1 firm);
- (b) Professional indemnity insurance, where RAG 7 firms complete Section E of the RMAR, and therefore a RAG 1 firm should complete that;
- (c) Threshold conditions, which is not applied across RAGs by virtue of SUP 16.12.3R(1)(a)(iii);

- (d) Training and competence data, where RAG 1 firms should also complete Section G of RMAR;
- (e) Conduct of business data, where RAG 1 firms should complete Section H of RMAR;
- (f) Supplementary product sales data, the reporting requirements for which are met by completing Section I of RMAR; and
- (g) Fees and levies, which are not applied across RAGs by virtue of SUP 16.12.3R(1)(a)(iii).

The reporting frequency and submission times for items (b) and (d) to (f) above are then derived from the rules applicable to *BIPRU firms* in SUP 16.12.23R and SUP 16.12.24R.

(2) Example 2

A non-EEA bank in RAG 1 that also carries on activities in RAG 5

Again, overlaying the RAG 1 reporting requirements with the requirements for a RAG 5 firm gives the following :

<u>RAG 1 requirements (SUP 16.12.5R)</u>	<u>RAG 5 requirements (SUP 16.12.18AR)</u>
<u>Annual accounts</u>	<u>Annual accounts</u>
<u>Audited accounts of the mixed-activity holding company (note 9)</u>	
<u>Solvency statement (note 10)</u>	
<u>Balance sheet</u>	<u>Balance Sheet</u>
<u>Income statement</u>	<u>Income Statement</u>
<u>Capital adequacy</u>	<u>Capital Adequacy</u>
<u>Credit risk</u>	
<u>Market risk</u>	
<u>Market risk -supplementary</u>	
<u>Operational risk</u>	
<u>Large exposures</u>	
<u>UK integrated group large exposures</u>	
<u>Liquidity (other than stock)</u>	
<u>Liquidity – stock</u>	
<u>Forecast data</u>	
<u>Solo consolidation data</u>	
<u>Interest rate gap report</u>	
<u>ELMI questions</u>	
<u>Non-EEA sub-group</u>	
	<u>Lending – Business flow and rates</u>
	<u>Residential Lending to individuals</u>

	<u>– New business profile</u>
	<u>Lending – Arrears analysis</u>
	<u>Mortgage administration – Business profile</u>
	<u>Mortgage Administration – Arrears analysis</u>
	<u>Analysis of loans to customers</u>
	<u>Provisions analysis</u>
	<u>Fees and levies</u>

In this case, it is more obvious that the firm’s reporting requirement in RAG 1 is not all the data items listed above. However, for the purposes of this exercise, it is the list of potential data items that is important. Thus comparing RAG 1 with RAG 5, the additional reporting requirements are:

- (a) Lending – Business flow and rates, where Section D MLAR is required;
- (b) Residential Lending to individuals – New business profile, where Section E MLAR is required;
- (c) Lending – Arrears analysis, where Section F MLAR is required;
- (d) Mortgage administration – Business profile, where Section G MLAR is required;
- (e) Mortgage Administration – Arrears analysis, where Section H MLAR is required
- (f) Analysis of loans to customers, where section A3 of MLAR is required
- (g) Provisions analysis, where Section B2 of MLAR is required; and
- (h) Fees and levies, which are not applied across RAGs by virtue of SUP 16.12.3R(1)(a)(iii).

The reporting frequency and submission times for items (a) to (g) above are then derived from the rules applicable to RAG 5 firms in SUP 16.12.18R.

The fact that the non-EEA bank has no specific data item to complete in respect of the balance sheet and capital adequacy in RAG 1 means that the notional requirement to provide such reports is satisfied by a non-submission. For example, in the case of the balance sheet for a non-EEA bank, this data is not requested as it duplicates data provided to the Bank of England, which is also available to the FSA.

16.12.4 R Table of applicable rules containing *data items*, frequency and submission

periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/ period	Due date
...
RAG 4	<ul style="list-style-type: none"> • managing investments • establishing, operating or winding up a regulated collective investment scheme • establishing, operating or winding up an unregulated collective investment scheme • establishing, operating or winding up a stakeholder pension scheme • establishing, operating or winding up a personal pension scheme • acting as depository or sole director of an OEIC 	<i>SUP</i> 16.12.14R <i>SUP</i> 16.12.15R	<i>SUP</i> 16.12.14R <i>SUP</i> 16.12.16R	<i>SUP</i> 16.12.14R <i>SUP</i> 16.12.17R
RAG 5	...			
RAG 6	<ul style="list-style-type: none"> • acting as trustee of an authorised unit trust scheme • safeguarding and administration of assets (without arranging) • arranging safeguarding and administration of assets • <u>acting as depository or sole director of an OEIC</u> 	<i>SUP</i> 16.12.19R	<i>SUP</i> 16.12.20R	<i>SUP</i> 16.12.21R
...

...

Regulated Activity Group 1

Applicable data items

...

Regulated Activity Group 3

...

16.12.11 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to *firm* type in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
Solvency statement	...			...	...			No standard format (note 11)
...								
Note 1	...							
...								
Note 8	<p>Only applicable to <i>BIPRU investment firms</i> that are:</p> <p>(a) subject to consolidated supervision under <i>BIPRU 8</i>, except those that are either included within the consolidated supervision of a group that includes a UK <i>credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>;</p> <p>(b) subject to consolidated supervision under <i>BIPRU 8</i> that have been granted an <i>investment firm consolidation waiver</i>; and</p> <p>(c) not subject to consolidated supervision under <i>BIPRU 8</i>.</p> <p>A <i>BIPRU investment firm</i> under (a) should complete the report on the basis of its UK consolidation group. A <i>BIPRU investment firm</i> under (b) or (c) should complete the report on the basis of its solo position.</p>							
...								

...

Regulated Activity Group 4

...

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU

		<i>firms</i>						
...								
Annual accounts of the <i>mixed-activity holding company</i> (note 10)	No standard & format							
	No standard format							
Solvency statement (note 11)	No standard & format				...			No standard format
	No standard format							
...								
Balance sheet	...	...	...	...	...	...	FSA029 (note 16) or <u>Section A RMAR</u> (note 17)	...
Income statement	...	...	...	...	...	...	FSA030 (note 16) or <u>Section B RMAR</u> (note 17)	...
Capital adequacy	...	...	...	...	...	...	FSA032 (note 14) or FSA037 (note 15 and 16) <u>Section D1 and D2 RMAR</u> (note 17)	...
...								
Non-EEA sub groups	...	...	...		
<u>Threshold conditions</u>							<u>Section F</u>	

							<u>RMAR</u> (note 17)	
Volumes and type of business	...	...	...	...	...	...	FSA038	...
Client money and client assets	...	...	...	...	...	...	<u>Section C</u> <u>RMAR</u> (note 17) or FSA039	...
...								
Note 1	...							
...								
Note 8	<p>Only applicable to <i>BIPRU investment firms</i> that are:</p> <p>(a) subject to consolidated supervision under <i>BIPRU 8</i>, except those that are either included within the consolidated supervision of a group that includes a <i>UK credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>;</p> <p>(b) subject to consolidated supervision under <i>BIPRU 8</i> that have been granted an <i>investment firm consolidation waiver</i>; and</p> <p>(c) not subject to consolidated supervision under <i>BIPRU 8</i>.</p> <p>A <i>BIPRU investment firm</i> under (a) should complete the report on the basis of its <i>UK consolidation group</i>. A <i>BIPRU investment firm</i> under (b) or (c) should complete the report on the basis of its solo position.</p>							
...								
Note 15	<p>FSA032 must be completed by a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>.</p> <p>FSA037 must be completed by any other <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 carrying out <i>RAG 4</i> activities.</p>							
...								
Note 17	<u>This is only applicable to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is not an <i>exempt CAD firm</i>.</u>							

16.12.16 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.4R* are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Firms' prudential category				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	Consolidated <i>BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>

...					
FSA037					Quarterly and annually (note 4)
...					
FSA042	...	...	...		...
<u>Section A RMAR</u>					<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section B RMAR</u>					<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section C RMAR</u>					<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section D1 and D2 RMAR</u>					<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section F RMAR</u>					<u>Half yearly</u>
Note 1	...				
Note 2	<u>Annual regulated business revenue up to and including £5 million.</u>				
Note 3	<u>Annual regulated business revenue over £5 million.</u>				

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
FSA036	
FSA037		<i>20 business days</i>		<i>80 business days</i>
...				
FSA042		...		
<u>Section A RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section B RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section C RMAR</u>		<u>30 business days</u>	<u>30 business days</u>	
<u>Section D1 and</u>		<u>30 business days</u>	<u>30 business days</u>	

<u>D2 RMAR</u>				
<u>Section F RMAR</u>			<u>30 business days</u>	
<u>Note 1</u>	<u>For unconsolidated and solo-consolidated reports.</u>			
<u>Note 2</u>	...			

...

Regulated Activity Group 6

...

16.12.19 R A The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of data item	<i>Firm's prudential category and applicable data item (note 1)</i>				
	<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13	<i>UPRU</i>
...	...				
Solvency statement (note 6)		No standard format (note 6)			<u>No standard format</u>
Balance sheet	...	...	...	FSA029 (note 3) or <u>Section A RMAR (note 7)</u>	...
Income statement	...	...	...	FSA030 (note 3) or <u>Section B RMAR (note 7)</u>	...
Capital adequacy	...	...	...	FSA032 (note 5) or FSA037 (note 5 and 3) <u>Section D1 and D2 RMAR (note 7)</u>	...
<u>Threshold conditions</u>				<u>Section F RMAR</u>	
Client money and client assets	...	...	...	<u>Section C RMAR (note 7)</u> or FSA039	...
...					
Note 1	...				
...					
Note 5	FSA032 must be completed by a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i> . FSA037 must be completed by any other <i>firm</i> subject to <i>IPRU(INV)</i> Chapter				

	<u>13 carrying out RAG 6 activities.</u>
...	
<u>Note 7</u>	<u>This is only applicable to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.</u>

16.12.20 R The applicable reporting frequencies for submission of *data items* referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

...	
FSA036	...
FSA037	<u>Quarterly and annually (note 1)</u>
...	
FSA040	...
<u>Section A</u> <u>RMAR</u>	<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section B</u> <u>RMAR</u>	<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section C</u> <u>RMAR</u>	<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section D1</u> <u>and D2</u> <u>RMAR</u>	<u>Half yearly (note 2)</u> <u>Quarterly (note 3)</u>
<u>Section F</u> <u>RMAR</u>	<u>Half yearly</u>
<u>Note 1</u>	...
<u>Note 2</u>	<u>Annual regulated business revenue up to and including £5 million.</u>
<u>Note 3</u>	<u>Annual regulated business revenue over £5 million.</u>

16.12.21 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.20R.

<i>Data item</i>	Quarterly submission	Half yearly submission	Annual submission
...			
FSA036	...		...
FSA037	<u>20 business days</u>		<u>80 business days</u>
...			
FSA040	...		
<u>Section A</u> <u>RMAR</u>	<u>30 business days</u>	<u>30 business days</u>	
<u>Section B</u>	<u>30 business days</u>	<u>30 business days</u>	

<u>RMAR</u>			
<u>Section C</u> <u>RMAR</u>	<u>30 business days</u>	<u>30 business days</u>	
<u>Section D1 and</u> <u>D2 RMAR</u>	<u>30 business days</u>	<u>30 business days</u>	
<u>Section F</u> <u>RMAR</u>		<u>30 business days</u>	

Regulated Activity Group 7

16.12.22 R The applicable *data items* referred to in SUP 16.12.4R are set out in the
A table below:

Description of <i>Data item</i>	Firm prudential category and applicable <i>data item</i> (note 1)				
	<i>BIPRU 730K</i> <i>firm</i>	<i>BIPRU 125K</i> <i>firm and</i> <i>UCITS</i> <i>investment</i> <i>firm</i>	<i>BIPRU 50K</i> <i>firm</i>	IPRU INV Chapter 13 firms carrying out European – wide activities under MiFID	IPRU INV Chapter 13 firms not carrying out European- wide activities under MiFID
...					
Note 1	...				
...					
Note 8	<p>Only applicable to <i>BIPRU investment firms</i> that are:</p> <p>(a) subject to consolidated supervision under <i>BIPRU 8</i>, except those that are either included within the consolidated supervision of a group that includes a UK <i>credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>;</p> <p>(b) subject to consolidated supervision under <i>BIPRU 8</i> that have been granted an <i>investment firm consolidation waiver</i>; and</p> <p>(c) not subject to consolidated supervision under <i>BIPRU 8</i>.</p> <p>A <i>BIPRU investment firm</i> under (a) should complete the report on the basis of its <i>UK consolidation group</i>. A <i>BIPRU investment firm</i> under (b) or (c) should complete the report on the basis of its solo position.</p>				
...					

...

Regulated Activity Group 8

...

16.12.25 R The applicable *data items* referred to in SUP 16.12.4R are set out according

A to type of *firm* in the table below:

Description of data item	<i>Firms prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
Solvency statement (note 11)			<u>No standard format</u>
Balance sheet	FSA029 (note 16) or <u>Section A RMAR (note 17)</u>	...
Income statement	FSA030 (note 16) or <u>Section B RMAR (note 17)</u>	...
Capital adequacy	FSA032 (note 15 or FSA037 (note 15 and 16) <u>Section D1 and D2 RMAR (note 17)</u>	...
...								
Non-EEA sub-group					
<u>Threshold conditions</u>							<u>Section F RMAR (note 17)</u>	

Client money and client assets	...	...	...	...	...	...	FSA03 9 or Section C RMAR (note 17)	...
...								
Note 1:	...							
...								
Note 8	<p>Only applicable to <i>BIPRU investment firms</i> that are:</p> <p>(a) subject to consolidated supervision under <i>BIPRU 8</i>, except those that are either included within the consolidated supervision of a group that includes a <i>UK credit institution</i>, or that have been granted an <i>investment firm consolidation waiver</i>;</p> <p>(b) subject to consolidated supervision under <i>BIPRU 8</i> that have been granted an <i>investment firm consolidation waiver</i>; and</p> <p>(c) not subject to consolidated supervision under <i>BIPRU 8</i>.</p> <p>A <i>BIPRU investment firm</i> under (a) should complete the report on the basis of its <i>UK consolidation group</i>. A <i>BIPRU investment firm</i> under (b) or (c) should complete the report on the basis of its solo position.</p>							
...								
Note 15	<p>FSA032 must be completed by a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>.</p> <p>FSA037 must be completed by any other <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 carrying out <i>RAG 8</i> activities.</p>							
...								
Note 17	<u>This is only applicable to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 that is not an <i>exempt CAD firm</i>.</u>							

16.12.26 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.25R* are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	Consolidated <i>BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA036					...
FSA037					Quarterly and annually (note 1)
...					
FSA040

<u>Section A RMAR</u>					<u>Half yearly (note 2) Quarterly (note 3)</u>
<u>Section B RMAR</u>					<u>Half yearly (note 2) Quarterly (note 3)</u>
<u>Section C RMAR</u>					<u>Half yearly (note 2) Quarterly (note 3)</u>
<u>Section D1 and D2 RMAR</u>					<u>Half yearly (note 2) Quarterly (note 3)</u>
<u>Section F RMAR</u>					<u>Half yearly</u>
Note 1	...				
Note 2	<u>Annual regulated business revenue up to and including £5 million.</u>				
Note 3	<u>Annual regulated business revenue over £5 million.</u>				

16.12.27 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.26R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
FSA037		<i>20 business days</i>		<i>80 business days</i>
...				
FSA040		...		
<u>Section A RMAR</u>		<u><i>30 business days</i></u>	<u><i>30 business days</i></u>	
<u>Section B RMAR</u>		<u><i>30 business days</i></u>	<u><i>30 business days</i></u>	
<u>Section C RMAR</u>		<u><i>30 business days</i></u>	<u><i>30 business days</i></u>	
<u>Section D1 and D2 RMAR</u>		<u><i>30 business days</i></u>	<u><i>30 business days</i></u>	
<u>Section F RMAR</u>			<u><i>30 business days</i></u>	
Note 1	...			
...				

Part 2

Amendments to SUP Transitional Provisions TP1

TP1.2

(1)		(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
12 M	(2)	SUP 16.12.5	R	<i>UK banks in Regulated Activity Group 1</i> should not submit FSA017 for reporting dates prior to 1 January 2009 <u>31 August 2008</u> .	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	(3)	SUP 16.12.5	R	<i>A building society in Regulated Activity Group 1:</i> (i) should not submit FSA017 for reporting dates prior to 1 January 2009 <u>31 August 2008</u> ; (ii)	1 January 2008 to 31 December <u>30 August</u> 2008	1 January 2008
	...					
	(9)	SUP 16.12.11R	R	<i>Exempt BIPRU commodity firms</i> are not required to submit the following data items for reporting dates: (i) falling prior to 30 June 2008: FSA008 (ii) falling prior to 31 August 2008: FSA001 FSA002 FSA016 FSA018 FSA028 <u>FSA033</u> FSA038 FSA039 FSA040 FSA041 FSA042	1 January 2008 to 30 August 2008	1 January 2008
	...					

Part 3

SUP 16 Ann 24R

...

FSA003

Capital adequacy

... ..
120 (Deficit reduction amount) if used

...

...
FSA007

Operational risk

The Standardised Approach (and Alternative Standardised Approach)	Advanced Measurement Approach
---	-------------------------------

A

B

...
12 Capital requirements before risk transfer mechanisms and expected loss deductions
13 Expected loss captured in business practice excluded from capital requirements
...

...
FSA008

Large exposures

...
6 I confirm that the firm has notified the FSA under GENPRUBIPRU 10.5.9R of all exposures that have exceeded, or will exceed, the limits set out in GENPRUBIPRU 10.5.6R or 10.5.8R (tick to confirm)

...

...
FSA018

UK integrated groups – large exposures

... ..
3 Group capital resources under BIPRU 10.8.13R

A

	Exposure no	Wider integrated group diverse blocks, and residual block	Gross exposure	% of capital resources under BIPRU 40.8.10R <u>10.8.13R</u>	...
4	A	B	C	D	...

...

...

FSA031

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...	Part 2 (To be completed by those firms whose own funds requirement is calculated in accordance with IPRU(INV) 9.2.9R)	
4140	Initial capital	<input type="text"/>
6	...	
...		
	Part 3 (To be completed by those firms whose own funds requirement is calculated in accordance with IPRU(INV) 9.5)	
4041	Initial capital	<input type="text"/>
18	...	
...		
	<i>Capital resources requirement</i>	
30	Own Funds requirement (Will always be a minimum of £5k / £40k even if PII/ combo indicated)	<input type="text"/>
31	Other FSA own funds requirement (if applicable)	<input type="text"/>
42	<u>Total own funds requirement</u>	<input type="text"/>
32	Surplus / (deficit)	<input type="text"/>
	<i>Professional Indemnity Insurance</i>	
...	...	

Part 4

SUP 16 Ann 24R

The following 3 pages set out the deletions within FSA005 (Market risk), with highlighting indicating those cells that have been deleted.

FSA005

Market risk

		A	B	C	D	E	F	G
		USD	GBP	EUR	CHF	YEN	Other	Total
Interest rate risk								
General interest rate risk								
1	Valuations of longs							
2	Valuation of shorts							
3	PRR (as per handbook)							
Specific interest rate risk								
Amount by risk bucket								
4	0.00%							
5	0.25%							
6	1.00%							
7	1.60%							
8	8.00%							
9	12.00%							
10	PRR							
11	Securitisation exposures/unrated liquidity facilities PRR							
12	Ordinary CDS PRR							
13	Securitisation CDS PRR							
14	Basic interest rate PRR calculation for equity instruments							
15	Option PRR for interest rate positions							
16	CAD1 PRR for interest rate positions							
17	Other PRR							
18	Total interest rate PRR							
Equity risk								
General equity risk (or simplified)								
19	Valuations of longs							
20	Valuation of shorts							
21	PRR							

FSA005 continued

	A	B	C	D	E	F	G
	USD	GBP	EUR	CHF	YEN	Other	Total
22	Specific equity risk by risk bucket						
22	Qualifying equities						
23	Qualifying equity indices						
24	Other equities, equity indices or equity baskets						
25	PRR						
26	Option PRR for equity positions						
27	CAD 1 PRR for equity positions						
28	Other PRR						
29	Total Equity PRR						

	Precious metals	Base metals	softs	energy	other	Total
30	Commodity Risk					
30	Valuation of longs					
31	Valuation of shorts					
32	Outright PRR					
33	Spread PRR					
34	Carry PRR					
35	Simplified PRR					
36	Total PRR					
37	Option PRR for commodity positions					
38	CAD 1 PRR for commodity positions					
39	Other PRR					
40	Total Commodity PRR					

	USD	GBP	EUR	CHF	YEN	Other	Total
41	Foreign currency risk						
41	General foreign currency risk						
41	Total net long positions						
42	Total net short positions						
43	Net gold position						
44	PRR						

FSA005 continued

	A	B	C	D	E	F	G
	USD	GBP	EUR	CHF	YEN	Other	Total
45	Option PRR for foreign currency						
46	CAD 1 PRR for foreign currency						
47	Other						
48	Total foreign currency PRR						
	Collective investment undertaking risk						
	USD	GBP	EUR	CHF	YEN	Other	Total
	General CIU risk						
49	Total net long positions						
50	Total net short positions						
51	PRR						
52	Option PRR for CIU						
53	CAD 1 PRR for CIU						
54	Other PRR						
55	Total CIU PRR						
	Other PRR						
56	Any other PRR						
	VaR model risk						
57	Multiplier						
58	Previous day's VaR PRR						
59	Average of previous 60 days VaR						
60	Incremental Default Risk Surcharge						
61	VaR model based PRR						
62	GRAND TOTAL PRR						

Part 5

Amendments to SUP 16

SUP 16 Ann 24R

In this Annex, the entire data item FSA037 is deleted, and replaced by '[deleted]'.

SUP 16 Ann 25G

In this Annex, the guidance notes and validations relating to FSA037 are deleted and replaced by '[deleted]'.

Part 6

SUP 16 Ann 25G

...

FSA003 – Capital adequacy

...

57A Total tier one capital plus tier two capital after deductions

...

(It is also the basis for the capital resources used under *BIPRU* 10.5.3R for the purposes of measuring large exposures. However, it is further adjusted under *BIPRU* 10.5.5R to remove data elements 41A (surplus provisions), 50A (expected loss amounts) and 51A (securitisation positions) for these purposes.)

...

62A Excess on limit for tier three capital

The amount reported in 59A, and 60A ~~and 61A~~ in excess of the limits set out in *GENPRU* 2.2.49R to *GENPRU* 2.2.50R.

[CEBS' CA 1.6.5, but with the sign reversed]

62B Excess on limit for tier three capital

The amount reported in 59B, and 60B ~~and 61B~~ in excess of the limits set out in *GENPRU* 2.2.49R to *GENPRU* 2.2.50R. It will only differ from 62A if the firm has reported *innovative tier one capital* in 26A.

...

70A Total variable capital requirement

This is the variable capital requirement of the firm or *UK consolidations group*, as calculated in 71A to ~~74A~~75A below. Each firm (~~or *UK consolidation group*~~) will only fill in one variable capital requirement which will have the correct method of calculating the variable capital requirement in accordance with *GENPRU* 2.1.45R and *GENPRU* 2.1.46R and any relevant waivers or treatment identified through the responses to data elements 5A, 10A and 11A above. In the case of a *UK consolidation group*, the rules set out in *BIPRU* 8 Annex 5R apply irrespective of whether the subsidiaries are in the UK or not.

[CEBS' CA 2]

...

FSA003 – Capital adequacy validations

Internal validations

Data elements are referenced by row then column.

Validation number Data element

...

10	40A	If 1A = no, then no [deleted – replaced by validation 114]
----	-----	---

11	41A		If 1A = no, then no [deleted =- replaced by validation 115]
...			
22	27B	=	28A + 29B + 30B + 31B + 32B + 33B + 34B [deleted – replaced by validation 116]
...			
113	...		
114	10A		If 1A = yes, then no
115	11A		If 1A = yes, then no
116	27B	=	<u>28B + 29B + 30B + 31B + 32B + 33B + 34B</u>

...

FSA005 – Market risk validations
Internal validations

Data elements are referenced by row then column.

Validation number	Data element		
...			
5	21G	=	21A + 21B + 21C + 21D + 21E + 21F [deleted]
6	25G	=	25A + 25B + 25C + 25D + 25E + 25F [deleted]
7	...		
8	29G	=	29A + 29B + 29C + 29D + 29E + 29F [deleted]
...			

...

FSA007 – Operational risk

...

9A Asset management

For each of the above business lines, enter the 3 year average, before the percentages are applied. See *BIPRU 6.4.14R* 6.4.6R to *BIPRU 6.4.9R*.

...

FSA008 – Large exposures

...

4A Capital resources under *BIPRU 10.5.3R*

This will be the figure calculated by the firm at the reporting date for data element 57A within FSA003 (even if the firm is not required to submit FSA003 at that date, as in the case of a *BIPRU 50K firm* or a *UK consolidation group* that only reports FSA003 half-yearly), adjusted in line with *BIPRU 10.5.5R* to remove surplus provisions (data element 41A on

FSA003), expected loss amounts (data element 50A on FSA003) and securitisation positions (data element 51A on FSA003). For monitoring large exposures during the quarter, firms may either re-calculate their capital resources on a regular basis or use the figure previously reported to the FSA on FSA003. However, at the reporting date, the figure reported should be the firm's latest calculation of capital resources.

...

4B Capital resources under BIPRU 10.5.4R

This will be the figures reported by the firm at the reporting date for data element 15A in FSA003, adjusted in line with *BIPRU 10.5.5R* to remove surplus provisions (data element 41A on FSA003), expected loss amounts (data element 50A on FSA003) and securitisation positions (data element 51A on FSA003).

...

FSA011 – Building society liquidity validations Internal validations

Data elements are referenced by row then column.

Validation number	Data element		
...			
11	8E	=	8A—8B[deleted]
...			

...

FSA017 – Interest rate gap report validations Internal validations

Data elements are referenced first by row then by column.

Validation number Data element

...

252 ~~31N~~ = ~~28N~~[deleted – replaced by validation 337]

...

284 46B = $1/((1+(43B+1A))^{34B})$ [deleted – replaced by validation 333]

...

332 ...

333 46B = $1/((1+(43B-1A))^{34B})$

334 47P = $28P*44P$

335 48P = $28P*45P$

336 49P = $28P*46P$

<u>337</u>	<u>31N</u>	≡	<u>28N</u>
<u>338</u>	<u>31P</u>	≡	<u>28P</u>
<u>339</u>	<u>38B</u>	≡	<u>48B-47B</u>
<u>340</u>	<u>38C</u>	≡	<u>48C-47C</u>
<u>341</u>	<u>38D</u>	≡	<u>48D-47D</u>
<u>342</u>	<u>38E</u>	≡	<u>48E-47E</u>
<u>343</u>	<u>38F</u>	≡	<u>48F-47F</u>
<u>344</u>	<u>38G</u>	≡	<u>48G-47G</u>
<u>345</u>	<u>38H</u>	≡	<u>48H-47H</u>
<u>346</u>	<u>38J</u>	≡	<u>48J-47J</u>
<u>347</u>	<u>38K</u>	≡	<u>48K-47K</u>
<u>348</u>	<u>38L</u>	≡	<u>48L-47L</u>
<u>349</u>	<u>38M</u>	≡	<u>48M-47M</u>
<u>350</u>	<u>38N</u>	≡	<u>48N-47N</u>
<u>351</u>	<u>38P</u>	≡	<u>48P-47P</u>
<u>352</u>	<u>39B</u>	≡	<u>49B-47B</u>
<u>353</u>	<u>39C</u>	≡	<u>49C-47C</u>
<u>354</u>	<u>39D</u>	≡	<u>49D-47D</u>
<u>355</u>	<u>39E</u>	≡	<u>49E-47E</u>
<u>356</u>	<u>39F</u>	≡	<u>49F-47F</u>
<u>357</u>	<u>39G</u>	≡	<u>49G-47G</u>
<u>358</u>	<u>39H</u>	≡	<u>49H-47H</u>
<u>359</u>	<u>39J</u>	≡	<u>49J-47J</u>
<u>360</u>	<u>39K</u>	≡	<u>49K-47K</u>
<u>361</u>	<u>39L</u>	≡	<u>49L-47L</u>
<u>362</u>	<u>39M</u>	≡	<u>49M-47M</u>
<u>363</u>	<u>39N</u>	≡	<u>49N-47N</u>
<u>364</u>	<u>39P</u>		<u>49P-47P</u>

FSA018 – UK integrated group large exposures

...

4F Amount of the exposure that is exempt

That part of the amount reported in column E that is an exempt under *BIPRU* 10.6 and *BIPRU* 10.7.

...

FSA023 – Foreign exchange risk (ELMIs) validations**Internal validations**

Data elements are referenced first by row then by column.

Validation number	Data element		
...			
5	12C	=	11A*8% [deleted – replaced by validation 8]
...			
<u>8</u>	<u>12C</u>	<u>≡</u>	<u>11C*8%</u>

...

FSA025 – Liquidity (ELMIs) validations**Internal validations**

Data elements are referenced first by row then by column.

Validation number	Data elements		
...			
4	4A	=	1A+2A+3A [deleted – replaced by validation 5]
5	4A	≤	1A+2A+3A

...

FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9) validations**Internal validations**

Data elements are referenced by row, then column.

Validation number	Data element		
...			
5	28A	=	21A + 22A + 23A + 24A + 25A + 26A - 27A [deleted – replaced by validation 12]
...			
13	32A	=	(16A or 28A) - (30A + 31A) [deleted – replaced by validation 15]
<u>14</u>	<u>42A</u>	<u>≡</u>	<u>30A + 31A</u>
<u>15</u>	<u>32A</u>	<u>≡</u>	<u>(16A or 28A) - 42A</u>

...

FSA034 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 not subject to exemption in IPRU(INV) 5.2.3(2)R) validations**Internal validations**

Data elements are referenced by row, then column.

Validation number	Data item		
...			
8	33B	=	32B * (33B / 52) [deleted – replaced by validation 12]
...			
<u>12</u>	<u>33B</u>	≡	<u>32B * (34B / 52)</u>

...

FSA036 – Capital Adequacy (for UCITS firms) validations
Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
...			
8	25B	=	40B [deleted]
...			

...

Part 7

SUP 16 Ann 24R

FSA028

Non-EEA sub-group

...

27 Do you have a non-EEA sub-group which you are reporting on behalf of?

Yes/No

If the answer to 27A above is no, then you do not have to complete any more of this data item, but it still needs to be submitted to the FSA

1 Is your non-EEA sub-group reporting requirement satisfied by your solo-consolidated FSA003/FSA009?

Yes/No

...
8 ~~Capital resources for large exposures~~ Total tier one capital plus tier two capital after deductions

...

...

Part 8
SUP 16 Ann 25G

FSA028 – Non-EEA sub-groups

...

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

27A Do you have a non-EEA sub-group you are reporting on behalf of?

Firms should view the examples of non-EEA sub groups in BIPRU 8 Annex 3R. If the firm is at the top of a non-EEA sub group (eg the UK bank in non-EEA sub group 1 in Example 5, and also UK bank 2 in the case of non-EEA sub group 2 in Example 4), then you should answer ‘yes’. If however the firm is not at the top of a non-EEA sub-group, for example the UK investment firms in non-EEA sub group 1 in Example 5), the answer will be ‘no’.

Thus for any non-EEA sub group, there should only be a single firm that answers ‘yes’ to this data element.

Firms that answer ‘no’ need not complete the data item further, but are still required to submit the data item.

1A Is your non-EEA sub-group reporting requirement satisfied by your solo-consolidated FSA003/FSA009?

...

8A ~~Capital resources for large exposures~~ Total tier one capital plus tier two capital after deductions

This is equivalent to Stage N in: ...

...

Large exposures

25A Capital resources

Enter here ~~the~~ a figure based on the previously reported capital resources for this non-EEA sub-group in data element 8A on the last submission, adjusted for those items excluded under BIPRU 10.5.5R, or alternatively a figure based on the capital resources figure reported in data element 8A above on this report, adjusted for those items excluded under BIPRU 10.5.5R. If it is the first occasion on which this sub-group has reported, use the figure in 8A above. Firms should report figures on a consistent basis.

...

FEES MANUAL (FSCS FUNDING) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157 (Guidance);
 - (4) section 213 (The compensation scheme) (including as referred to in section 216(5) (Continuity of long-term insurance policies) and section 217(7) (Insurers in financial difficulties));
 - (5) section 214 (General);
 - (6) section 223 (Management expenses);
 - (7) section 234 (Industry Funding); and
 - (8) paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex A; Parts 1, 3 and 5 of Annex B come into force on 6 November 2007;
 - (2) the remainder of this instrument comes into force on 1 April 2008.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The FEES manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees Manual (FSCS Funding) Instrument 2007.

By order of the Board
31 October 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where a new definition is being inserted this is described and not shown underlined.

Part 1 [with effect from 6 November 2007]

The existing definition is amended as follows:

annual eligible income (in ~~COMP FEES~~ the annual income (as described in Part 2 of FEES 4 Annex 1R) for the firm's last financial year ended in the year to 31 December preceding the date for submission of the information under FEES 6.5.13R attributable to the relevant ~~contribution group~~ *sub-class*; or if the firm prefers, that amount of that annual income attributable to business conducted with or on behalf of *eligible claimants*, but only if the firm notifies FSCS of the amount in accordance with FSCS reporting requirements.

Insert new definitions as follows in the appropriate place:

class one of the broad classes to which FSCS allocates levies as described in FEES 6.5.7 R.

sub-class one of the classes of *participant firms* within a *class* set out in FEES 6 Annex 3R being sub-classes that carry on business of a similar nature or have other common characteristics, to which *compensation costs* and *specific costs* are allocated in accordance with FEES 6.4 and FEES 6.5. *Class A* (Deposits) is to be treated as being made up of a single *sub-class*.

Part 2 [With effect from 1 April 2008]

Insert new definition as follows in the appropriate place:

levy limit (in *FEES*) the maximum amount of *compensation costs* that may be allocated to a particular *sub-class* or *class* in one financial year as set out in *FEES* 6 Annex 2R.

The existing definitions are amended as follows

~~*Contribution group* One of the groups of *participant firms* within a *sub-scheme* set out in *FEES* 6.5.7 R being groups that carry on business of a similar nature, to which *compensation costs* and *specific costs* are allocated in accordance with *FEES* 6.4 and *FEES* 6.5.~~

~~*establishment costs levy* a levy, forming part of the *management expenses levy*, to meet the establishment costs, each *participant firm's* share being calculated in accordance with *FEES* 6.4.11 R.~~

management expenses levy a levy imposed by the *FSCS* on *participant firms* to meet the *management expenses* and which is made up of one or more of a base cost levy, and a *specific costs levy* ~~and an *establishment costs levy*~~, each *participant firm's* share being calculated in accordance with *FEES* 6.4.17R.

~~*Sub-scheme* One of the sub-schemes to which *FSCS* allocates liabilities for *compensation costs*, as described in *FEES* 6.5.7 R.~~

Annex B

Amendments to the Fees manual (FEES)

Part 1 [Comes into effect 6 November 2007]

In this part of Annex B all text is new and is not underlined

Insert FEES TP 2 as follows:

- 2 Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2007/8
- 2.1 Treatment of balances as at 1 April 2008
- 2.1.1 R *FSCS* must calculate a levy balance as at 31 March 2008 attributable to each *participant firm* to which this *rule* applies (see *FEES* TP 2.1.19R), in respect of contribution groups in place as at 31 March 2008, in the following way:
 - (1) identifying each of the relevant contribution groups to which a *participant firm* belongs;
 - (2) identifying amounts held to the credit of each such contribution group;
 - (3) identifying amounts held as a debit balance to each such contribution group;
 - (4) calculating the net balance for each contribution group from (2) and (3);
 - (5) calculating, in relation to each relevant contribution group, that *participant firm's* tariff base as a proportion of the total tariff base of all *participant firms* in the contribution group;
 - (6) for each relevant contribution group applying the proportion in (5) to the figure in (4); and
 - (7) the balance for the *participant firm* is calculated by adding together the figure in (6) for each relevant contribution group of which the *participant firm* is a member.

- 2.1.2 R This *rule* relates to a claim or other amount that could be the subject of a *compensation costs levy* or *specific costs levy* and is otherwise eligible for inclusion in a debit balance for a contribution group under *FEES* TP 2.1.1R(3). This *rule* deals with a case where there are insufficient funds standing to the credit of that contribution group's *FSCS* account to meet the claim. Such a claim may only be included in the debit balance in accordance with the requirements about the amounts that can be levied under *compensation costs levies* and *specific costs levies* under *FEES* 6 in the form *FEES* 6 was in force on 31 March 2008.
- 2.1.3 G The credit balance referred to in *FEES* TP 2.1.1R(2) includes:
- (1) funds standing to the credit of the contribution group together with any interest receivable less any tax payable;
 - (2) any amounts lent to another contribution group (together with any interest payable on that amount under *FEES* 6); and
 - (3) any amount levied on or before 31 March 2008 but not received by 31 March 2008;
- (all such amounts being calculated as at 31 March 2008).
- 2.1.4 G (1) The debit balance referred to in *FEES* TP 2.1.1R(3) includes:
- (a) any amounts borrowed by *FSCS* for the purpose of paying amounts for which a *compensation costs levy* may be imposed on the contribution group in question together with any interest payable;
 - (b) any amounts borrowed from another contribution group (together with any interest payable on that amount under *FEES* 6); and
 - (c) amounts that could be the subject of a *compensation costs levy* or *specific costs levy* that *FSCS* has not yet paid;
- (all such amounts being calculated as at 31 March 2008).
- (2) If *FSCS* has decided to pay a claim, has decided the amount it will pay and (where applicable) has agreed the payment with the claimant it is eligible for inclusion under (1)(c). So is a claim for which *FSCS* has sent out a compensation cheque if the cheque has not been cleared by 31 March. A claim that has been made and settled will not be included as it will have already reduced the funds standing to the credit of the relevant contribution group. Claims made but not yet accepted or agreed by 31 March will not be included.

- 2.1.5 G *FEES* TP 2.1.2R has a further limitation on what claims can be included as a debit for a contribution group under *FEES* TP 2.1.1R. They may be included if there are sufficient funds standing to the credit of the contribution group. Any excess can also be included but only up to the levy limit for the relevant contribution group. In calculating the amount that *FSCS* would have been able to levy, *FSCS* will take into account any levies already made in the financial year beginning on 31 March 2007 (and, if relevant, previous years). The caps for these purposes are the ones in force on 31 March 2008.
- 2.1.6 R (1) If a *participant firm's* levy balance calculated under *FEES* TP 2.1.1R(7) is a debit, it is to be added to the first *compensation costs levy* or *management expenses levy* made on or after 1 April 2008 in which the *participant firm* shares.
- (2) If a *participant firm's* levy balance calculated under *FEES* TP 2.1.1R(7) is a credit, it is to be refunded as follows:
- (a) by deduction from any *compensation costs levy* or *management expenses levy* in which the *participant firm* shares included in the invoice that includes the *FSA's* periodical fee referred to in (2)(b);
- (b) (as to any balance) by deduction from any *FSA* periodical fees payable under *FEES* 4.3 in respect of the financial year beginning on 1 April 2008 and the *general levy* payable in respect of the same financial year; and
- (c) (as to any balance) by payment to the *participant firm*.
- 2.1.7 R Any amount that is added to a *participant firm's* levy under *FEES* TP 2.1.6R must not be taken into account for the purpose of calculating whether a *levy limit* of any *sub-class* has been exceeded and how much headroom there is between a *levy limit* and the amount already levied.
- 2.1.8 R If it appears to the *FSCS* that in the exceptional circumstances of a particular case, refunding a *participant firm's* credit balance arising under *FEES* TP 2.1.1R by way of a deduction in accordance with *FEES* TP 2.1.6R would be inequitable, the *FSCS* may refund any part of that amount by payment to the *participant firm*.
- 2.1.9 R *FSCS* may use the money collected from *participant firms* prior to 1 April 2008 in order to pay claims or *management expenses* after 31 March 2008 but only in so far as any such payments are treated as costs to be allocated to *sub-classes* in existence after 31 March 2008 and do not prejudice the calculation in *FEES* TP 2.1.1R.

- 2.1.10 R Subject to *FEES* TP 2.1.16R, *FSCS* must calculate any levy after 31 March 2008 on the basis that all credit balances referred to in *FEES* TP 2.1R have been refunded to *participant firms* and all debit balances referred to in *FEES* TP 2.1R have been repaid and all *management expenses levies* made before 1 April 2008 have been spent.
- 2.1.11 R For the purposes of the calculations in *FEES* TP 2.1R, *FSCS* may rely on information *FSCS* relied on in the 2007/8 financial year.
- 2.1.12 R Subject to *FEES* TP 2.1.16R, if a *participant firm* provides, or is deemed to provide, incorrect information which is used for the purposes of *FEES* TP 2.1, then *FSCS* may take account of any resulting material overpayment or underpayment made under *FEES* TP 2.1 notified to it. If *FSCS* does take into account any such overpayment or underpayment it will be dealt with as follows:
- (1) *FSCS* must repay any such overpayment on or before 30 calendar days after the date when it decides to take such overpayment into account; and
 - (2) the *participant firm* must repay such underpayment on or before 30 calendar days after the date when the invoice for it is issued by *FSCS*.
- 2.1.13 R *FSCS* may, in its absolute discretion, refuse requests to recalculate a *firm's* levy balance calculated under *FEES* TP 2.1.1R on the basis of information corrected or re-submitted after 31 March 2009.
- 2.1.14 R Any rebate or refund to a *participant firm* arising out of the recalculation of a *participant firm's* levy balance carried out in accordance with *FEES* TP 2.1.12R is to be allocated to the *sub-class* most closely analogous to the contribution group the *firm* belonged to before 1 April 2008 or, if applicable, in accordance with *FEES* TP 2.1.18R.
- 2.1.15 R Any interest, arising between 31 March 2008 and the date that a credit balance is refunded to a *participant firm* under *FEES* TP 2.1.6R (including any interest attributable to the use of the funds in accordance with *FEES* TP 2.1.9R) is to be held for the benefit of the *sub-class* most closely analogous to the contribution group the *firm* belonged to before 1 April 2008 or, if applicable, in accordance with *FEES* TP 2.1.18R.
- 2.1.16 R *FEES* TP 2.1 does not apply to the extent that it is inconsistent with the provisions of the *compensation transitionals order*.
- 2.1.17 R If a *participant firm* fails to pay an amount due with respect to a debit balance under *FEES* TP 2.1.6R, that default is to be allocated to the *sub-class* most closely analogous to the contribution group the *firm* belonged to before 1 April 2008 for which the debit balance arises, or if applicable, in accordance with *FEES* TP 2.1.18R.

- 2.1.18 R (1) *FEES* TP 2.1.18R deals with a situation in which *FEES* TP 2.1 requires that a rebate, refund, receipt or default be allocated to the *sub-class* most closely analogous to the contribution group a *participant firm* belonged to before 1 April 2008 but where it is not possible to do this because the *participant firm* belonged to more than one relevant contribution group or because the contribution group maps onto more than one *sub-class*.
- (2) That sum will be divided between contribution groups and *sub-classes* in whatever way *FSCS* considers fair and consistent with the purpose of *FEES* TP 2.1.
- 2.1.19 R *FEES* TP 2.1.1R does not apply to a *participant firm* that was not a *participant firm* on 1 April 2007 or that was exempt during *FSCS*'s financial year beginning on that date. Subject to that, *FEES* TP 2.1.1R applies to a *participant firm* as at 31 March 2008 that has subsequently ceased to be a *participant firm*.
- 2.1.20 G The purpose of *FEES* TP 2.1 is to help to ensure that there is a clean break between periods beginning on or after 1 April 2008 and periods before. The aim is to ensure that debit and credit balances for each contribution group as at 31 March 2008 are discharged and any credit balance in relation to a contribution group is returned to *participant firms* in that contribution group as at that date.
- 2.2 Split of business between life and pensions intermediation and investment intermediation
- 2.2.1 R *FEES* TP 2.2 deals with the calculation of the tariff base of *participant firms* in *sub-classes* C2 (Life and Pensions intermediation) and D2 (Investment intermediation) in relation to the *FSCS*'s financial year beginning on 1 April 2008.
- 2.2.2 R If a *participant firm* would have fallen within both *sub-classes* C2 and D2 in the financial year to 31 March 2008 it must provide *FSCS*, by the date requested by *FSCS*, with an estimated breakdown of business carried on in its financial year ended in the year ending 31 December 2007 which would have fallen within *sub-classes* C2 and D2.
- 2.2.3 R The breakdown in *FEES* TP 2.2.2R must show the ratio of business (in terms of income earned) between the two *sub-classes*, expressed as a percentage and rounded up or down to the nearest ten per cent so that the total figure is one hundred per cent. That percentage is then applied to the amount calculated for *sub-classes* C2 and D2.
- 2.2.4 R *Firms* in contribution group A10 in the financial year to 31 March 2008 will be deemed to have an estimated breakdown of business of one hundred per cent in *sub-class* D2 and zero per cent in *sub-class* C2, unless otherwise notified to the *FSCS* by the date for submission in *FEES* 6.5.13 R.

- 2.2.5 R If a *participant firm* does not provide the information required in *FEES* TP 2.2 by the date requested, the *firm* must pay the administrative fee in *FEES* 6.5.16R(1) and *FSCS* must deem the *firm* in question to carry on one hundred per cent of its intermediation business in *sub-class* C2 and one hundred per cent in *sub-class* D2.
- 2.2.6 R Information supplied under *FEES* TP 2.2 is treated as part of the information supplied under *FEES* 6.5.13R.
- 2.3 Incorrect information
- 2.3.1 R If a *participant firm* provides, or is deemed to provide, information under *FEES* 6.5.13R(2) which is incorrect then *FSCS* may take account of any material overpayment or underpayment notified to it in calculating the *firm's* share of the next *FSCS* levy in accordance with *FEES* 6.3.22R. Any overpayment or overcharge will not be refunded or reduced in the year of the levy unless it appears to *FSCS* that in the exceptional circumstances of a particular case, the payment of, or retention by *FSCS* of, any such *FSCS* levy would be inequitable.
- 2.3.2 R *FEES* TP 2.3 applies in relation to information supplied for the purpose of the *FSCS's* financial year beginning on 1 April 2008.
- 2.3.3 R *FEES* TP 2.3.1R does not apply in relation to the calculations in *FEES* TP 2.1.
- 2.4 Allocation of recoveries
- 2.4.1 R Any recoveries made by the *FSCS* after 31 March 2008 in relation to *protected claims* compensated prior to 1 April 2008, the costs of which were allocated to the relevant contribution group in place at the time, must be credited to the *sub-class* in place after 31 March 2008 to which the costs of the *protected claim* would have been allocated had it been compensated after that date, or if relevant, in accordance with *FEES* 6.3.20R.
- 2.4.2 R *FEES* TP 2.4.1R does not apply to the extent that it is inconsistent with the *compensation transitionals order*.
- 2.5 Interpretation
- 2.5.1 R In *FEES* TP 2 'contribution group' means one of the groups of *participant firms* within a sub-scheme in existence prior to 1 April 2008 set out in *FEES* 6.5.7R at the time, being groups that carried on business of a similar nature, to which *compensation costs* and *specific costs* were allocated in accordance with *FEES* 6.4 and *FEES* 6.5 in force at the time. Sub-scheme means one of the sub-schemes to which *FSCS* allocated liabilities for *compensation costs* prior to 1 April 2008, as described in *FEES* 6.5.7R at the time.
- 2.5.2 R For the purpose of *FEES* 6.5.13R as it applies with respect to the *FSCS's* financial year beginning on 1 April 2008:

- (1) references in *FEES* 6.5.13R to *sub-classes* must be read as references to *sub-classes* to which *firms* will belong after 31 March 2008; and
 - (2) (where *FEES* TP provides for the tariff base for a *sub-class* to be calculated by reference to a contribution group prior to that date) *FEES* 6.5.13R(1) must be read as also including a requirement for the supply of the necessary information in relation to that contribution group.
- 2.5.3 R The amendments made to *FEES* 6.5.13R by the Fees Manual (FSCS Funding) Instrument 2007 only have effect before 1 April 2008 for the purpose of *FSCS's* financial year beginning on 1 April 2008.
- 2.5.4 G *FEES* 6 Annex 2R and *FEES* 6 Annex 3R (*classes, sub-classes* and tariff bases) are brought into force for the purpose of *FEES* TP and *FEES* 6.5.13R in November 2007. However they do not have any other effect until 1 April 2008.
- 2.6 Past defaults
- 2.6.1 G The changes made to the levy *rules* made by the Fees Manual (FSCS Funding) Instrument 2007 apply to any levy made after 31 March 2008. This is so even if:
- (1) the claim against the *firm in default* arose or relates to circumstances arising before that date;
 - (2) the *firm* was *in default* before that date; or
 - (3) the levy relates to arrangements or measures under *COMP* 3.3 made or taken before that date.

Part 2 [Comes into effect 1 April 2008]

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

6.1 Application

6.1.1 R This chapter applies to:

- (1) every *participant firm*;
- (2) the *FSCS*; and
- (3) the *Society*.

6.1.2 G (1) *Firms* which are not *participant firms* (such as certain types of *incoming EEA firms*, service companies and *ICVCs*) are not required to contribute towards the funding of the *compensation scheme*.

(2) Although a *member* is a *participant firm* for the purposes of most provisions of *COMP*, a *member* is excluded from the definition of *participant firm* for the purposes of *FEES* 6 (see definition of *participant firm* in *Glossary*). This is because the fees levied in relation to the carrying on of *insurance market activities* by *members* will be imposed on the *Society* rather than individually on each *member* (see *FEES* 6.3.24 R).

Purpose

6.1.3 G The purpose of this chapter is to set out the requirements on *participant firms* to pay levies imposed by the *FSCS* to provide funding for its functions.

General structure

6.1.4 G Section 213(3)(b) of the *Act* requires the *FSA* to make *rules* to enable the *FSCS* to impose levies on *authorised persons* in order to meet its expenses. These expenses include in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks.

6.1.5 G The *FSCS* may impose two types of levy: a *management expenses levy*, and a *compensation costs levy*. ~~In the first three full years of the operation of the compensation scheme, the FSCS may impose an establishment costs levy as part of a management expenses levy.~~ The *FSCS* has discretion as to the timing of the levies imposed.

6.1.6 G In calculating a *compensation costs levy*, the *FSCS* may include anticipated *compensation costs* for defaults expected to be determined in the 12-month period following the date of the levy. The total of all *management expenses levies* attributable to a financial year will be restricted to the amount set out on an annual basis in *FEES* 6 Annex 1R.

- 6.1.7 G In order to allocate a share of the amount to be funded by an individual *participant firm*, the funding arrangements are split into five *sub-schemes classes*: the ~~accepting deposits class~~; the ~~insurance business life and pensions class~~; the ~~designated investment business class~~; the ~~mortgage advice and arranging home finance class~~ and the general insurance ~~mediation class~~. The business carried on by a *participant firm* determines into which *class*, or *classes*, it falls.
- 6.1.8 G Within each *sub-scheme class* there are one or more ~~contribution groups sub-classes~~. These relate to different types of activity carried on by *participant firms* within each *sub-scheme class*. Within a *sub-scheme class*, individual *participant firms* are allocated for funding purposes to one or more ~~contribution groups sub-classes~~, depending on their business activities. This, together with the provisions on the allocation of levies to *sub-classes up to their levy limits*, meets a requirement of section 213(5) of the *Act* that the *FSA*, in making rules to enable the *FSCS* to impose levies, must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of *authorised person* reflects, so far as practicable, the amount of claims made, or likely to be made, in respect of that class of person. The deposit class is made up of a single sub-class. This means that a reference to a sub-class will, unless the context otherwise requires, include a reference to the deposits class.

The management expenses levy

- 6.1.9 G Section 223 of the *Act* (Management expenses) prevents the *FSCS* from recovering, through a levy, any *management expenses* attributable to a particular period in excess of the limit set in *COMP* as applicable to that period. 'Management expenses' are defined in section 223(3) to mean expenses incurred or expected to be incurred by the *FSCS* in connection with its functions under the *Act*, except:
- (1) expenses incurred in paying compensation; and
 - (2) expenses incurred as a result of the *FSCS* making the arrangements to secure continuity of insurance set out in COMP 3.3.1R and COMP 3.3.2R or taking the measures set out in COMP 3.3.3R and COMP 3.3.4R when a *relevant person* is an *insurer* in financial difficulties.

- 6.1.10 G *A management expenses levy under COMP may consist of ~~three~~ two elements. The first is a *base costs levy*, for the base costs of running the *compensation scheme* in a financial year, that is, costs which are not dependent upon the level of activity of the *compensation scheme* and which therefore are not referable to any specific default. Included in this category are items such as the salary of the members of the board of the *FSCS*, the costs of the premises which the *FSCS* occupies, and its audit fees. It would also likely include the cost of any insurance cover secured by *FSCS* against the risk of it paying claims out in circumstances where the *levy limit* of the particular *class* to which the claim would otherwise be attributable has exceeded its *levy limit* for the year, as the insurance cover is likely to benefit all *classes* which may have costs allocated to them if the *levy limit* of another *class* is breached. The amount that each *participant firm* pays towards a *base costs levy* is calculated by reference to the *regulatory costs* paid by the *firm*. All *participant firms* are liable to contribute towards a *base costs levy*.*
- 6.1.11 G The second element of a *management expenses levy* is a *specific costs levy* for the "specific costs" of running the *compensation scheme* in a financial year. These costs depend on the number of claims and types of default, and include the salaries of the staff of the *FSCS* and legal and other professional fees paid in respect of particular defaults. It also may include the cost of any insurance cover that *FSCS* secures against the risk of *FSCS* paying out claims above a given level in any particular *sub-class* (but below the *levy limit* for that *sub-class* for the year) or the cost of commercial borrowing to allow *FSCS* to pay claims attributable to a particular *sub-class* in advance of the next levy. Where a *levy limit* has been reached and *FSCS* secures borrowing in order to pay claims allocated to another *sub-class* in accordance with the rules on allocation in *FEES* 6.5.2R, the costs of borrowing are attributable to the *sub-class* whose *levy limit* has been reached. The specific costs are allocated to the ~~*contribution group*~~ or ~~*sub-scheme sub-class*~~ *sub-class* which is responsible for those costs under *COMP*, on the basis of the *protected claims* against that *person*. The *FSCS* may include in a *specific costs levy* the specific costs that the *FSCS* expects to incur (including in respect of defaults not yet declared at the date of the levy) in the financial year of the *compensation scheme* to which the levy relates. The amount that each *participant firm* pays towards the *specific costs levy* is calculated by reference to the amount of business conducted by the *firm* in each of the ~~*contribution groups*~~ *sub-classes* to which the *FSCS* has allocated specific costs. Each ~~*contribution groups*~~ *sub-class* has a separate "tariff base" for this purpose, set out in *FEES* ~~6~~ 6.5.8R to *FEES* 6.5.11 Annex 3R. *Participant firms* may be exempt from contributing to the *specific costs levy*.
- 6.1.12 G ~~The third element of a *management expenses levy* is the costs of establishing the *FSCS*. The *FSCS* may impose an *establishment costs levy* only until the end of the third full financial year of operation of the *compensation scheme*. The amount that each *participant firm* pays towards the *establishment costs levy* is calculated on the same basis as the *base costs levy*, and all *participant firms* are liable to contribute. [deleted]~~

- 6.1.13 G The *FSA* intends to consult in January each year on the amount which it will set as the limit on the *management expenses* attributable to the forthcoming financial year of the *FSCS*.
- The compensation costs levy
- 6.1.14 G The *compensation costs levy* is made up of the *compensation costs* which the *FSCS* has incurred and has not yet recovered from *participant firms* (less any recoveries it has made using the rights that have been assigned to it), together with those *compensation costs* it expects to incur (including in respect of defaults yet to be declared) over the 12 *months* following the date of the levy.
- 6.1.15 G *Compensation costs* are principally the costs incurred in paying compensation. Costs incurred in securing continuity of long-term insurance in safeguarding *eligible claimants* when insurers are in financial difficulties, and in making payments or giving indemnities under COMP 11.2.3 R are also treated as *compensation costs*. For funding purposes, these costs are allocated by the *FSCS*, and met by *participant firms*, in the same way as *specific costs* – see up to relevant *levy limits* and then in accordance with the allocation provisions in *FEES* 6.5.2R.
- 6.1.16 G If a *participant firm* is a member of more than one ~~*contribution group sub-class*~~, the total *compensation costs levy* and *specific costs levy* for that *firm* will be the aggregate of the individual levies calculated for the firm in respect of each of the ~~*contribution groups sub-classes*~~. Each *sub-class* has a *levy limit* which is the maximum amount of *compensation costs* which may be allocated to a particular *sub-class* in a financial year for the purposes of a levy. Once the costs attributable to a particular *sub-class* have exceeded the *levy limit* the excess costs are allocated to the other *sub-class* in the same *class*, up to the *levy limit* of that other *sub-class*, and thereafter allocated to a 'general retail pool' of all the other *sub-classes* whose *levy limits* have not been reached (with the exception of the home finance providers). The amount of the excess cost to be allocated to each particular *sub-class* in the general retail pool is calculated pro-rata in accordance with the relative size of the *levy limit* of that *sub-class* to the sum of the *levy limits* of the remainder of the *sub-classes* in the general retail pool whose *levy limits* have not been reached. In the case of the deposits *class*, once the costs attributable to that *class* have exceeded the *levy limit* the excess costs are allocated to the general retail pool. The use made by *FSCS* of borrowing facilities to provide liquidity until the next levy does not affect this allocation of costs.
- 6.1.16A G *FSCS* may consider obtaining insurance cover, if available, against the risk that the value of claims *FSCS* pays out exceeds the *levy limits* of, or given levels within, particular *classes* or *sub-classes*. Any costs associated with the insurance would be allocated proportionally to the *classes* or *sub-classes* intended to benefit from that insurance.

Incoming EEA firms

- 6.1.17 G *Incoming EEA firms* which obtain cover or 'top up' under the provisions of COMP 14 are *firms* whose *Home State* scheme provides no or limited compensation cover in the event that they are determined to be in default. Under *FEES* 6.6, the *FSCS* is required to consider whether *incoming EEA firms* should receive a discount on the amount that they would otherwise pay as their share of the levy, to take account of the availability of their *Home State* cover. The amount of any discount is recoverable from the other members of the *incoming EEA firm's ~~contribution group~~ sub-class*.

6.2 Exemption

- 6.2.1 R (1) A *participant firm* which does not conduct business that could give rise to a *protected claim* by an *eligible claimant* and has no reasonable likelihood of doing so is exempt from a *specific costs levy*, or a *compensation costs levy*, or both, provided that:
- (a) it has notified the *FSCS* in writing that those conditions apply; and
 - (b) the conditions in fact continue to apply.
- (2) The exemption takes effect from the date on which the notice was received by the *FSCS*, subject to *FEES* 6.2.6 R.
- 6.2.2 R *FEES* 6.2.1R does not apply to a *participant firm* that may be subject to a claim under COMP 3.2.4R.
- 6.2.3 G A *participant firm* to which *FEES* 6.2.2R applies must report *annual eligible income* in accordance with *FEES* 6.5.13R. Such a *participant firm* may take advantage of the option to report its annual income attributable to business conducted with or on behalf of *eligible claimants*.
- 6.2.4 R A *participant firm* which is exempt under *FEES* 6.2.1R must notify the *FSCS* in writing as soon as reasonably practicable if the conditions in *FEES* 6.2.1R no longer apply.
- 6.2.5 G A *participant firm* to which the conditions in *FEES* 6.2.1R no longer apply will then become subject to *FEES* 6.3.
- 6.2.6 R If a *participant firm* ceases to conduct business that could give rise to a *protected claim* by an *eligible claimant* and notifies the *FSCS* of this under *FEES* 6.2.1R(1), it will be treated as a *participant firm* to which *FEES* 6.7.6R applies until the end of the financial year of the compensation scheme in which the notice was given.
- 6.2.7 G The financial year of the *compensation scheme* is the twelve months ending on 31 March. The effect of *FEES* 6.2.6R and *FEES* 6.2.1R(2) R is that if a *firm* fails to notify *FSCS* of an exemption under *FEES* 6.2.1R by 31 March it will be treated as non-exempt for the whole of the next financial year.

6.3 The FSCS's power to impose levies

General limits on levies

6.3.1 R The *FSCS* may at any time impose a *management expenses levy* or a *compensation costs levy*, provided that the *FSCS* has reasonable grounds for believing that the funds available to it to meet relevant expenses are, or will be, insufficient, taking into account:

- (1) in the case of a *management expenses levy*, the level of the *FSCS*'s anticipated expenditure in respect of those expenses in the financial year of the *compensation scheme* in relation to which the levy is imposed; and
- (2) in the case of a *compensation costs levy*, the level of the *FSCS*'s anticipated expenditure in respect of *compensation costs* in the 12 months following the levy.

6.3.2 G The calculation of levies will also take into account previous levies, where funds raised in anticipation of meeting liabilities prove either more or less than the amount actually required.

6.3.3 G The *FSCS* may impose one or more levies in a financial year to meet either its *management expenses* or its *compensation costs*. The *FSCS* may also impose interim levies, as part of its overall levy commitment. This flexibility allows the *FSCS* to phase its financing over the course of a financial year and thus avoid collecting levies from firms before the money is actually needed. The *FSCS* has committed itself in the Memorandum of Understanding with the *FSA* (the text of which can be found on the *FSA* website www.fsa.gov.uk) to publish regularly an indicative timetable for its levy procedures.

6.3.4 G The discretion over levying in *COMP* also gives the *FSCS*, if it thinks this appropriate, the ability to use third parties as its agents in raising and collecting the levies.

Limits on compensation costs levies on sub-classes and classes

6.3.5 R ~~The *FSCS* must not require a *participant firm* in the accepting deposits *sub-scheme* to pay a share of a *compensation costs levy* allocated to that *sub-scheme* to the extent that:~~

- ~~(1) the share in question; plus~~
- ~~(2) all previous amounts paid by the *firm* either as its share of levies allocated to that *sub-scheme*, or under the Deposit Protection Scheme (deducting from those amounts any amount refunded under *FEES* 6.3.20 R to *FEES* 6.3.21 R or by the Deposit Protection Scheme);~~

~~amounts to more than 0.3% of the *firm*'s *protected deposits*.~~

The maximum amount of compensation costs for which the FSCS can levy each sub-class and class in any one financial year of the compensation scheme is limited to the amounts set out in the table in FEES 6 Annex 2R.

- 6.3.6 R ~~The FSCS must not require a participant firm in the insurance business sub-scheme to pay a share of a compensation costs levy allocated to that sub-scheme in any financial year of the compensation scheme, to the extent that the share in question, together with all previous amounts paid by the firm as its share of compensation costs levies allocated to that sub-scheme in that financial year, amounts to more than 0.8% of the participant firm's relevant net premium income.~~[deleted]
- 6.3.7 R ~~The maximum amount of compensation costs for which the FSCS can levy the designated investment business sub-scheme in any one financial year of the compensation scheme is limited to £400 million.~~[deleted]
- 6.3.8 R ~~The FSCS must not require a participant firm in the mortgage advice and arranging sub-scheme to pay a share of a compensation costs levy allocated to that sub-scheme in any financial year of the compensation scheme, to the extent that:~~[deleted]
- (1) ~~the share in question; plus~~
 - (2) ~~all previous amounts paid by the firm as its share of compensation costs levies allocated to that sub-scheme in that financial year;~~
- ~~amounts to more than 0.8% of the participant firm's annual eligible income.~~
- 6.3.9 R ~~The FSCS must not require a participant firm in the general insurance mediation sub-scheme to pay a share of a compensation costs levy allocated to that sub-scheme in any financial year of the compensation scheme, to the extent that:~~[deleted]
- (1) ~~the share in question; plus~~
 - (2) ~~all previous amounts paid by the firm as its share of the compensation costs levy allocated to that sub-scheme in that financial year;~~
- ~~amounts to more than 0.8% of the participant firm's annual eligible income.~~
- Levy compensation costs paid in error
- 6.3.10 R The FSCS may include in a compensation costs levy the costs of compensation paid by the FSCS in error, provided that the payment was made in good faith.
- Management of funds

- 6.3.11 R The *FSCS* must hold any amount collected from a *specific costs levy* or *compensation costs levy* to the credit of the ~~*sub-schemes classes*~~ and relevant ~~*contribution groups sub-classes*~~, in accordance with the allocation established under *FEES* 6.4.6R and *FEES* 6.5.2R.
- 6.3.12 R Any funds received by the *FSCS* by way of levy or otherwise for the purposes of the *compensation scheme* are to be managed as the *FSCS* considers appropriate, and in doing this the *FSCS* must act prudently.
- 6.3.13 R Interest earned by the *FSCS* in the management of funds held to the credit of a ~~*contribution group sub-class*~~ must be credited to that ~~*contribution group sub-class*~~, and must be set off against the *management expenses* or *compensation costs* allocated to that ~~*contribution group sub-class*~~.
- 6.3.14 R The *FSCS* must keep accounts which show:
- (1) the funds held to the credit of each ~~*sub-scheme class*~~ and relevant ~~*contribution group sub-class*~~; and
 - (2) the liabilities of that ~~*sub-scheme class*~~ and relevant ~~*contribution group sub-class*~~.
- 6.3.15 R The *FSCS* may use the money collected from *firms* within one ~~*sub-scheme class*~~ to pay *compensation costs* in respect of any ~~*contribution group sub-class*~~ within that ~~*sub-scheme class*~~, so long as it ensures that this is done without prejudice to the *participant firms* from whom the money has been collected.
- 6.3.15A G *FEES* 6.3.15R deals with how *FSCS* may use money available to it and does not affect the *rules* on allocation in *FEES* 6.5.2R. Therefore the requirement that the procedure in *FEES* 6.3.15R should not prejudice the *participant firms* does not apply to an allocation under *FEES* 6.5.2R.
- 6.3.16 G *FEES* 6.3.15R means that, for example:
- (1) when crediting interest under *FEES* 6.3.13R, the *FSCS* should regard any money collected from one ~~*contribution group sub-class*~~ which has been used to pay the *compensation costs* of another ~~*contribution group sub-class*~~ within the same ~~*sub-scheme class*~~ as standing to the credit of the first ~~*contribution group sub-class*~~; and
 - (2) the *FSCS* should not raise a levy under *FEES* 6.3.1R on a ~~*contribution group sub-class*~~ solely because, as a result of the *FSCS*'s action under *FEES* 6.3.15R, there appear to be insufficient funds available to the credit of the ~~*contribution group sub-class*~~ to meet its expenses;—and
 - (3) (2) would not be applicable to the extent that the funds used are in respect of costs allocated to the *sub-class* in accordance with the *rules* on allocation in *FEES* 6.5.2 R(1) and (2).

- 6.3.17 R (1) The *FSCS* may use any money held to the credit of one *sub-scheme class* (the creditor *sub-scheme class*) to pay compensation costs in respect of or allocated to another *sub-scheme class* (the debtor *sub-scheme class*) if the *FSCS* has reasonable grounds to believe that this would be more economical than borrowing funds from a third party or raising a levy.
- (2) Where the *FSCS* acts in accordance with (1), it must ensure that:
- (a) the creditor *sub-scheme class* is reimbursed by the debtor *sub-scheme class* as soon as possible;
 - (b) the debtor *sub-scheme class* pays interest at a rate equivalent to the Bank of England's repo rate from time to time in force; and
 - (c) the amount lent by the creditor *sub-scheme class* to the debtor *sub-scheme class* is taken into account by the *FSCS* when considering whether to impose a compensation costs levy on the creditor *sub-scheme class* under *FEES* 6.3.1R.
- 6.3.18 R (1) ~~The *FSCS* may use any money held to the credit of any class to repay borrowing from a third party incurred to pay establishment costs if in the opinion of the *FSCS* this would be to the benefit of participant firms.~~
- G *FEES* 6.3.17R deals with how *FSCS* may use money available to it and does not affect the rules on allocation in *FEES* 6.5.2R. Therefore *FEES* 6.3.17R(2) (a), (b) and (c) do not apply where the costs otherwise attributable to one debtor class are allocated to the creditor class in accordance with the rules on allocation in *FEES* 6.5.2R.
- (2) ~~Where the *FSCS* acts in accordance with (1), it must ensure that:~~
- (a) ~~future establishment costs levies or are used first to repay all amounts borrowed from the appropriate classes;~~
 - (b) ~~interest is paid to the appropriate classes at a rate equivalent to the Bank of England's repo rate from time to time in force; and~~
 - (c) ~~the amount lent by any class is taken into account by the *FSCS* when considering whether to impose a levy under *FEES* 6.3.1 R.~~
- 6.3.19 R Unless *FEES* 6.3.20R applies, any recoveries made by the *FSCS* in relation to *protected claims* must be credited to the *contribution groups sub-classes* to which the related *compensation costs* were allocated.

6.3.20 R (1) ~~If the FSCS makes recoveries in relation to *protected claims* where the related *compensation costs* were allocated to the accepting deposits *sub-scheme*, or in relation to compensation paid out of a special contribution under the Deposit Protection Scheme, and if the FSCS refunds the recoveries under FEES 6.3.21 R, it must ensure that, as far as possible, the recoveries are refunded to the *firms* that contributed to the relevant *compensation costs levy* or special contribution (whether or not the *firms* are *participant firms* at the time that the recoveries are made).~~

This rule applies where the FSCS makes recoveries in relation to *protected claims* where related *compensation costs* would have been met by a *sub-class* (sub-class A) had the *levy limit* for sub-class A not been reached and have therefore been met by another *sub-class* or *sub-classes*.

(2) This rule applies even though the recovery is made in a subsequent financial year.

(3) Recoveries referred to in (1) must be applied in the following order of priority:

(a) (if the *compensation costs* were allocated to the general retail pool (see FEES 6.5.2R(2)) to the *classes* and *sub-classes* to which the costs were allocated in accordance FEES 6.5.2R(2) in the same proportion as those *classes* and respective *sub-classes* contributed, up to the total amount of that allocation plus interest at a rate equivalent to the Bank of England's repo rate from time to time in force;

(b) (if the *compensation costs* were allocated to the other *sub-class* in the same *class* as sub-class A) to that other *sub-class* up to the total amount of that allocation plus interest at a rate equivalent to the Bank of England's repo rate from time to time in force; and

(c) sub-class A.

6.3.20A G Recoveries under FEES 6.3.20R are net of the costs of recovery.

6.3.21 R If the FSCS has more funds to the credit of a ~~*contribution group sub-class*~~ *sub-class* than the FSCS believes will be required to meet levies on that ~~*contribution group sub-class*~~ *sub-class* for the next 12 months, it may refund the surplus to members or former members of the ~~*contribution group sub-class*~~ *sub-class* on any reasonable basis.

Adjustments to calculation of levy shares

6.3.22 R The FSCS may adjust the calculation of a *participant firm's* share of any levy to take proper account of:

- (1) any excess, not already taken into account, between previous levies of that type imposed in relation to previous periods and the relevant costs actually incurred in that period; or
- (2) *participant firms* that are exempt from the levy under *FEES* 6.2; or
- (3) amounts that the *FSCS* has not been able to recover from *participant firms* as a result of *FEES* 6.3.5R, ~~*FEES* 6.3.6R, *FEES* 6.3.8R or *FEES* 6.3.9R~~; or
- (4) amounts that the *FSCS* has not been able to recover from *participant firms* after having taken reasonable steps; or
- (5) *FEES* 6.4.8R (New *participant firms*), *FEES* 6.5.9R (New *participant firms*), *FEES* 6.3.23R (Remission of levy or additional administrative fee) or *FEES* 6.6 (Incoming EEA firms); or
- (6) anything else that the *FSCS* believes on reasonable grounds should be taken into account.

Remission of levy or additional administrative fee

- 6.3.23 R If a *participant firm's* share of a levy or an additional administrative fee under *FEES* 6.7.4R would be so small that, in the opinion of the *FSCS*, the costs of collection would be disproportionate to the amount payable, the *FSCS* may treat the *participant firm* as if its share of the levy or additional administrative fee amounted to zero.

Levies on the Society of Lloyd's

- 6.3.24 R The *FSCS* may impose a levy on the *Society* to be calculated as the aggregate of the levies that would be imposed on each *member* if this chapter applied to *members*, as follows:
- (1) ~~a share of any unexpired portion of an *establishment costs* levy;~~
 - (2) a proportionate share of a *base costs* levy in respect of the *compensation scheme's* costs for the period from 1 January 2004 to the end of the *compensation scheme's* financial year and a share of such levies for all subsequent financial years; and
 - (3) a *specific costs* levy and a *compensation costs* levy in respect of costs arising out of a *relevant person* being *in default*, arrangements made under COMP 3.3.1R or measures taken under COMP 3.3.3R where:
 - (a) the default occurs or the circumstances giving rise to the arrangements being made or the measures being taken, as the case may be, occur; and
 - (b) the *protected contracts of insurance* in connection with which the costs arise were entered into;

on or after 1 January 2004.

- 6.4 Management expenses
- Obligation on participant firm to pay
- 6.4.1 R *A participant firm must pay to the FSCS a share of each management expenses levy.*
- Limit on management expenses
- 6.4.2 R The total of all *management expenses levies* attributable to a particular period of the *compensation scheme* may not exceed the limit applicable to that period set out in *FEES 6 Annex 1R*.
- Participant firm's share
- 6.4.3 R *A participant firm's share of a management expenses levy consists of one or more of: (1) a share of a base costs levy; and (2) a share of a specific costs levy; and (3) a share of an establishment costs levy.*
- 6.4.4 R The *FSCS* must ensure that each *participant firm's* share of a *management expenses levy* separately identifies the *firm's* share of the *base costs levy*, and specific costs levy ~~and establishment costs levy~~.
- Base costs levy
- 6.4.5 R Unless *FEES 6.3.22R* applies, the *FSCS* must calculate a *participant firm's* share of a *base costs levy* by:
- (1) identifying the *base costs* which the *FSCS* has incurred, or expects to incur, in the relevant financial year of the *compensation scheme*, but has not yet levied;
 - (2) calculating the amount of the *participant firm's* regulatory costs as a proportion of the total *regulatory costs* relating to all *participant firms* for the relevant financial year; and
 - (3) applying the proportion calculated in (2) to the figure in (1).
- Specific costs levy
- 6.4.6 R ~~(1)~~ The *FSCS* must ~~(subject to (2))~~ allocate any *specific costs levy* amongst the ~~*sub-schemes*~~ and relevant ~~*contribution groups sub-classes*~~ *sub-classes* in proportion to the ~~volume~~ amount of relevant costs arising from, or expected to arise from, claims in respect of the different activities represented by those ~~*contribution groups sub-classes*~~.
- ~~(2)~~ The *FSCS* must allocate any part of a *specific costs levy* that relates to ~~IFA pensions review claims in accordance with *FEES 6.5.17 R* (IFA pensions review compensation levies)~~.

- 6.4.7 R The *FSCS* must calculate a *participant firm's* share of a *specific costs levy* (subject to *FEES* 6.3.22R (Adjustments to calculation of levy shares) ~~and~~ *FEES* 6.5.17 R (IFA pensions review compensation levies)) by:
- (1) identifying each of the ~~*sub-scheme*~~ and relevant *sub-classes* ~~*contribution groups*~~ within those ~~*sub-schemes*~~ to which the *participant firm* belongs, using the statement of business most recently supplied under *FEES* 6.5.13R;
 - (2) identifying the *management expenses* other than ~~*base costs*~~ ~~or~~ ~~*establishment costs*~~ which the *FSCS* has incurred, or expects to incur, in the relevant financial year of the *compensation scheme*, allocated to the ~~*contribution groups*~~ *sub-classes* identified in (1), but not yet levied;
 - (3) calculating, in relation to each relevant ~~*contribution group*~~ *sub-class*, the *participant firm's* tariff base as a proportion of the total tariff base of all *participant firms* in the ~~*contribution group*~~ *sub-class*, using the statement of business most recently supplied under *FEES* 6.5.13R;
 - (4) applying the proportion calculated in (3) to the figure in (2); and
 - (5) if more than one ~~*sub-scheme class*~~ or ~~*contribution group sub-class*~~ is relevant, adding together the figure in (4) for each ~~*contribution group sub-class*~~.

New participant firms

- 6.4.8 R A *firm* which becomes a *participant firm* part way through a financial year of the *compensation scheme* will not be liable to pay a share of a *specific costs levy* made in that year.
- 6.4.9 G ~~New *participant firms* will normally have relevant tariff bases of nil as at 31 December in the financial year preceding that in which they join, so that they will not be required to pay a share of a *specific costs levy* (or a *compensation costs levy* because of *FEES* 6.5.6R). *FEES* 6.4.8R means that the *FSCS* does not have to estimate the tariff base of a new *participant firm*. [deleted]~~
- 6.4.10 G Since a *firm* that becomes a *participant firm* in the course of a financial year of the *compensation scheme* will already be obtaining a discount in relation to the *base costs levy* ~~and the *establishment costs levy*~~ through the modified fee provisions of *FEES* 4.2.6R, no *rule* is necessary in *COMP* for discounts on the *base costs levy* ~~or the *establishment costs levy*~~.

~~Establishment costs levy~~

- 6.4.11 R ~~The *FSCS* must calculate a *participant firm's* share of an *establishment costs levy* on the same basis as a *base costs levy* under *FEES* 6.4.5 R. [deleted]~~

6.4.12 R ~~The FSCS may not impose an *establishment costs levy* after the end of the third full financial year of operation of the *compensation scheme*. [deleted]~~

- 6.5 Compensation costs
- 6.5.1 R The *compensation costs levy* is made up of *compensation costs* incurred by the *FSCS*, together with any *compensation costs* which can reasonably be anticipated as arising in the 12 months following the levy date and which in each case have not already been subject to a levy.
- 6.5.2 R ~~(1)~~ The *FSCS* must ~~(subject to (2))~~ allocate any *compensation costs levy* to the ~~individual sub-scheme and relevant sub-classes~~ contribution groups in proportion to the ~~volume~~ amount of *compensation costs* arising from, or expected to arise from, claims in respect of the different activities represented by those ~~contribution groups~~ sub-classes up to the *levy limit* of each relevant *sub-class* and thereafter in the following order:
- (1) any excess must be allocated to the other sub-class in the same class up to the levy limit of that other sub-class (except in the deposit class, for which there is only one sub-class); and
- (2) any excess above the levy limit of the class must be allocated to each other sub-class, other than the home finance provision sub-class E1, whose levy limit has not been reached (the 'general retail pool'), in proportion to the relative sizes of the levy limits of those remaining sub-classes in the general retail pool.
- ~~(2) The FSCS must allocate any part of a compensation costs levy that relates to IFA pensions review claims in accordance with FEES 6.5.17 R (IFA pensions review compensation levies).~~
- 6.5.2A G The use made by FSCS of borrowing facilities to provide liquidity until the next levy does not affect the allocation of costs incurred or anticipated.
- 6.5.2B G The calculation of the relative sizes of the levy limits for the purpose of FEES 6.5.2R(2) (including any allocations caused by the exhaustion of a receiving sub-class) is based on the original levy limit for the sub-classes (as set out in FEES 6 Annex 2R) and not the remaining capacity in each sub-class.
- 6.5.2C G When FSCS allocates excess compensation costs levies otherwise attributable to a class which has reached its levy limit, in accordance with FEES 6.5.2R(2), a sub-class to which any excess has been allocated (the 'receiving sub-class') may, as a result of that allocation, itself reach its levy limit. In that case, the effect of FEES 6.5.2R is that any resulting excess levy beyond the levy limit of the receiving sub-class is to be allocated amongst the remaining sub-classes whose levy limits have not been reached, to the exclusion of the receiving sub-class. This process is repeated until the compensation costs levy has been met in full or the general retail pool has been exhausted.

- 6.5.3 R If a *participant firm* which is *in default* has carried on a *regulated activity* other than in accordance with a *permission*, the *FSCS* must allocate any *compensation costs* or *specific costs* arising out of that activity to the relevant ~~*contribution group sub-class*~~ *sub-class* which covers that activity or if a *levy limit* of the relevant *sub-class* or *class* has been exceeded, *FSCS* must allocate any *compensation costs levy* on the same basis as set out in *FEES 6.5.2R*.
- 6.5.4 R If the relevant *person* in default is an *appointed representative* or, where applicable, a *tied agent*, the *FSCS* must allocate any *compensation costs* or *specific costs* arising out of a *regulated activity* for which his *principal* has not accepted responsibility to the relevant ~~*contribution group sub-class*~~ *sub-class* for that activity or if a *levy limit* of the relevant *sub-class* or *class* has been exceeded, *FSCS* must allocate any *compensation costs levy* on the same basis as set out in *FEES 6.5.2R*.
- 6.5.5 R (1) A *participant firm* must pay to the *FSCS* a share of each *compensation costs levy* unless either the *firm* is exempt under *FEES 6.2* (Exemption) or the *FSCS* has chosen to exercise its discretion under *FEES 6.3.23R* in respect of that *firm*.
- (2) If a *levy* relates solely to costs allocated in excess of a particular *levy limit* (1) does not apply to a *participant firm* member of the *sub-class* or *class* whose *levy limit* has been exceeded.

Compensation costs levy

- 6.5.6 R ~~The *FSCS* must calculate a *participant firm's* share of a *compensation costs levy* (subject to *FEES 6.5.17 R* (IFA pensions review compensation levies)) on the same basis as a *specific costs levy* under *FEES 6.4.6 R*, *FEES 6.4.7 R* and *FEES 6.4.8 R*.~~

The *FSCS* must calculate each *participant firm's* share of a *compensation costs levy* (subject to *FEES 6.3.22R* (Adjustments to calculation of levy shares)) by:

- (1) identifying each of the *sub-classes* to which each *participant firm* belongs, using the statement of business most recently supplied under *FEES 6.5.13R*;
- (2) identifying the *compensation costs* falling within *FEES 6.5.1R* allocated, in accordance with *FEES 6.5.2R*, to the *sub-classes* identified in (1);
- (3) calculating, in relation to each relevant *sub-class*, the *participant firm's* tariff base as a proportion of the total tariff base of all *participant firms* in the *sub-class*, using the statement of business most recently supplied under *FEES 6.5.13R*;
- (4) applying the proportion calculated in (3) to the figure in (2); and

- (5) if more than one class or sub-class is relevant, adding together the figure in (4) for each sub-class.

Sub-classes and tariff bases for compensation cost levies and specific costs levies

- 6.5.7 R When calculating a *participant firm's* share of a *compensation costs levy* or *specific costs levy* allocated to each sub-class the *FSCS* must use the sub-classes and tariff bases as set out in the table in *FEES 6 Annex 3R*.
- (1) ~~the accepting deposits sub-scheme or the insurance business sub-scheme, the FSCS must use the contribution groups and tariff bases as set out in the table in FEES 6.5.8 R;~~
- (2) ~~the investment business sub-scheme, the FSCS must (unless (3) applies) use as the contribution groups and tariff bases the correspondingly numbered activity groups and tariff bases set out in part 1 and part 2 of FEES 4 Ann 1 which are identified in FEES 6.5.9 R;~~
- (3) ~~the investment business sub-scheme, where any part of the levy relates to IFA pensions review claims, the FSCS must comply with FEES 6.5.17 R (IFA pensions review compensation levies);~~
- (4) ~~the mortgage advice and arranging sub-scheme, the FSCS must use the contribution group and tariff base set out in the table in FEES 6.5.10 R;~~
- (5) ~~the general insurance mediation sub-scheme, the FSCS must use the contribution group and tariff base set out in the table in FEES 6.5.11 R.~~
- 6.5.8 R ~~Table: Contribution Groups for the Accepting Deposits Sub-scheme and the Insurance Business Sub-scheme for the Financial Services Compensation Scheme (see FEES 6.5.7R (1))~~
- G Guidance on parts of FEES 6 Annex 3R can be found in FEES 6 Annex 4G.

SUB-SCHEME	CONTRIBUTION GROUP (references to A1, A2 etc are to the FSA fee Blocks)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i>)	TARIFF BASE
Accepting deposits	A1—deposit takers	<i>Accepting deposits</i> (article 5)	<i>Protected deposits</i> (see <i>FEES 6.5.15 R</i>)

Insurance business	A3—Insurance activities—General insurance	<i>Effecting contracts of insurance and/or carrying out contracts of insurance (article 10) that are general insurance contracts</i>	<i>Relevant net premium income</i>
Insurance business	A4—insurance activities—Life Insurance	<i>Effecting contracts of insurance and/or carrying out contracts of insurance (article 10) that are long-term insurance contracts</i>	<i>Relevant net premium income</i>

New participant firms

- 6.5.9 R Table: The contribution groups and tariff bases for the investment business sub-scheme (see *FEES 6.5.7R (2)*). (The contribution groups, legal bases for activity and tariff bases are the same as the correspondingly numbered activity groups and tariff bases set out in part 1 and part 2 of *FEES 4 Ann 1R*).

A firm which becomes a participant firm part way through a financial year of the compensation scheme will not be liable to pay a share of a compensation costs levy made in that year.

SUB-SCHEME	CONTRIBUTION GROUP (references to A7 etc are to the activity groups in part 1 of <i>FEES 4 Ann 1R</i>)	LEGAL BASIS FOR ACTIVITY (this is merely a summary of the basis in part 1 of <i>FEES 4 Ann 1R</i> ; references to articles are to articles of the <i>Regulated Activities Order</i>)	TARIFF BASE (this is merely a summary of the base in part 2 of <i>FEES 4 Ann 1R</i>)
Designated	A7—fund	<i>Managing</i>	Funds under

investment business	managers	<i>investments</i> (article 37)	management
Designated investment business	A9—managers of an <i>AUT</i> , <i>ACDs</i> and depositaries and <i>operators</i> of <i>personal pension schemes</i> or <i>stakeholder pension schemes</i>	Any of the following: (a) establishing, operating or winding up a collective investment scheme; (b) acting as a trustee of an authorised unit trust scheme; (c) acting as a depositary, or sole director of an open-ended investment company (article 51); (d) <i>establishing, operating or winding up a personal pension scheme or a stakeholder pension scheme.</i>	Gross income
Designated investment business	A10—dealing as principal	<i>Dealing in investments as principal</i> (article 14).	Number of traders
Designated investment business	A12—advisory brokers (excluding corporate finance advisers)—holding either <i>client money</i> or assets	Any of the following: (a) <i>dealing in investments as agent</i> (article 21); (b) <i>arranging (bringing about) deals in investments</i> (article 25(1)); (c) <i>making arrangements with a view to transactions in</i>	Number of <i>approved persons</i>

		<i>investments (article 25(2)); with permission to: (i) advise on investments (article 53); (ii) hold client money; and (iii) safeguarding and administering investments (article 40)</i>	
Designated investment business	A13—advisory brokers (excluding corporate finance adviser) not holding either <i>client money</i>	Any of the following: (a) <i>dealing in investments as agent</i> (article 21); (b) <i>arranging (bringing about) deals in investments (article 25(1)); (c) making arrangements with a view to transactions in investments (article 25(2)); with permission to advise on investments (article 53); but not to (i) hold client money; and (ii) safeguard and administer investments (article 40).</i>	Number of <i>approved persons</i>
Designated investment business	A14—corporate finance advisory firms	<i>Permission includes a requirement that the firm must not conduct designated investment</i>	Number of <i>approved persons</i>

		<i>business other than corporate finance business</i>	
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Exclusion of new and exempt participant firms

6.5.10 R Table: the contribution groups and tariff bases for the mortgage advisers and arrangers (see ~~FEES 6.5.7R (4)~~) [deleted]

SUB-SCHEME	CONTRIBUTION GROUP (references to A1, A2 etc are to the FSA fee Blocks)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i>)	TARIFF BASE
Mortgage advice and arranging	A18—Mortgage lenders, advisers and arrangers	Any of the following: (a) arranging (bringing about) regulated mortgage contracts; (b) making arrangements with a view to regulated mortgage contracts; (c) advising on regulated mortgage contracts; (d) agreeing to carry on a regulated activity which is within any of the above; and (e) the activities of a mortgage lender which would be arranging but for article 28A of the <i>Regulated Activities Order</i>	<i>annual eligible income</i>

		(Arranging contracts to which the arranger is a party):	
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6.5.11 R ~~Table: the contribution groups and tariff bases for the general insurance intermediaries (see FEES 6.5.7R (5)) [deleted]~~

SUB-SCHEME	CONTRIBUTION GROUP (references to A1, A2 etc are to the FSA fee Blocks)	LEGAL BASIS FOR ACTIVITY (references to articles are to articles of the <i>Regulated Activities Order</i>)	TARIFF BASE
General insurance	A.19 General	Any of the following in relation to a <i>non-investment insurance contract</i> : (a) <i>dealing in investments as agent</i> ; (b) <i>arranging (bringing about) deals in investments</i> ; (c) <i>making arrangements with a view to transactions in investments</i> ; (d) <i>assisting in the administration and performance of a contract of insurance</i> ; (e) <i>advising on investments</i> ; and (f) <i>agreeing to carry on a regulated activity which is within any of the</i>	<i>annual-eligible income</i>

		above	
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- 6.5.12 G A *participant firm* may belong to more than one ~~sub-scheme class~~, and more than one ~~contribution-group sub-class~~ within the same ~~sub-scheme class~~.

Part 3 [Changes to 6.5.13R to come into effect on 6 November 2007]

In this part of Annex B underlining denotes new text and striking through denotes deleted text.

- 6.5.13 R (1) Unless exempt under *FEES* 6.2.1R, a *participant firm* must provide the *FSCS* by the end of February each year (or, if it has become a *participant firm* part way through the financial year, by the date requested by the *FSA*) with a statement of:
- (+) (a) the ~~contribution-groups sub-classes~~ to which it belongs; and
 - (2) (b) the total amount of business (measured in accordance with the appropriate tariff base or tariff bases) which it conducted, in respect of the *firm's* last financial year ended in the year to 31 December preceding the relevant year, or if appropriate to the tariff base, as at 31 December of the previous year immediately preceding the relevant year in relation to each of those ~~sub-classes contribution-groups~~.
- (2) In this rule the relevant year means the year in which the month of February referred to in (1) falls.
- (3) This rule does not apply in relation to the home finance provision sub-class E1.

Part 4 [Comes into effect 1 April 2008]

In this part of Annex B underlining denotes new text and striking through denotes deleted text.

- 6.5.14 R If the information in *FEES* 6.5.13R has been provided to the *FSA* under other *rule* obligations, a *participant firm* will be deemed to have complied with *FEES* 6.5.13R.

- 6.5.15 R Where a *participant firm* can identify that a *protected deposit* was made by a *person* who is not an *eligible claimant*, it may exclude the amount of that deposit from the tariff base, provided that it notifies the *FSCS* of the amount of the deposit so excluded and provides the *FSCS* with such information about the deposit as the *FSCS* may reasonably require.
- 6.5.16 R If a *participant firm* does not submit a complete statement by the date on which it is due in accordance with *FEES* 6.5.13R and any prescribed submission procedures:
- (1) the *firm* must pay an administrative fee of £250 (but not if it is already subject to an administrative fee under *FEES* 4 Annex 2 Part 1 or *FEES* 5.4.1R for the same financial year); and
 - (2) the *compensation costs levy* and any *specific costs levy* will be calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10 (or, if it has become a *participant firm* part way through a financial year, on the basis of the information provided to the *FSA* for the purposes of *FEES* 4.4.2R) or on any other reasonable basis, making such adjustments as seem appropriate in subsequent levies once the true figures are known.

~~IFA pensions review compensation levies~~

- 6.5.17 R ~~The *FSCS* must allocate any part of a *specific costs levy* or *compensation costs levy* that relates to *IFA pensions review claims*: [deleted]~~
- ~~(1) to *participant firms* which were liable to pay the *PIA* pensions review compensation costs levy in 2001/2002; and~~
 - ~~(2) in the same percentage share as that levy (adjusted to distribute the share of any previous contributor, which is not a *participant firm*, among remaining *participant firms* in accordance with their percentage shares).~~

.....

Part 5 [Comes into effect on 6 November 2007]

Insert three new annexes as follows

In this part of Annex B all text is new and is not underlined

6 Annex 2R Financial Services Compensation Scheme – annual levy limits
This table belongs to *FEES* 6.3.5R and *FEES* TP 2.5.2R

Class	Sub-class	Levy Limit (£ million)
Deposit		
	Deposit	1,840
Life and Pensions		
	Life and Pensions Provision	690
	Life and Pensions Intermediation	100
General insurance		
	General Insurance Provision	775
	General Insurance Intermediation	195
Investment		
	Fund management	270
	Investment Intermediation	100
Home Finance		
	Home Finance Provision	70
	Home Finance Intermediation	60

Class A	Deposit
Legal basis for activity in class A	<i>accepting deposits.</i> BUT does not include any fee payer who either effects or carries out <i>contracts of insurance.</i>
Tariff base	<i>Protected deposits</i> as at 31 December

Class B	General Insurance
Sub-class B1	General Insurance Provision
Legal basis for activity in sub-class B1	<ul style="list-style-type: none"> • <i>effecting contracts of insurance; and/or</i> • <i>carrying out contracts of insurance;</i> <p>that are <i>general insurance contracts</i>.</p>
Sub-class B2	General Insurance Intermediation
Legal basis for activity in sub-class B2	<p>Any of the following in respect of <i>general insurance contracts</i>:</p> <ul style="list-style-type: none"> • <i>dealing in investments as agent;</i> • <i>arranging (bringing about) deals in investments;</i> • <i>making arrangements with a view to transactions in investments;</i> • <i>assisting in the administration and performance of a contract of insurance;</i> • <i>advising on investments;</i> • <i>agreeing to carry on a regulated activity which is within any of the above.</i>
Tariff base	<p>Sub-class B1: <i>Relevant net premium income.</i></p> <p>Sub-class B2: <i>annual eligible income</i> where the annual income is calculated in accordance with that for fee-block A19 in part 2 of <i>FEES 4 Annex 1R</i>.</p>

Class C	Life and Pensions
Sub-class C1	Life and Pensions Provision
Legal basis for activity in sub-class C1	<ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; and/or • <i>carrying out contracts of insurance</i>; <p>that are <i>long term insurance contracts (including pure protection contracts)</i>.</p>
Sub-class C2	Life and Pensions Intermediation
Legal basis for activity in sub-class C2	<p>Any of the following:</p> <ul style="list-style-type: none"> • <i>dealing in investments as agent</i>; • <i>arranging (bringing about) deals in investments</i>; • <i>making arrangements with a view to transactions in investments</i>; • <i>assisting in the administration and performance of a contract of insurance</i>; • <i>advising on investments</i>; • <i>advising on pension transfers and pension opt-outs</i>; • <i>giving basic advice on a stakeholder product</i>. • <i>agreeing to carry on a regulated activity which is within any of the above</i>; <p>in relation to any of the following:</p> <ul style="list-style-type: none"> • <i>long term insurance contracts (including pure protection contracts)</i>; • <i>rights under a stakeholder pension scheme or a personal pension scheme</i>.
Tariff base	<p>Sub-class C1: <i>Relevant net premium income</i></p> <p>Sub-class C2: Number of <i>approved persons</i> as at 31 December, calculated on the same basis as corresponding tariff base provisions for fee blocks A12, 13, and A14 in <i>FEES 4 Annex 1 R</i> (even if the <i>firm's approved persons</i> are not counted for the purposes of those fee blocks), and multiplied by the <i>firm's</i> estimated proportion of business falling within <i>sub-class C2</i> provided or deemed as provided in accordance with <i>FEES 6</i>.</p>

Class D	Investment
Sub-class D1	Fund Management
Legal basis for activity in sub-class D1	<p>Any of the following:</p> <ul style="list-style-type: none"> • <i>managing investments;</i> • <i>establishing, operating or winding up a regulated collective investment scheme;</i> • <i>establishing, operating or winding up an unregulated collective investment scheme;</i> • <i>acting as trustee of an authorised unit trust scheme;</i> • <i>acting as the depositary or sole director of an open-ended investment company;</i> • <i>establishing, operating or winding up a stakeholder pension scheme;</i> • <i>establishing, operating or winding up a personal pension scheme;</i> • <i>agreeing to carry on a regulated activity which is within any of the above.</i>
Sub-class D2	Investment Intermediation
Legal basis for activity in sub-class D2	<p>Any of the following activities in relation to <i>designated investment business</i></p> <ul style="list-style-type: none"> • <i>dealing in investments as principal;</i> • <i>dealing in investments as agent;</i> • <i>arranging (bringing about) deals in investments;</i> • <i>making arrangements with a view to transactions in investments;</i> • <i>advising on investments;</i> • <i>giving basic advice on a stakeholder product;</i> • <i>safeguarding and administering of assets;</i> • <i>arranging safeguarding and administering of assets;</i> • <i>operating a multilateral trading facility;</i>

	<ul style="list-style-type: none"> • <i>agreeing to carry on a regulated activity</i> which is within any of the above; <p>BUT excluding activities that relate to <i>long term insurance contracts</i> or rights under a <i>stakeholder pension scheme</i> or a <i>personal pension scheme</i>.</p>
Tariff base	<p>Sub-class D1: gross income. Gross income in respect of activities falling into fee block A9 must be calculated in accordance with the tariff base provisions for that fee block. In any case the calculation excludes any value attributable to activities which are simultaneously activities in <i>sub-class D2</i> to the extent included there.</p> <p>Sub-class D2: Number of <i>approved persons</i> or, for <i>firms</i> in contribution group A10 as at 31 March 2008, number of traders, as at 31 December, calculated on the same basis as corresponding tariff base provisions for fee blocks A12, A13, A10 and A14 in <i>FEES 4 Annex 1R</i>, and multiplied by the <i>firm's</i> estimated proportion of business falling within <i>sub-class D2</i> (except fee block A10) provided or deemed as provided in accordance with <i>FEES 6</i>. To avoid double-counting, when calculating the number of traders <i>FSCS</i> must deduct the number of <i>approved persons</i> who are also traders attributed to the <i>firm</i> for the purposes of <i>FSA</i> fee block A12, A13 or A14.</p>

Class E	Home Finance
Sub-class E1	Home Finance Provision
Legal basis for activity in sub-class E1	Any of the activities below: <ul style="list-style-type: none"> • <i>entering into a home finance transaction;</i> • <i>administering a home finance transaction;</i> • <i>agreeing to carry on a regulated activity</i> which is within any of the above.
Sub-class E2	Home Finance Intermediation
Legal basis for activity in sub-class E2	Any of the following activities: <ul style="list-style-type: none"> • <i>arranging (bringing about) a home finance transaction;</i> • <i>making arrangements with a view to a home finance transaction;</i> • <i>advising on home finance transactions;</i> • the activities of a <i>home finance provider</i> which would be arranging but for article 28A of the <i>Regulated Activities Order</i> (Arranging contracts or plans to which the arranger is party); • <i>agreeing to carry on a regulated activity</i> which is within any of the above.
Tariff base	Sub-class E1: FSA periodic fees Sub-class: E2: <i>annual eligible income</i> where the annual income is calculated in accordance with fee-block A18 in part 2 of <i>FEES 4 Annex 1R</i>

Notes	
(1)	Any reference in this annex to a <i>specified investment</i> includes a reference to <i>rights to or interests in investments</i> in that <i>specified investment</i> .
(2)	This paragraph deals with a tariff base calculation for a <i>sub-class</i> based on the calculations for corresponding specified fee blocks where this is not possible because there are no corresponding fee blocks. In this case the calculation is based on whichever of the specified fee blocks <i>FSCS</i> may reasonably choose.

6 Annex 4G Guidance on the calculation of tariff bases
This table belongs to FEES 6.5.8G

Calculation of gross income for firms who carry out discretionary fund management and are in sub-class D1

- 1.1 G The calculation of gross income for the purpose of *sub-class* D1 should be based on the calculation of fees under fee block A9. Gross income for the activity of *managing investments* is the sum of the following:
- (1) the amount of the annual charge on all assets in portfolios which the *firm* manages on a discretionary basis received or receivable in the latest accounting period (this is calculated as a percentage of funds invested, typically 1% p.a.); plus
 - (2) the front-end or exit charge levied on sales or redemptions of assets in portfolios which the *firm* manages on a discretionary basis (typically 4-5% of sales/redemptions) in that same accounting period; plus
 - (3) the amount of performance management fees from the management of assets in portfolios which the *firm* manages on a discretionary basis received or receivable in that same accounting period; plus
 - (4) any other income directly attributable to the management of assets in portfolios which the *firm* manages on a discretionary basis in that same accounting period, including commission and interest received.
- 1.2 G Gross income should exclude:
- (1) income received or receivable from assets managed on a non-discretionary basis, being assets that the *firm* has a contractual duty to keep under continuous review but in respect of which prior specific consent of the client must be obtained for proposed transactions, as this activity is covered in *sub-class* D2 (the investment intermediation *sub-class*);
 - (2) income that the *firm* has rebated to customers or passed onto other *firms* (for instance where there is a commission chain).
- 1.3 G A *firm* should make appropriate arrangements to ensure that income is not double counted in relation to the activities it undertakes (for example, where it operates and manages a *personal pension scheme* or *collective investment scheme*).

Corresponding fee blocks

- 2.1 G An example of a case covered by Note 2 in *FEES 6 Annex 3R* (Financial Services Compensation Scheme – classes and sub-classes) is as follows. The tariff base for *sub-class C2* (Life and Pensions Intermediation) is based on *approved persons*, calculated on the same basis as the corresponding tariff base provisions for fee blocks A12, 13, and A14. However *firms* carrying on business originally falling within fee block A19 (e.g. in relation to *pure protection contracts*) can also fall into *sub-class C2*. The note means that *FSCS* may choose whether the calculation is based on the tariff base applicable to A12, A13, or A14.

**INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (LIQUIDITY)
INSTRUMENT 2007**

Power exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- C. The Interim Prudential sourcebook for Banks (IPRU(BANK)) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Liquidity) Instrument 2007.

By order of the Board
31 October 2007

Annex

Amendments to the Interim Prudential sourcebook for Banks (IPRU(BANK))

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

...

Chapter LS STERLING STOCK LIQUIDITY

Section 4 THE MEASUREMENT OF STERLING STOCK LIQUIDITY

4.3 The wholesale sterling net outflow limit and sterling stock 'floor'

...

4.3.2 *The wholesale sterling net outflow limit*

7 A sterling stock liquidity bank should set an internal limit for its maximum wholesale sterling net outflow over the next five working days. The internal limit does not apply to any wholesale funding undertaken by the bank in relation to reserves held under the Bank of England's reserves scheme.

...

4.4 Definitions relevant to both components

...

4.4.2 *Wholesale sterling net outflow*

13 A sterling stock liquidity bank's *wholesale sterling net outflow* is obtained by subtracting wholesale sterling assets maturing over the next five working days ~~and reserves that are held with the Bank of England's reserves scheme~~ from wholesale sterling liabilities falling due over the same period.

...

**MiFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS) (NO 2)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 133 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the MiFID (Deferred Matters and Consequential Amendments) (No 2) Instrument 2007.

By order of the Board
31 October 2007

Annex

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

The amendments shown below take account of the changes made to IPRU(INV) by Annex L to the *MiFID (Deferred Matters and Consequential Amendments) Instrument 2007* (FSA 2007/58).

Chapter 5: FINANCIAL RESOURCES

...

- 5.2.3(2) R The *financial resources requirement* is an *own funds requirement* determined in accordance with paragraph (a) of rule 5.2.3(3) for a *firm* if its permitted business does not include *establishing, operating or winding-up a personal pension scheme* and which:
- (i) is an *exempt CAD firm* which is also an *operator* of a *collective investment scheme* and that scheme only invests in *venture capital investments* for *non-retail clients*; or
 - (ii) is not an *exempt CAD firm* if:
 - (a) ...
 - (b) the ~~firm's~~ *firm's* permitted business includes the activities as in (a) above, but only in respect of *venture capital investments* for ~~non private customers~~ *non-retail clients*; or

...

Chapter 9: Financial resources requirements for an exempt CAD firm

...

- 9.2.3 R An *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business* must also have and maintain at all times financial resources calculated in accordance with the chapter of *IPRU(INV)* to which the *firm* is otherwise subject (Chapters 3 or 5) at least equal to the requirements set out in the relevant chapter (except that if the only *designated investment business* an *exempt CAD firm* is carrying on in addition to *investment services and activities* is *making arrangements with a view to transactions in investments* (article 25(2) *Regulated Activities Order*) ~~and~~ or agreeing to carry on that *regulated activity* or both, it only needs to comply with requirements set out in this chapter and not chapters 3 or 5).

**GENERAL PRUDENTIAL SOURCEBOOK (VALUATION FOR
COUNTERPARTY CREDIT RISK) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages); and
 - (3) section 156 (General supplementary powers).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2007.

Amendments to the Handbook

- D. The General Prudential sourcebook (GENPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the General Prudential Sourcebook (Valuation for Counterparty Credit Risk) Instrument 2007.

By order of the Board
6 December 2007

Annex

Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text.

...

1.3 Valuation

...

General requirements: Marking to market

...

- 1.3.16 R (1) When marking to market, a *firm* must use the more prudent side of bid/offer unless the *firm* is a significant market maker in a particular position type and it can close out at the mid-market price.
- (2) When calculating the current *exposure* value of a credit risk *exposure* for counterparty credit risk purposes:
- (a) a *firm* must use the more prudent side of bid/offer or the mid-market price and the *firm* must be consistent in the basis it chooses; and
- (b) where the difference between the more prudent side of bid/offer and the mid-market price is material, the *firm* must consider making adjustments or establishing reserves.

...

**PRUDENTIAL REQUIREMENTS FOR INSURERS (AMENDMENT NO 2)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 141 (Insurance business rules);
 - (c) section 150(2) (Actions for damages);
 - (d) section 156 (General supplementary powers);
 - (e) section 157(1) (Guidance); and
 - (f) section 340 (Appointment); and
 - (2) the other powers and related provisions listed in Schedule 4 to the General Provisions (Powers exercised) of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2007.

Amendments to the Handbook

- D. The modules of the FSA'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 Prudential sourcebook (GENPRU)	Annex B
Prudential sourcebook for Insurers (INSPRU)	Annex C
Interim Prudential sourcebook for Friendly Societies (IPRU (FSOC))	Annex D
Interim Prudential sourcebook for Insurers (IPRU (INS))	Annex E

Citation

- E. This instrument may be cited as the Prudential Requirements for Insurers (Amendment No 2) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Glossary of definitions

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

contract for differences the *investment*, specified in article 85 of the *Regulated Activities Order* (Contracts for differences etc), which is in summary rights under:

(a) a contract for differences; or

(b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in:

(i) the value or price of property of any description; or

(ii) an index or other factor designated for that purpose in the contract; or

(c) a derivative instrument for the transfer of credit risk to which article 85(3) of the *Regulated Activities Order* applies.

general insurance liabilities ~~insurance~~ liabilities arising from *general insurance business*.

non-directive insurer (a) an *insurer* which is a provident or mutual benefit institution whose *insurance business* is restricted to the provision of benefits which vary according to the resources available and in which the contributions are determined on a flat-rate basis; or

...

sectoral rules

(in relation to a *financial sector*) rules and requirements relating to the prudential supervision of *regulated entities* applicable to *regulated entities* in that *financial sector* as follows:

(a) ...; or

(b) (for the purpose of calculating *solo capital resources*, ~~and~~ a *solo capital resources requirement* and regulatory surplus value):

(i) (to the extent provided for in paragraphs ~~6.5~~ 6.4 to 6.6 of GENPRU 3 Ann 1R) rules and requirements that are referred to in those paragraphs; and

(ii) the rules and requirements in (c); or

(c) (for all other purposes) rules and requirements of the *FSA*;

...

Annex B

Amendments to the General Prudential sourcebook (GENPRU)

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

- 1.3.47 R For the purposes of *GENPRU* 1.3.45R, the value of the *shares* held in an *undertaking* referred to in *GENPRU* 1.3.43R(1) or *GENPRU* 1.3.43R(3) is the sum of:
- (1) the ~~regulatory surplus value~~ regulatory surplus value of that *undertaking*; less
 - ...
- 1.3.52 G *GENPRU* 1.3.47R to *GENPRU* 1.3.51R set out several different valuation bases for an *insurer's shares* in *related undertakings*. The ~~regulatory surplus value~~ regulatory surplus value (defined in *GENPRU* 1.3.48R) ...

GENPRU 2 Annex 7R

Admissible assets in insurance

...	
(2)	Subject to paragraph (3) below, where an asset would, but for this paragraph, be capable of falling into paragraph (1)(A)(d) above and one or more other categories in paragraph (1) above, that asset is only capable of falling into paragraph (1)(A)(d). a unit in a collective investment scheme is only admissible for the purposes of paragraph (1) above if it falls within paragraph (1)(A)(d), notwithstanding that it may also fall into one or more other categories in paragraph (1).
(3)	Where an asset would, but for this paragraph, be capable of falling into paragraph (1)(A)(f) above and one or more other categories in paragraph (1) above, that asset is only capable of falling into paragraph (1)(A)(f). A derivative, quasi-derivative or stock lending transaction is only admissible for the purposes of paragraph (1) above if it falls within paragraph (1)(A)(f), notwithstanding that it may also fall into one or more other categories in paragraph (1).

Annex C

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 1.1.20 R A *firm* which is not a *composite firm* must hold *admissible assets* of a value at least equal to the amount of:
- (1) ...
 - (2) ...
- but excluding, where the *firm* is not a *pure reinsurer*, *property-linked liabilities* and *index-linked liabilities* and the assets held to cover them under *INSPRU 3.1.57R* and *INSPRU 3.1.58R*.
- 1.1.21 R A *composite firm* must ensure that:
- (1) ...
- but excluding, where the *firm* is not a *pure reinsurer*, *property-linked liabilities* and *index-linked liabilities* and the assets held to cover them under *INSPRU 3.1.57R* and *INSPRU 3.1.58R*; and
- (2) ...
- 1.1.51 R (1) Subject to (2) and (3), tThe *brought forward amount* is the *general insurance capital requirement (GICR)* for the *prior financial year*, multiplied, if the ratio is less than one, by the ratio (expressed as a percentage) of:
- ~~(1a)~~ ...
 - ~~(2b)~~ ...
- (2) If the amount of the *technical provisions* (calculated net of *reinsurance*) in (1)(a) and (b) is in both cases zero, the *brought forward amount* is the *general insurance capital requirement (GICR)* for the *prior financial year*, multiplied, if the ratio is less than one, by the ratio (expressed as a percentage) of:
- (a) the *technical provisions* (calculated gross of *reinsurance*) for *claims outstanding* at the end of the *prior financial year*, determined in accordance with *INSPRU 1.1.12R*; to

- (b) the technical provisions (calculated gross of reinsurance) for claims outstanding at the beginning of the prior financial year, determined in accordance with INSPRU 1.1.12R.
- (3) If the amount of the technical provisions (calculated gross of reinsurance) in (2)(a) and (b) is in both cases zero, the brought forward amount is the general insurance capital requirement (GICR) for the prior financial year.
- 1.1.52 G The brought forward amount is the same as the GICR for the prior financial year, except where claims outstanding have fallen during that financial year. ~~If they have fallen, the brought forward amount is itself reduced by the same percentage fall~~ the technical provisions (calculated net of reinsurance) have fallen, the brought forward amount is itself reduced by the same percentage fall. If the technical provisions (calculated net of reinsurance) are zero at the beginning and end of that financial year and the technical provisions gross of reinsurance have fallen, the brought forward amount is reduced by the percentage fall in technical provisions gross of reinsurance.
- 1.1.53 G ~~If the GICR for the prior financial year is less than the premiums amount or the claims amount, then a brought forward amount is not required to be calculated. [deleted]~~
- 1.4.34 R (1) ...
- (2) As at the end of the financial year in which the transfer takes place a sum equal to that part of the consideration for the transfer that relates to business in an insurance business grouping must be:
- (a) ~~excluded from net net written premiums (written or earned)~~ before performing the calculations required by INSPRU 1.4.24R (maximum provision) and INSPRU 1.4.26 R (provisional transfers in);
- ...

- 1.5.17 G (1) Under section ~~34~~19 of the *Act*, a *firm* may not carry on a *regulated activity* unless it has *permission* to do so (or is exempt in relation to the particular activity). Both *general insurance business* and *long-term insurance business* are *regulated activities* and *permission* will extend to the *effecting* or *carrying out* of one or more particular *classes of contracts of insurance*.
- (2) A firm's permission can be varied so as to add other classes. The permission of an existing composite firm may be varied by adding classes of both general insurance business and long-term insurance business.
- (3) It is FSA policy, in compliance with EC directives on insurance, not to grant or vary *permission* if that would allow a newly established firm, or an existing firm engaging solely in general insurance business or solely in long-term insurance business, to engage in both *general insurance business* and *long-term insurance business*. This does not apply where a firm's permission to carry on long-term insurance business is or is to be restricted to reinsurance. It also does not apply where a firm's permission to carry on general insurance business is or is to be restricted to effecting or carrying out accident or sickness contracts of insurance (see article 18(2) of the Consolidated Life Directive).
- (4) Where a firm's permission extends to effecting or carrying out life and annuity contracts of insurance. This will automatically this will normally include permission to effect or carry out accident contracts of insurance or sickness contracts of insurance on an ancillary or a supplementary basis (see article 2(1)(c) of the Consolidated Life Directive Consolidated Life Directive).

Separately identify and maintain long term insurance assets

- 1.5.18 R A *firm* carrying on *long-term insurance business* must identify the assets relating to its *long-term insurance business* which it is required to hold by virtue of: ~~INSPRU 1.1.20R or INSPRU 1.1.21R.~~
- (1) in the case of a pure reinsurer:
- (a) INSPRU 1.1.20R or INSPRU 1.1.21R; and
- (b) INSPRU 3.1.61AR; and
- (2) in any other case:
- (a) INSPRU 1.1.20R or INSPRU 1.1.21R; and
- (b) INSPRU 3.1.57R and INSPRU 3.1.58R.

- 1.5.19 G (1) *INSPRU 1.1.16R* requires a *firm* to establish adequate *technical provisions* for its *long-term insurance contracts*. *INSPRU 1.1.20R* requires a *firm* which is not a *composite firm* to hold *admissible assets* of a value at least equal to the amount of the *technical provisions* and its other *long-term insurance liabilities*. *INSPRU 1.1.21R* ensures that a *composite firm* identifies separate *admissible assets* with a value at least equal to the *technical provisions* for *long-term insurance business* and its other *long-term insurance liabilities* as well as holding other *admissible assets* of a value at least equal to the amount of its *technical provisions* for *general insurance business* and its other *general insurance liabilities*.
- (2) In the case of a *firm* carrying on *long-term insurance business* which is not a *pure reinsurer*, there are excluded from the scope of *INSPRU 1.1.20R* and *INSPRU 1.1.21R* *property-linked liabilities* and *index-linked liabilities* and the assets held to cover them under *INSPRU 3.1.57R* and *INSPRU 3.1.58R*. The latter two *rules* do not apply to a *pure reinsurer* (see *INSPRU 3.1.58AR*). However, a *pure reinsurer* is required by *INSPRU 3.1.61AR* to invest all its assets in accordance with the requirements of that *rule*.
- (3) The overall impact of these provisions in *INSPRU 1.1* and *INSPRU 3.1*, when read together with, and of *INSPRU 1.5.18R*, is that any *firm* writing *long-term insurance business* must identify separately *assets* of a value at least equal to the amount of its *long-term insurance business technical provisions*, including those in respect of any *property-linked liabilities* or *index-linked liabilities*, and its other *long-term insurance liabilities*.

- 1.5.21 R (1) ...
- (2) The items are:
- (a) the assets identified under *INSPRU 1.5.18R* (including assets into which those assets have been converted) but excluding any assets identified as being held to cover liabilities in respect of subordinated debt;
- (b) any other assets identified by the *firm* as being available to cover its *long-term insurance liabilities* (including assets into which those assets have been converted) including, if the *firm* so elects, assets which are excluded under (a);
- ...

1.5.52 R For the purpose of *INSPRU 1.5.48 R* and *INSPRU 1.5.49 R*:
...

(2) an *admissible asset* consisting of a ~~claim~~ claim against a debtor is to be regarded as held in any country or territory where it can be enforced by legal action;

...

1.6.5 R ...

1.6.5A G The purpose of *INSPRU* 1.6.5R is to ensure that a *UK ISPV* may be viewed as a going concern at all times.

2.1.41 R ...

Meaning of reinsurance

2.1.41A R For the purposes of *INSPRU* 2.1, references to *reinsurance* include analogous non-*reinsurance* financing agreements, including contingent loans, securitisations and any other arrangements in respect of *contracts of insurance* that are analogous to *contracts of reinsurance* in terms of the risks transferred and the finance provided and references to *reinsurer* shall be construed accordingly.

3.2.19 G ~~Where a *firm* partially covers a *derivative* (or other contract falling within *INSPRU* 3.2.14R(1) and *INSPRU* 3.2.14R(2)), the *firm* may split the *derivative* into a covered portion and an uncovered portion. The portion of the *derivative* that is covered (after taking into account the requirement to cover reasonably foreseeable adverse variations in *INSPRU* 3.2.17R(1)) is an *approved derivative*, provided it also meets the requirements in *INSPRU* 3.2.5R(1) and *INSPRU* 3.2.5R(3); the uncovered portion is not an *approved derivative*. A *firm* is required to cover a *derivative* under *INSPRU* 3.2.14R whether it satisfies the other conditions for approval under *INSPRU* 3.2.5R or not. Under *INSPRU* 3.2.17R a *firm* may cover an obligation to pay a monetary amount by setting up a provision. If the *derivative* is not covered at any time by other means then a provision needs to be set up to complete the cover taking into account obligations to pay monetary amounts that would arise if, for example, an obligation to transfer assets could not be met in full. By doing so, a *derivative* becomes covered. If it satisfies the other conditions under *INSPRU* 3.2.5R it is an *approved derivative* and may be taken into account for solvency purposes to the extent permitted by the large exposure limits and market risk and counterparty limits.~~

- 6.1.35 G ~~[intentionally blank]~~ INSPRU 6.1.34R sets out the rules for calculating an insurer's individual capital resources requirement. Among other things, this allows the use of local rules for related entities in designated states and territories. Paragraphs 6.5 and 6.6 of GENPRU 3 Annex 1R include the equivalent provisions for related undertakings in the banking sector and investment services sector. The provisions of paragraphs 6.4 to 6.6 extend to the calculation of solo capital resources, with the references to sectoral rules in paragraphs 1.2, 2.3 and 3.2 of GENPRU 3 Annex 1R (that is, the capital resources requirement of a related undertaking must be met by capital resources that are eligible under the relevant sectoral rules).
- 6.1.42 G For the purposes of *INSPRU 6.1.41R*, in respect of an *insurance undertaking* that is a member of an *insurance group*, the assets of a *long-term insurance fund* are restricted assets within the meaning of *INSPRU 6.1.41R*. Any excess of assets over liabilities in the *long-term insurance business fund* may only be included in the calculation of the *group capital resources* up to the amount of the *undertaking's individual capital resources requirement related to that which relates to the long-term insurance business in respect of which that long-term insurance fund is held.*

Annex D

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

ANNEX 4

GUIDANCE ON MARGINS OF SOLVENCY AND THE GUARANTEE FUND

...

12.1 Resilience Test⁴³

12.2 The resilience test is a requirement for prudent provision to be made against the effects of possible future changes in the value of assets on the adequacy of these assets to meet liabilities. This requirement is in paragraph 16 of Appendix 5 of *IPRU(FSOC)* and applies to the determination of the amount of long-term liabilities. A friendly society should for this purpose treat *INSPRU* 3.1.16G to *INSPRU* 3.1.26R as providing guidance on the scenarios that may be appropriate for this purpose. (Any additional reserve required by the resilience test is part of *mathematical reserves* and not a capital requirement).

12.3 ~~*Friendly societies* should, as a minimum, consider the scenario of a fall in the market value of equities of at least 10%, or, if greater, the lower of:~~

- ~~(1) 25%, or such lower amount which would not produce a P/E ratio on the FTSE Actuaries All Share Index lower than 75% of the inverse of the long term gilt yield (as defined in paragraph 10(9) of Appendix 5 of *IPRU(FSOC)*); and~~
- ~~(2) 25% less any percentage reduction between the current FTSE Actuaries All Share Index and its average over the last 90 calendar days. [deleted]~~

12.4 ~~At the same time, *friendly societies* should make the assumption that the earnings yield on equities will fall by 10% (shortly after the above fall in equity values), but that dividends would remain unaltered when assessing the corresponding rate of interest at which the liabilities should be valued.~~

~~In 12.3(2), the current index should be compared to its recent average, based on levels at the close of business. Of the last 90 calendar days, only those on which the London Stock exchange was open for trading should be taken into account in determining the average. Where there has been a fall, such a percentage fall should be deducted from the 25% in arriving at this resilience test. [deleted]~~

12.5 ~~The *actuary* appointed to perform the *actuarial function* under the rules in *SUP* would then be expected to apply his or her own professional judgement in advising the management of the *friendly society* on the level of changes in the *market value* of, and yield on, other types of investment held by the society for the purpose of the resilience test. The prudence concept should be paramount. Reductions in fixed interest yields, or changes in the shape of the yield curve, are among the obvious possibilities. [deleted]~~

12.6 ...

Footnote:

⁴³~~This section has been replaced by Guidance Note No.4 (2002) (Resilience test for insurers) until the Integrated Prudential Sourcebook comes into force~~

Annex E

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

...

Chapter 9

FINANCIAL REPORTING

...

Annual accounts and balance sheets

9.3 (1) Subject to (2) and (3), an *insurer* which does not fall within (5) must, with respect to each of its *financial years*, prepare –

...

(5) A long-term insurer which:

(a) has transferred all of its long-term insurance business to another insurer;

(b) has no intention to carry on further long-term insurance business; and

(c) is not carrying on general insurance business.

must provide to the FSA within three months of the date of transfer Forms 40, 41, 42, 43, 45, 46 and 47 in respect of the period from the end of the financial year most recently ended to the date of transfer together with a certificate in accordance with Appendix 9.6 paragraphs 1(1)(a) and 1(1)(b)(i) and a statement that no long-term insurance business has been carried on by the insurer since then, there is no intention to carry on further any such business and the insurer is not carrying on general insurance business.

(6) The Forms 40, 41, 42, 43, and 45 provided under (5) must be audited by a person qualified to do so, in accordance with the rules in SUP, who must make and annex to those documents a report in accordance with Appendix 9.6 paragraph 4(a)(i) in respect of those documents.

Deposit of accounts etc. with the FSA

9.6 (1) Every 'account' ... within the periods set out in the table below.

	deposit period following the <i>financial year end</i> or, for documents required by rule 9.3A, the end of the first six months of the <i>financial year</i>	
<i>financial year ending on or after</i>	where the deposit is made electronically or under rule 9.36A	otherwise
31 December 2001	4 months	3 months and 15 days
31 December 2002 and following years	3 months	2 months and 15 days

(1B) ...

(6) There must be deposited with every revenue 'account' and 'balance sheet' of an *insurer* any statement or report on the affairs of the *insurer* made or submitted:

(a) to the *insurer's* shareholders or ~~*policy holders*~~ *policyholders*; or

(b) ...

Content and form of accounts

9.11 Every account, balance sheet, note, statement, report and certificate required to be prepared by an *insurer* pursuant to rule 9.3(1), (2) and (3) (annual accounts and balance sheets) or 9.3(5) must be prepared in the manner set out in the *Accounts and Statements Rules* and must fairly state the information provided on the basis required by the *Accounts and Statements Rules*. Where the rules in *IPRU(INS)* require a Form to be submitted, but all entries (including comparatives) would be blank, that Form may be omitted provided that a note coded FF00 (where FF is the Form number) is included stating that this is why the Form has been omitted. This note is not needed where a Form is omitted because the rules do not require it.

Balance sheet

...
9.12 ...

(8) For each **Form 13** which an *insurer* is required to complete under (5)(a) or (b), the *insurer* must complete **Form 17** in respect of the same *insurance business*; ~~except that where in respect of that Form all amounts required to be shown would be zero and no supplementary note would be required, **Form 13** may instead be accompanied by a supplementary note to that effect and **Form 17** may be returned in blank.~~

...
...

Additional information on derivative contracts

- 9.29 (1) ...
- (h) the circumstances surrounding ...
 - (hi) the total value ...
- ...

Valuation reports on long-term insurance business

9.31 Every *insurer* ...

- (a) for the purposes of rule 9.4 other than in relation to the calculation required by rule 9.4(2)(c):
 - (i) where an investigation into the financial condition of the *insurer* has been made in accordance with rule 9.4(1)(a), a valuation report which, complies with the requirements of **Appendix 9.4** and contains the information specified in that Appendix;
 - (ii) where an investigation into the financial condition of the *insurer* has been made at some other time with a view to the distribution of profits or the results of which are made public, **Form 58** and a valuation report which, instead of complying with the requirements of **Appendix 9.4**, includes a full description of each of the changes in the methods and assumptions used in the investigation for the purposes of rule 9.4(2)(a) and (b) since the previous investigation at the end of the *preceding financial year* or if there has been no such change, a statement to that effect; and
- (b) ...

Additional information on financial reinsurance and financing arrangements: general insurers

- 9.32A (1) ...
- (5) The statement ... even if ...
 - (6) ...

Audit and auditor's report

...
9.35 (1) The documents referred to in rules 9.12, 9.13 and 9.14, together with **Forms**

40 to 45, 48, 49, 56, 58 (including a **Form 58** completed under rule 9.31(a)(ii)) and **60**, and every statement, analysis or report annexed pursuant to rules 9.24 to 9.27, 9.29 and 9.31 must be audited by a person, in accordance with the rules in *SUP*, who must make and annex to those documents a report in accordance with the requirements of Part II of **Appendix 9.6**.

...

Chapter 11

DEFINITIONS

11.1 ...

Term or phrase	Definition
...	
<i>annuities on human life</i>	does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons
...	
<i>initial margin</i>	in respect of a <i>derivative contract</i> or a contract or asset having the effect of a <i>derivative contract</i> ⁹ , means assets which, ...
...	
<i>linked assets</i> ¹⁰	...
...	

⁹ See rule 4.13 for contracts which have the effect of *derivative contracts*

¹⁰ For guidance, see paragraph 3 of **Guidance Note 4.1**

...

ANNEX 11.1

CLASSES OF LONG-TERM INSURANCE BUSINESS

Number	Description	Nature of business
...		
VIII	Collective insurance etc	Effecting or carrying out contracts of a kind referred to in Article 42(2)(e) of the <i>First Consolidated Life Directive</i> .
IX	Social insurance	Effecting or carrying out contracts of a kind referred to in Article 42(3) of the <i>First Consolidated Life Directive</i> .
...		

ANNEX 11.2

CLASSES, AND GROUPS OF CLASSES, OF GENERAL INSURANCE BUSINESS

Part I

Classes of general insurance business

Number	Description	Nature of business
...		
4	Railway rolling <u>stock</u>	Effecting or carrying out <i>contracts of insurance</i> stock against loss of or damage to railway rolling stock.
...		

ANNEX 11.3

DESCRIPTIONS OF FSA GENERAL INSURANCE BUSINESS REPORTING CATEGORIES

Part I

Categories to which contracts of general insurance business are to be allocated for the purpose of reporting in the return

Category Number	FSA general insurance business reporting category	Map to classes of business in Annex A of 73/239/EEC
...	.	.
182	Creditor ...	42, <u>1,2,16</u>
...		
343	Energy (on and off-shore) ...	6,8,9,12, <u>13, 16</u>
...		

...

APPENDIX 9.1 (rules 9.12 and 9.13)

**BALANCE SHEET AND PROFIT AND LOSS ACCOUNT
(FORMS 1 TO 3 AND 10 TO 19)**

...

Completion of Forms

2. ~~Where 'source' appears at the head of a column on a form, the information to be included in the preceding columns of a particular line is to be taken from those items in the return to which reference is made on that line in the column headed 'source'. No entries are to be made in the column headed 'source'.~~
~~[deleted]~~

3. (1) ~~The insurer's registration number to be entered in every form must be the number provided to the insurer by the FSA (or a predecessor). An insurer making a return must complete the 'company registration number box' using the full registration number given by the Registrar of Companies. If the insurer does not have such a number, it must agree a suitable number with the FSA. An overseas insurer must use its F-series number issued by the Registrar of Companies.~~

...

...

Presentation of amounts

6. ...

7. Firms should not normally restate comparatives unless restatement is necessary in order to allow the appropriate comparison to be made. Where in any ~~Form~~ an amount which is a comparative (i.e. shown in a "previous year" column) or shown brought forward from a previous year differs from the corresponding amount shown in a "this financial year" column in a return for a previous year or as carried forward from that year, as the case may be, and the difference is not due solely to the use of a different rate to express other currencies in sterling, ...

...

Counterparty exposure

11. (1) ...

(2) In each case where ~~the~~ a counterparty exposure of the insurer ~~to a counterparty~~ which is subject to any of the limits in *INSPRU 2.1.22R(3)* exceeds at the end of the *financial year in question* ~~exceeds~~:

...

...

Reconciliation

14. ~~A reconciliation of the capital resources of the insurer to the net admissible assets of the insurer must be provided in accordance with instruction 66 to Form 3.~~ [deleted]

...

Instructions for completion of Form 1

1. ...
...
4. ... is equal to Form 10 line ~~29~~23.
...
7. ... the adjustment is the difference between ~~Form~~ Form 13 line 89 ...
8. ...
...

Instructions for completion of Form 2

1. ...
2. ... *implicit items* plus ~~Form~~ Form 10 line 11 less ... equal to Form 10 line ~~29~~23.
3. ...
...

Instructions for completion of Form 3

1. ...
...
19. The entries at lines 45 and 46 for perpetual cumulative *preference shares*, *subordinated debt* and *securities* must be the total, unrestricted, amounts that the *firm* can include in *upper tier two capital* in accordance with ~~GENPRU 2.2.117G, 2.2.176G, 2.2.177R, 2.2.178R, 2.2.180R, and 2.2.181R.~~ 2.2.177R to 2.2.181R and GENPRU 2.2.270R to 2.2.271R.
20. ...
21. The types of capital instrument that a *firm* can include within its *lower tier two capital* are set out at ~~GENPRU 2.2.66G, 2.2.69G, 2.2.159R, 2.2.163R, 2.2.164G, 2.2.165G, 2.2.167G, 2.2.169R~~ 2.2.159R to 2.2.174R, GENPRU 2.2.194R to 2.2.196R and GENPRU 2.2.270R to 2.2.271R. These should be split between fixed term *preference shares* and other *tier two instruments* and entered at lines 51 and 52 respectively.
22. ...
58. Any arrangement relating to *long-term insurance business* which is not entered in lines 91 to 95, but which falls within the definition of financing arrangement in paragraph ~~4(4)~~ 9(3) of Appendix 9.4 (Abstract of valuation report) must be disclosed in a supplementary note (code 0305) to this Form.
59. ...
68. A reconciliation of profit and loss account and other reserves (line 12) as at the end of this financial year and the end of the previous financial year (columns 3 and 4) to the profit and loss retained (Form 16 line 59) must be provided as a supplementary note (code 0313).

Statement of net assets

Name of insurer

UK branch business/EEA branch business

Financial year ended

		Company registration number	GL/ UK/ CM	day	month	year	units
		R10					£000
			As at end of this financial year 1		As at end of the previous year 2		
...							
Other assets allowed to be taken into account in covering the capital resources requirement	Unpaid amounts (including share premium) on partly paid shares	24					
	Supplementary contributions for a mutual carrying on general insurance business	25					
Liabilities allowed to be left out of account in covering the capital resources requirement	Subordinated loan capital	26					
	Cumulative preference share capital	27					
Available assets (23 to 27)		29					

Represented by

Paid up share capital (other than cumulative preference share capital)	51		
Amounts included in lines 24 to 27 above	52		
Amounts representing the balance of net assets	56		
Total (51 to 56) and equal to line 29 above	29		

**Movement of balance of net admissible assets for solvency purposes
as per line 5623**

Instructions for completion of Form 10

1. ...
 2. ~~Lines 24-27, 51 and 52 should be blank. [deleted]~~
 3. ...
- ...

Calculation of general insurance capital requirement– premiums amount and brought forward amount

Form 11

Name of insurer

Global business / UK branch business / EEA branch business

Financial year ended

General/long-term insurance business

		Company registration number	GL/UK/CM	day	month	year	units
R11							£000
				This financial year		Previous year	
				1		2	
Gross premiums written		11					
Premium taxes and levies (included in line 11)		12					
Premiums written net of taxes and levies (11-12)		13					
Premiums for classes 11, 12 or 13 (included in line 13)		14					
Premiums for "actuarial health insurance" (included in line 13)		15					
Sub-total A (13 + ½ 14 - 2/3 15)		16					
Gross premiums earned		21					
Premium taxes and levies (included in line 21)		22					
Premiums earned net of taxes and levies (21-22)		23					
Premiums for classes 11, 12 or 13 (included in line 23)		24					
Premiums for "actuarial health insurance" (included in line 23)		25					
Sub-total H (23 + ½ 24 - 2/3 25)		26					
Sub-total I (higher of sub-total A and sub-total H)		30					
Adjusted sub-total I if financial year is not a 12 month period to produce an annual figure		31					
Division of gross adjusted premiums amount: sub-total I (or adjusted sub-total I if appropriate)	x 0.18	32					
	Excess (if any) over 53.1M EURO x 0.02	33					
Sub-total J (32-33)		34					
Claims paid in period of 3 financial years		41					
Claims outstanding carried forward at the end of the 3 year period	For insurance business accounted for on an underwriting year basis	42					
	For insurance business accounted for on an accident year basis	43					
Claims outstanding brought forward at the beginning of the 3 year period	For insurance business accounted for on an underwriting year basis	44					
	For insurance business accounted for on an accident year basis	45					
Sub-total C (41+42+43-44-45)		46					
Amounts recoverable from reinsurers in respect of claims included in Sub-total C		47					
Sub-total D (46-47)		48					
Reinsurance ratio (Sub-total D / sub-total C or, if more, 0.50 or, if less, 1.00)		49					
Premiums amount (Sub-total J x reinsurance ratio)		50					
Provision for claims outstanding (before discounting and net of reinsurance)		51					
Provision for claims outstanding (before discounting and gross of reinsurance) if both 51.1 and 51.2 are zero, otherwise zero.		52					
Brought forward amount (See instruction 4)		523					
Greater of lines 50 and 523		534					

Calculation of general insurance capital requirement– claims amount and result

Form 12

Name of insurer

Global business / UK branch business / EEA branch business

Financial year ended

General/long-term insurance business

		Company registration number	GL/UK/CM	day	month	year	units
		R12					£000
						This financial year 1	Previous year 2
Reference period (No. of months) See <i>INSPRU</i> 1.1.63R				11			
Claims paid in reference period				21			
Claims outstanding carried forward at the end of the reference period	For insurance business accounted for on an underwriting year basis			22			
	For insurance business accounted for on an accident year basis			23			
Claims outstanding brought forward at the beginning of the reference period	For insurance business accounted for on an underwriting year basis			24			
	For insurance business accounted for on an accident year basis			25			
Claims incurred in reference period (21+22+23-24-25)				26			
Claims incurred for classes 11, 12 or 13 (included in 26)				27			
Claims incurred for "actuarial health insurance" (included in 26)				28			
Sub-total E (26 + ½ 27 - ²/₃ 28)				29			
Sub-total F – Conversion of sub-total E to annual figure (multiply by 12 and divide by number of months in the reference period)				31			
Division of sub-total F (gross adjusted claims amount)	x 0.26			32			
	Excess (if any) over 37.2M EURO x 0.03			33			
Sub-total G (32 - 33)				39			
Claims amount Sub-total G x reinsurance ratio (11.49)				41			
Higher of premiums amount and brought forward amount (11.534)				42			
General insurance capital requirement (higher of lines 41 and 42)				43			

Instructions for completion of Forms 11 and 12

...

Prior year figures

...

7. If the *financial year* ends after 30 December 2006, the amounts to be shown in column 2 must be the amounts shown in column 1 for the previous *financial year*, unless Forms 11 and 12 were not completed for the previous *financial year*. In that event column 2 must be left blank, apart from the amounts in 11.51.2, 11.52.2 and 12.43.2. The amounts in 11.51.2 and 12.43.2 must be calculated in accordance with the rules in force at the date to which they relate, so for a previous *financial year* ending prior to 31 December 2006 they must exclude *life protection insurance business*.

...

Instructions for completion of Form 11

...

4. ~~If Form 11 line 51 column 2 is zero, Form 11 line 52 column 1 equals Form 12 line 43 column 2. Form 11 line 53 column 1 is determined as follows:~~

- If Form 11 line 51 columns 1 and 2 and line 52 column 2 are all zero then Form 11 line 53 column 1 equals Form 12 line 43 column 2.
- If Form 11 line 51 columns 1 and 2 are both zero but line 52 column 2 is non-zero then Form 11 line 53 column 1 equals the lesser of Form 12 line 43 column 2 and (Form 12 line 43 column 2 multiplied by the ratio of Form 11 line 52 column 1 to line 52 column 2).
- If Form 11 line 51 column 2 is zero but line 51 column 1 is non-zero then Form 11 line 53 column 1 equals Form 12 line 43 column 2.
- If Form 11 line 51 column 2 is non-zero then Form 11 line 53 column 1 equals the lesser of Form 12 line 43 column 2 and (Form 12 line 43 column 2 multiplied by the ratio of Form 11 line 51 column 1 to line 51 column 2).

...

Analysis of admissible assets

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Category of assets

	Company registration number	GL/UK/CM	day	month	year	units	Category of assets
	R13					£000	
						As at end of this financial year 1	As at end of the previous year 2
...							
Grand total of admissible assets after deduction of <u>admissible assets in excess of</u> market risk and counterparty limits (11 to 86 less 87)					89		

Analysis of admissible assets

Name of insurer
Global business/UK branch business/EEA branch business
Financial year ended
Category of assets

R13	Company registration number	GL/UK/CM	day	month	year	units	Category of assets
						£000	
						As at end of this financial year 1	As at end of the previous year 2

Reconciliation to asset values determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting

Total admissible assets after deduction of <u>admissible assets in excess of</u> market risk and counterparty limits (as per line 89 above)	91		
<u>Admissible assets</u> in excess of market and counterparty limits	92		
<u>Inadmissible assets directly held</u>	93		
Capital resources requirement deduction of regulated related undertakings	93		
Ineligible surplus capital and restricted assets in regulated related insurance undertakings	94		
Inadmissible assets of regulated related insurance undertakings	95		
Book value of related ancillary services undertakings	96		
	97		
Other differences in the valuation of assets (other than for assets not valued above)	97		
	98		
Deferred acquisition costs excluded from line 89	98		
	99		
Reinsurers' share of technical provisions excluded from line 89	99		
	100		
Other asset adjustments (may be negative)	100		
	101		
Total assets determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting (91 to 400 101)	101		
	102		
Amounts included in line 89 attributable to debts due from related insurers, other than those under contracts of insurance or reinsurance	102		
	103		

Instructions for completion of Form 13

1. ...
16. Lines ~~98-101~~102 must be completed in accordance with the *insurance account rules* or *international accounting standards* as applicable to the *firm* for the purpose of its external financial reporting if the *firm* is required to produce such accounts. Otherwise these lines must be left blank. Line ~~99~~100 includes the discounting adjustment for the *reinsurers'* share of claims outstanding – see instruction 4 of **Form 15**. Details of amounts in line ~~100~~101 must be disclosed in a supplementary note (code 1318). ~~The previous year figures for lines 98-101 must be left blank for financial years ending on or before 30 December 2006. For years ending on or before 30 December 2008, the previous year figure for line 93 must be left blank and that for line 101 must equal line 100 from the previous return.~~

Liabilities (other than long term insurance business)

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

		Company registration number	GL/ UK/ CM	day	month	year	units
R15							£000
			As at end of this financial year 1	As at end of the previous year 2			
...							
Creditors	Taxation	47					
	<u>Declared Foreseeable</u> dividend	48					
	Other	49					
...							
<u>Reinsurers' share of DAC</u>			81				
Amounts deducted from technical provisions for discounting			82				
Other adjustments (may be negative)			83				
Capital and reserves			84				
Total liabilities under insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting (69+84-82+83+84)			85				

Instructions for completion of Form 15

1. ...
8. Lines ~~81~~82-85 must be completed in accordance with the *insurance accounts rules* or *international accounting standards* as applicable to the *insurer* for the purpose of its external financial reporting if the *insurer* is required to produce such accounts. Otherwise these lines must be left blank. Details of amounts in line 83 must be disclosed in a supplementary note (code 1507). ~~The previous year figures must be left blank for financial years ending on or before 30 December 2006.~~
9. The amount at line 48 column 1 is dividends which are foreseeable in accordance with GENPRU 2.2.87AG ~~had been declared but not paid prior to the end of the financial year.~~ Where the previous financial year ends before 31 December 2006~~7~~ the amount shown in column 2 must be the amount shown in the previous annual return (where a different definition for this item may have been used).

APPENDIX 9.3 (rules 9.14 and 9.23)

**LONG-TERM INSURANCE BUSINESS
REVENUE ACCOUNT AND ADDITIONAL INFORMATION
(FORMS 40 TO 60)**

...

2. ...

2A Insurers should not normally restate comparatives unless restatement is necessary in order to allow the appropriate comparison to be made. Where in any Form an amount which is a comparative (i.e. shown in a "previous year" column) differs from the corresponding amount shown in a "this financial year" column in a return for a previous year and the difference is not due solely to the use of a different rate to express other currencies in sterling, an explanation of the reason for the difference must be given by way of a supplementary note to that Form. (For Forms 40, 41, 42, 43, 44, 45, 46, 50, 58 and 60 the code for the supplementary note is 4011, 4111, 4211, 4311, 4411, 4511, 4611, 5011, 5811 and 6011 respectively.)

3. ...

...

Instructions for completion of Form 47

1. ...

3. Information must be further divided by product code as follows:

Code	Product description
...	.
400	Annuity non-profit (CPA)
<u>401</u>	<u>Annuity non-profit (bulk transfer)</u>
405	Annuity non-profit (CPA impaired life)
...	
905	Index linked annuity (CPA)
<u>906</u>	<u>Index linked annuity (bulk transfer)</u>
<u>907</u>	<u>Index linked deferred annuity</u>
...	

...

Compulsory purchase annuities (CPA) annuities include those arising from group death in service policies, and bulk purchase of annuities from occupational pension schemes. "Bulk transfer" annuities referred to in codes 401 and 906 cover all annuities in payment as part of a bulk transfer of liabilities from an occupational pension scheme or a reinsurance contract; these codes are to be used for new business instead of codes 400, 405 and 905. Transfers from insurers under Part VII of the Act are recorded in Form 40, there being no premiums passing through the revenue account.

...

Instructions for completion of Forms 51, 52, 53 and 54

1. ...
4. Subject to 11, ... Subdivision of pensions business into increments and DWP National Insurance rebates is not required in Forms 51-54. Subdivision of annuities in payment into those arising from bulk transfers is not required in Forms 51-54, i.e. new business reported under codes 401 and 906 is reported under codes 400, 405 and 905 for in force business.

...

APPENDIX 9.6 (rules 9.34 and 9.35)

CERTIFICATE BY DIRECTORS AND REPORT OF THE AUDITORS

Part I

Certificate by directors

1. (1) Subject to 3, the certificate required by rule 9.34 must state -
 - (a) ...
 - (b) that the *directors* are satisfied that:
 - (i) throughout the *financial year in question*, the *insurer* has complied in all material respects with the requirements in *SYSC* and *PRIN* as well as the provisions of *IPRU(INS)*, ~~*PRU*~~, *GENPRU* and *INSPRU*; and
 - (ii) ...

APPENDIX 9.8 (rule 9.36A)

MARINE MUTUALS: ITEMS TO BE DISREGARDED, DIRECTORS' CERTIFICATES AND AUDITORS REPORTS

Part 1

Items to be disregarded

1. In completing the Forms required under rule 9.36A, a *marine mutual* must disregard *reinsurance* arrangements with any *relevant company* and must treat income and expenditure and assets and liabilities of any *relevant company* as, respectively, income and expenditure and assets and liabilities of the *marine mutual*.

Completion of Forms

- 1A. Where 'source' appears at the head of a column on a Form, the information to be included in the preceding columns of a particular line is to be taken from those items in the return to which reference is made on that line in the column headed 'source'. No entries are to be made in the column headed 'source'.

Part II

Directors' certificates

2. Subject to 4, ...
 - (a) confirming that –
 - (i) ...
 - (ii) the *directors* are satisfied that throughout the *financial year in question*, the *marine mutual* has complied in all material respects with the requirements in *SYSC* and *PRIN* as well as the provisions of *IPRU(INS)*, ~~*PRU*~~, *GENPRU* and *INSPRU* and ...
 - (iii) ...
 - (b) ...

...

Marine mutuals - Analysis of admissible assets

**Form M3
(Sheet 2)**

Name of insurer

Financial year ended

		Company registration number	day	month	year	units
		M3				£000
			As at end of this financial year 1		As at end of the previous year 2	
Deposits with ceding undertakings		57				
Assets held to match linked liabilities	Index linked	58				
	Property linked	59				
Reinsurers' share of technical provisions						
Provision for unearned premiums		60				
Claims outstanding		61				
Provision for unexpired risks		62				
Other		63				
Debtors and salvage						
Direct insurance business	Policyholders	71				
	Intermediaries	72				
Salvage and subrogation recoveries		73				
Reinsurance	Accepted	74				
	Ceded	75				
Dependants	due in 12 months or less	76				
	due in more than 12 months	77				
Other	due in 12 months or less	78				
	due in more than 12 months	79				
Other assets						
Tangible assets		80				
Deposits not subject to time restriction on withdrawal with approved institutions		81				
Cash in hand		82				
Other assets (particulars to be specified by way of supplementary note)		83				
Accrued interest and rent		84				
Deferred acquisition costs (general business only)		85				
Other prepayments and accrued income		86				
Deductions from the aggregate value of assets		87				
Grand total of admissible assets after deduction of <u>admissible assets in excess of</u> market risk and counterparty limits (11 to 86 less 87)		89				

Marine mutuals - Analysis of admissible assets

**Form M3
(Sheet 3)**

Name of insurer

Financial year ended

	Company registration number	day	month	year	units
M3					£000
				As at end of this financial year 1	As at end of the previous year 2

Reconciliation to asset values determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting

Total admissible assets after deduction of <u>admissible assets in excess of market risk and counterparty limits</u> (as per line 89 above)	91		
<u>Admissible assets in excess of market and counterparty limits</u>	92		
<u>Inadmissible assets directly held</u>	93		
Capital resources requirement deduction of regulated related undertakings	93		
Ineligible surplus capital and restricted assets in regulated related insurance undertakings	94		
Inadmissible assets of regulated related insurance undertakings	95		
Book value of related ancillary services undertakings	96		
Other differences in the valuation of assets (other than for assets not valued above)	97		
Deferred acquisition costs excluded from line 89	98		
Reinsurers' share of technical provisions excluded from line 89	99		
Other asset adjustments (may be negative)	100		
Total assets determined in accordance with the insurance accounts rules or international accounting standards as applicable to the firm for the purpose of its external financial reporting (91 to 100 <u>101</u>)	101		
Amounts included in line 89 attributable to debts due from related insurers, other than those under contracts of insurance or reinsurance	102		
	103		

Lines ~~989-101~~ 102 must be completed in accordance with the *insurance account rules* or *international accounting standards* as applicable to the *insurer* for the purpose of its external financial reporting if the *insurer* is required to produce such accounts. Otherwise these lines must be left blank. Details of amounts in line ~~100~~ 101 must be disclosed in a supplementary note (code 1318). ~~The previous year figures must be left blank for financial years ending on or before 30 December 2006.~~ For years ending on or before 30 December 2008, the previous year figure for line 93 must be left blank and that for line 101 must equal line 100 from the previous *return*.

INVESTMENT FIRMS (AUDITOR'S REPORTS) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance); and
 - (4) section 340(1) (Appointment of Auditors and Actuaries).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2007.

Amendments to the Handbook

- D. The modules of the FSA'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)
Prudential sourcebook for UCITS Firms (UPRU)	Annex A
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Investment Firms (Auditor’s Reports) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

Annual ~~audited~~ fixed expenditure

- 2.1.3 R For the purposes of this sourcebook, a *firm's* annual ~~audited~~ fixed expenditure is:
- ...
- 2.1.4 G A *firm's financial resources requirement* will be recalculated ~~and audited~~ annually when its *annual financial return* is prepared. The *firm* should maintain *financial resources* sufficient to meet its new *financial resources requirement* from the date on which the *annual financial return* is ~~approved by the auditor~~ prepared. The annual ~~audited~~ fixed expenditure applicable at the *accounting reference date* to which the *annual financial return* is prepared will be that based on the previous year's figures. This will usually be the same as that used in the fourth quarter's *quarterly financial return* prepared to the same *accounting reference date*.

Annex B

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

3 Securities and Futures firms which are not Investment Firms

...

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 3

annual financial statements means statements drawn up in accordance with Schedule 4 to the Companies Act 1985 or, where applicable, *international accounting standards* as at the *firm's annual accounting reference date* ~~and, where required, an *auditor's report*;~~

auditor's report ~~means a report drawn up in the format required by the *Supervision manual* which a firm must submit to the FSA in conjunction with the *firm's annual financial statements*;~~

reporting statement means any one or more of the following types of report as required by the *Supervision manual*:

...

(c) ~~Auditor's report; [deleted]~~

...

5.2.4(2) G ~~A firm's financial resources requirement will be recalculated and, where required, audited~~ annually when its *annual financial return* is prepared. The *firm* must maintain *financial resources* sufficient to meet its new *financial resources requirement* from the date on which the *annual financial return* is prepared, ~~and where required, approved by the auditor.~~ The *expenditure based requirement* applicable at the *accounting reference date* to which the *annual financial return* is prepared will be that based on the previous year's figures. This will usually be the same as that used in the fourth quarter's *quarterly financial return* prepared to the same *accounting reference date*.

5.2.4(3) R ~~A firm's annual expenditure must be audited unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)). [deleted]~~

...

Chapter 5:
APPENDIX 1 (INTERPRETATION)

...

annual ~~audited~~ expenditure has the meaning given in rule 5.2.4(1) (Determination).

Annex C

Amendments to the Supervision manual (SUP)

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

3.1.2 R Applicable sections (see SUP 3.1.1 R)

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1)	<i>Authorised professional firm</i> which is required by <i>IPRU(INV)</i> 2.1.2R to comply with chapters 3, 5, 9 <u>10</u> or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Note 1)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8 ₂ –SUP 3.10
...			
(7)	<i>Investment management firm</i> , (other than an <i>exempt CAD firm</i>) <i>personal investment firm</i> (other than a <i>small personal investment firm</i>), or <i>securities and futures firm</i> (other than an <i>exempt CAD firm</i>) which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Notes 3 and 3A)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8 ₂ –SUP 3.10
...			
(7B)	<i>UCITS firm</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8 ₂ –SUP 3.10
...			

3.1.6 G The application of *SUP 3.7* and ~~*SUP 3.9*~~ to an *incoming Treaty firm* or an auditor of such a *firm* is further qualified in *SUP 3.7.1 G* and ~~*SUP 3.9.2 R*~~.

Auditors of lead regulated firms

3.1.7 G The application of ~~*SUP 3.9*~~ and *SUP 3.10* to the auditor of a *lead regulated firm* is qualified in ~~*SUP 3.9.2 R*~~ and *SUP 3.10.3 R*.

...

SUP 3.9 is deleted in its entirety. The text is not shown struck through.

SUP 3.9 [deleted]

5.3.2 G The decision to require a report by a *skilled person* will normally be prompted by a specific requirement for information, analysis of information, assessment of a situation or expert advice or recommendations or by a decision to seek assurance in relation to a regulatory return. It ~~will usually~~ may be part of the risk mitigation programme applicable to a *firm*, or the result of an event or development relating or relevant to a *firm*, or prompted by a need for verification of information provided to the *FSA* or part of the *FSA's* regular monitoring of a *firm*.

16.7.34 G ~~The *FSA* expects the audited annual financial statements to be submitted together with the auditor's report required by *SUP 3.9.4 R*. [deleted]~~

16.7.39 G (1) ~~The *FSA* expects the annual accounts to be submitted together with the auditor's report required by *SUP 3.9.4 R*. [deleted]~~

(2) Notes giving *guidance* on the completion of the consolidated financial resources return are contained in *SUP 16 Ann 17*. The *guidance* in *SUP 16.3.25G* (Reports from groups) is also relevant.

16.7.70 G ~~The *FSA* expects the annual accounts to be submitted together with the auditor's report required by *SUP 3.9.4 R*. [deleted]~~

16 Ann 5R: Investment management firms' reporting forms and requirements applying to their completion

...

Financial Return

Investment Management Firms

Annual Financial Return

For the year ended _____

Name of Firm _____

FSA firm reference number _____

Date of Audit Opinion _____

...

CALCULATION OF FINANCIAL RESOURCES REQUIREMENT FOR FORTHCOMING YEAR AFS5

	£000	£000
Expenditure Based Requirement (IPRU(INV)Table 5.2.3(5) (a))		
...		
Expenditure		
Annual Expenditure		
(pro-rated where relevant to annual amount) (IPRU (INV) 5.2.4R(1)(b)R)		
(audited unless the firm is exempt from the requirement to audit accounts) (IPRU (INV) 5.2.4(3)R)		
Expenditure Based Requirement		
(6/52* or 13/52* of Annual Expenditure)		(69)
Fraction indicator (6* or 13*)		(70)

Note: The Expenditure Based Requirement calculated above becomes effective from the date on which this Annual Financial Return is approved by the ~~auditor~~ management of the firm. At all times throughout the period from this date until the next Annual Financial Return is approved, the Firm's Financial Resources must satisfy its Financial Resources Requirement incorporating the above Requirement. ~~If the Firm is not required to have an auditor, then the Expenditure Based Requirement becomes effective when approved by the management of the Firm.~~

**Delete whichever is not applicable*

...

DECLARATION

AFS7

This Annual Financial Return has been properly prepared in accordance with the Rules,

and was approved by the Firm on(date).

It is accompanied by the Annual Accounts ~~and, if required by the rules, the report of the auditor to the FSA.~~

SIGNATURE AND DECLARATION

Knowingly or recklessly giving the FSA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signed on behalf of the Firm by:

(date) (authorised signatory)

.....(authorised signatory)
(date)

...

16 Ann 16R: UCITS management companies reporting forms and requirements applying to their completion

...

Financial Return

UCITS Management Companies

Annual Financial Return

For the year ended _____

Name of Firm _____

FSA firm reference number _____

Date of Audit Opinion _____

...

Satisfaction of Financial Resource Tests - UCITS Management Companies

UAFS 4

Financial Resources Requirements for all UCITS Management Companies

...

Test 2

Financial Resources Test

Financial resources (*line 47*) _____ (54)

Less the higher of :

€125,000 _____ (55)

Plus : Funds Under Management over €250m X 0.02% _____ (56)

Total (55+56 is subject to a maximum of €10m) (_____) (57)

and

13/52 of annual audited fixed expenditure (*UPRU 2.1.2R(2) -form UAFS5*) (_____) (58)

Surplus/Deficit of financial resources [54-57 or 58] _____ (59)

Test 3 (applicable to UCITS Investment Firms only)

Liquid Capital Resource Test

Liquid capital (*line 50*) _____ (60)

13/52 of Annual Audited Fixed Expenditure (<i>IPRU(INV) Rule 7.2.3 -form UAFS5</i>)	_____	(61)
Position Risk Requirement (<i>IPRU(INV) Table 5.2.3(5)(b)</i>)	_____	(62)
Counterparty Risk Requirement (<i>IPRU(INV) Table 5.2.3(5)(c)</i>)	_____	(63)
Foreign Exchange Requirement (<i>IPRU(INV) Table 5.2.3(5)(d)</i>)	_____	(64)
Other Assets Requirement (<i>IPRU(INV) Table 5.2.3(5)(e)</i>)	_____	(65)
Liquid Capital Resource Requirement [61 to 65]	()	(66)
	=====	
Surplus/Deficit of liquid capital [60-66]	=====	(67)

**Calculation of financial resources requirement for forthcoming year-UCITS Management Companies
UAFS 5**

	£000	£000
Annual Audited Fixed Expenditure		
...		
Audited Fixed Expenditure		=====
Annual Audited Fixed Expenditure (pro-rated where relevant to annual amount)(<i>UPRU 2.1.3R (2)</i>)		=====
Expenditure Based Requirement (13/52 of Annual Audited Fixed Expenditure)		===== (68)

Note: The annual ~~audited~~ fixed expenditure calculated above becomes effective from the date on which this Annual Financial Return is approved by the ~~auditor~~ management of the firm. At all times throughout the period from this date until the next Annual Financial Return is approved, the Firm's Financial Resources must satisfy its Financial Resources Requirement incorporating the above Requirement.

...

DECLARATION UCITS Management Companies **UAFS 7**

This Annual Financial Return has been properly prepared in accordance with the rules,
and was approved by the Firm on(date).

It is accompanied by the Annual Accounts and the report of the auditor to the FSA as required by the rules.

...

Financial Return

UCITS Management Companies

Quarterly Financial Return

...

Satisfaction of Financial Resource Tests - UCITS Management Companies

UQFS 4

Financial Resources Requirements for all UCITS Management Companies

£000

£000

...

Test 2

Financial Resources Test

Financial resources (<i>line 47</i>)		=====	(54)
Less the higher of :			
€125,000	_____		(55)
Plus : Funds Under Management over €250m X 0.02%	_____		(56)
Total (55+56 is subject to a maximum of €10m)		(_____)	(57)
and			
13/52 of annual-audited fixed expenditure (<i>IPRU 2.1.2R(2) -form UAFS 5</i>)		(_____)	(58)
Surplus/Deficit of financial resources [54-57 or 58]		=====	(59)

Test 3 (applicable to UCITS Investment Firms only)

Liquid Capital Resource Test

Liquid capital (<i>line 50</i>)		_____	(60)
13/52 of Annual-Audited Fixed Expenditure(<i>IPRU(INV) Rule 7.2.3 -form UAFS 5</i>)	_____		(61)
Position Risk Requirement (<i>IPRU(INV) Table 5.2.3(5)(b)</i>)	_____		(62)
Counterparty Risk Requirement (<i>IPRU(INV) Table 5.2.3(5)(c)</i>)	_____		(63)
Foreign Exchange Requirement (<i>IPRU(INV) Table 5.2.3(5)(d)</i>)	_____		(64)
Other Assets Requirement (<i>IPRU(INV) Table 5.2.3(5)(e)</i>)	_____		(65)
Liquid Capital Resource Requirement [61 to 65]		(_____)	(66)
Surplus/Deficit of liquid capital [60-66]		=====	(67)

Sch 2		Notification requirements				
...						
Sch 2.2	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...						
		SUP 3.9	Auditor: certain <i>investment business firms</i> —annual report	Various matters including relevant financial reporting statements and adequacy of financial resources and whether proper accounting records kept	After each <i>accounting reference date</i>	<i>Securities and futures firms</i> : three months; <i>Personal investment firms</i> and <i>investment management firms</i> : four months
		SUP 3.9.8 R	Auditor: certain <i>investment business firm</i> —inability to prepare annual report	Inability to report on matters set out in SUP 3.9; reasons why unable to meet the requirements	Inability to report within timetable (see time allowed)	<i>Securities and futures firms</i> : three months; <i>Personal investment firms</i> and <i>investment management firms</i> : four months
...						

**MiFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS) (NO 3)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the MiFID (Deferred Matters and Consequential Amendments) (No 3) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Glossary of definitions

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

approved index

in relation to *permitted links*:

- (a) an index that is:
 - (i) calculated independently;
 - (ii) published at least once every week;
 - (iii) based on constituents that are *permitted links*; and
 - (iv) calculated on a basis that is made available to the public, and that ~~excludes~~ includes both the rules for including and excluding constituents and the rules for valuation which must use an arithmetic average of the value of the constituents; or
- (b) a national index of retail prices published by or under the authority of a government of a State belonging to Zone A as defined in the *Banking Consolidation Directive*; or
- (c) an index that is:
 - (i) based on constituents that are *permitted links*; and
 - (ii) in respect of which a *derivative* contract is *listed*.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
2.4 A	<i>COBS 11.2</i>	R	<p><i>COBS 11.2 (Best execution) does not apply to an order from an ISA manager when acting as such which is not a MiFID investment firm or a third country investment firm for the purchase of or sale of units in a regulated collective investment scheme from or to the operator of that scheme.</i></p> <p><u><i>COB 7.5, as it was in force on 31 October 2007, continues to apply (and COBS 11.2 will not apply) during the transitional period to a firm when executing a customer order in a designated investment when such business is not MiFID or equivalent third country business unless the firm decides to comply with COBS 11.2 before 1 May 2008.</i></u></p>	From 1 November 2007 to 31 October <u>30 April 2008</u>	1 November 2007
2.4B	<i>COBS 11.2</i>	<u>R</u> G	<p><i>COBS 11.2 (Best execution) does not apply to a client order for the purchase of or sale of units in a regulated collective investment scheme directly</i></p>	From 1 November 2007 to 31 October <u>30 April 2008</u>	1 November 2007

			<p>from or to the <i>operator</i> of that <i>scheme</i>.</p> <p>The effect of TP 2.4AR is that for a <i>firm</i> which carries on the activities set out in TP 2.4AR COB 7.5 will continue to apply until 1 May 2008 (and COBS 11.2 will not apply), unless the <i>firm</i> decides to comply with COBS 11.2 before 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.4AR applies must comply with the best execution provisions in COBS 11.2.</p>		
2.4C	<u>COBS 11.2</u>	R	<p>If a <i>firm</i> carrying out the activities set out in TP 2.4AR decides to comply with COBS 11.2 before 1 May 2008:</p> <p>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</p> <p>(2) from the effective date it must comply with COBS 11.2</p>	From 1 November 2007 to 30 April 2008	<u>1 November 2007</u>
<u>2.4D</u>	<u>COBS 11.2</u>	R	<p>COBS 11.2 (Best execution) does not apply to a <i>client</i> order for the purchase of or sale of <i>units</i> in a <i>regulated collective investment scheme</i> from or to the <i>operator</i> of that <i>scheme</i> which is not <i>MiFID</i> or <i>equivalent third country business</i></p>	From 1 May 2008 to 31 October 2008	<u>1 May 2008</u>
2.4E	COBS 12.2 and COBS 12.3	R	<p>COB 7.16, as it was in force on 31 October 2007, continues to apply (and COBS 12.2 and 12.3 will not apply during the transitional period) to a <i>firm</i> which is not a <i>MiFID investment firm</i> or a <i>third country investment firm</i> which prepares <i>investment research</i> for publication or distribution to its <i>clients</i>, or that publishes or distributes <i>investment</i></p>	From 1 November 2007 to 30 April 2008	1 November 2007

			<i>research to its clients unless the firm decides to comply with COBS 12.2 and 12.3 sooner than 1 May 2008.</i>		
2.4 DF	COBS 12.2 and COBS 12.3	G	The effect of TP 2.4 CE R is that for a <i>firm</i> which is not a <i>MiFID investment firm</i> or <i>third country investment firm</i> carrying on the activities set out in the transitional rule TP 2.4 CE R COB 7.16 will continue to apply (<u>and COBS 12.2 and 12.3 will not apply</u>) until 1 May 2008, unless the <i>firm</i> decides to comply with COBS 12.2 and 12.3 sooner than before 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.4 CE R applies must comply with the investment research provisions in COBS 12.2 and 12.3.	From 1 November 2007 to 30 April 2008	1 November 2007
2.4E G	COBS 12.2 and COBS 12.3	R	If a <i>firm</i> carrying out the activities set out in TP 2.4 CE R decides to comply with COBS 12.2 and 12.3 sooner than before 1 May 2008: (1) it must make a record of the date of the decision and the date from which it is to be effective; and (2) from the effective date it must comply with COBS 12.2 and 12.3.	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.8 A	COBS 18	R	COB, as it was in force on 31 October 2007, continues to apply (<u>and COBS will not apply</u>) to the following activities and <i>firms</i> (<u>as the case may be</u>) in relation to business which is not <i>MiFID or equivalent third country business</i> and COBS does not apply during the transitional period unless	From 1 November 2007 to 30 April 2008	1 November 2007

			<p>the <i>firm</i> decides to comply with <i>COBS</i> sooner than <u>before</u> 1 May 2008:</p> <p>(1) <i>Energy market activity</i> and <i>oil market activity</i>;</p> <p>(2) activities referred to in the <i>general application rule</i> related to:</p> <p style="padding-left: 40px;">(a) <i>commodity futures</i>;</p> <p style="padding-left: 40px;">(b) <i>commodity options</i>;</p> <p style="padding-left: 40px;">(c) <i>contracts for differences</i> related to an underlying <i>commodity</i>; or</p> <p style="padding-left: 40px;">(d) other <i>futures</i> or <i>contracts for differences</i> which are not related to <i>commodities</i>, <i>financial instruments</i> or <i>cash</i>;</p> <p>which is not <i>energy market activity</i> or <i>oil market activity</i>;</p> <p>(3) <i>corporate finance business</i>;</p> <p>(4) a <i>firm</i> which is an <i>operator</i> of a <i>collective investment scheme</i>;</p> <p>(5) <i>Lloyd's market activities</i>;</p> <p>(6) <i>depositories</i>;</p> <p>(7) <i>OPS firms</i>.</p>		
2.8B	<i>COBS</i> 18	G	<p>The effect of TP 2.8AR is that for <i>firms</i> carrying on the activities set out in the transitional rule TP 2.8AR <i>COB</i> will continue to apply <u>(and <i>COBS</i> will not apply)</u> until 1 May 2008, unless the <i>firm</i> decides to comply with <i>COBS</i> sooner than <u>before</u> 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.8AR applies must comply with <i>COBS</i> as set out in <i>COBS</i> 18.</p>	From 1 November 2007 to 30 April 2008	1 November 2007

2.8C	COBS 18	R	<p>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with <i>COBS</i> sooner than 1 May 2008:</p> <p>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</p> <p>(2) subject to TP 2.8ADR, from the effective date it must comply with <i>COBS</i> as set out in the relevant parts of <i>COBS</i> 18.</p>	From 1 November 2007 to 30 April 2008	1 November 2007
2.8D	COBS 18	G	<p>In accordance with transitional rules TP 2.8AR and TP 2.8CR, the following provisions of <i>COB</i> will continue to apply to a <i>firm</i> carrying out the activities set out in TP 2.8AR that decides to comply with <i>COBS</i> before 1 May 2008:</p> <p><u>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with <i>COBS</i> before 1 May 2008 the following provisions of <i>COB</i> will continue to apply to it in accordance with transitional rules TP 2.12R and TP 2.13R if the <i>firm</i> is not a <i>common platform firm</i>:</u></p> <p>(1) <i>COB</i> 2.4 (Chinese walls);</p> <p>(2) <i>COB</i> 5.10 (Corporate finance business issues); and</p> <p>(3) <i>COB</i> 7.1 (Conflicts of interest and material interest).</p>	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.12	COBS	R	<i>COB</i> 2.4 (Chinese walls) and <i>COB</i> 7.1 (Conflicts of interest) as they were in force on 31 October 2007	From 1 November 2007 indefinitely	1 November 2007

			continue to apply to <i>designated investment business</i> carried on by a <i>firm</i> which is not <i>MiFID or equivalent third country business</i> . <u>a common platform firm.</u>		
2.13	COBS	R	COB 5.10 (Corporate finance business issues) as it was in force on 31 October 2007 continues to apply to <i>corporate finance business</i> carried on by a <i>firm</i> which is not <i>MiFID or equivalent third country business</i> . <u>a common platform firm.</u>	From 1 November 2007 indefinitely	1 November 2007

**INSURANCE: NEW CONDUCT OF BUSINESS SOURCEBOOK
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 to the Annex to this instrument.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force on 6 January 2008.

Revocation of the Insurance: Conduct of Business sourcebook (ICOB)

- D. The provisions of the Insurance: Conduct of Business sourcebook (ICOB) are revoked.

Making the Insurance: New Conduct of Business sourcebook (ICOBS)

- E. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument.

Notes

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

Citation

- G. This instrument may be cited as the Insurance: New Conduct of Business Sourcebook Instrument 2007.
- H. The sourcebook in the Annex to this instrument (including its schedules) may be cited as the Insurance: New Conduct of Business sourcebook (or ICOBS).

By order of the Board
17 December 2007

Annex

Insurance: New Conduct of Business sourcebook (ICOBS)

In this Annex, the entire text is new and is not underlined.

1 Application

1.1 The general application rule

The general application rule

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

- (1) an *insurance mediation activity*;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

Modifications to the general application rule

1.1.2 R The general application *rule* is modified in *ICOBS 1 Ann 1* according to the type of *firm* (Part 1), its activities (Part 2), and its location (Part 3).

1.1.3 R The general application *rule* is also modified in the chapters of this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

Guidance

1.1.4 G *Guidance* on the application provisions is in *ICOBS 1 Ann 1* (Part 4).

1 Annex 1: Application (see ICOBS 1.1.2R)

Part 1: Who?

Modifications to the general application rule according to type of firm

- 1 Third party processors
- 1.1 R (1) This *rule* applies where a *firm* (or its *appointed representative*) (“A”) has outsourced *insurance mediation activities* to a *third party processor*.
- (2) Any *rule* in this sourcebook which requires the *third party processor*, when acting as such, to disclose its identity to a *customer* must be read as applying to the *third party processor* only to the extent that it applies to A and as requiring disclosure of A’s identity.
- 2 Managing agents
- 2.1 R (1) References to an *insurer* apply equally to a *managing agent* unless the context requires otherwise.
- (2) A *managing agent* must give effect to the policy that a *consumer* must, where required by this sourcebook, be offered cancellation rights.
- (3) References to *managing agents* in this sourcebook relate to their functions in managing the obligations of a *member* in his capacity as such.
- 3 Authorised professional firms
- 3.1 R This sourcebook does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:
- (1) the provisions on communications to *clients* and *financial promotions* (see *ICOBS 2.2*);
- (2) the e-commerce provisions (*ICOBS 3.2*);
- (3) status disclosure requirements in relation to complaints procedures (see *ICOBS 4.1*); and
- (4) provisions implementing articles 12 and 13 of the *Insurance Mediation Directive* (see *ICOBS 4.1*, *ICOBS 5.2* and *ICOBS 5.3.3R*), except to the extent that the *firm* is subject to equivalent rules of its *designated professional body* approved by the *FSA*.
- 3.2 G Compliance with provisions of the *Distance Marketing Directive* is dealt with in the Professional Firms sourcebook (see *PROF 5.4*).

- 4 Appointed representatives
- 4.1 R (1) An *insurer* must ensure that its *appointed representative* complies with this sourcebook as it applies to an *insurance intermediary*.
- (2) However, if the *appointed representative* is acting as the *insurer's third party processor* then:
- (a) this *rule* is subject to the *third party processors rule* (see paragraph 1.1R); and
- (b) the *insurer* is not required to ensure that the *appointed representative* complies with the *rules* in this sourcebook on commission disclosure (see *ICOBS 4.4*) or, unless they apply to an *insurer*, the *rules* on statements of demands and needs (see *ICOBS 5.2*).
- 4.2 G The cancellation requirements in chapter 7 do not apply to a *distance contract* entered into by an *appointed representative* to provide mediation services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the *Distance Marketing Regulations* apply instead.
- 5 Service companies
- 5.1 R This sourcebook does not apply to a *service company*, except for the provisions on communications to *clients* and *financial promotions* (see *ICOBS 2.2*).
- 6 Lloyd's
- 6.1 R The *Society* must ensure that no *member* carries on *motor vehicle liability insurance business* at Lloyd's unless a claims representative has been appointed to act for that *member* in each *EEA State* other than the *United Kingdom*, with responsibility for handling and settling a claim by an *injured party*. Otherwise, this sourcebook does not apply to the *Society*.

Part 2: What?

Modifications to the general application rule according to activities

- 1 Reinsurance
- 1.1 R This sourcebook does not apply to activities carried on in relation to a *reinsurance contract*.
- [**Note:** article 12(4) of the *Insurance Mediation Directive*]

- 2 Contracts of large risks
- 2.1 R Subject to Part 3 of this Annex, this sourcebook does not apply to an *insurance intermediary* mediating a *contract of large risks*:
- (1) where the risk is located outside the *European Economic Area*; or
 - (2) for a *commercial customer* where the risk is located within the *European Economic Area*.
- [**Note:** article 12(4) of the *Insurance Mediation Directive*]
- 2.2 G *Principle 7* continues to apply so a *firm* should provide evidence of cover promptly after inception of a *policy* to its *customer*. In respect of a *group policy*, a *firm* should provide information to its *customer* to pass on to other *policyholders* and should tell the *customer* that he should give the information to each *policyholder*.
- 3 Pure protection contracts: election to apply COBS rules
- 3.1 R (1) This sourcebook does not apply in relation to a *pure protection contract* to the extent that a *firm* has elected to comply with the Conduct of Business sourcebook (*COBS*) in respect of such business.
- (2) Within the scope of such an election, a *firm* must comply with the rest of the *Handbook*, treating the *pure protection contract* as a *life policy* and a *designated investment*, and not as a *non-investment insurance contract*.
 - (3) A *firm* must make, and retain indefinitely, a record in a *durable medium* of such an election (and any reversal or amendment). The record must include the effective date and a precise description of the part of the *firm's* business to which the election applies.
- 4 Chains of insurance intermediaries
- 4.1 R Where there is a chain of *insurance intermediaries* between the *insurer* and the *customer*, this sourcebook applies only to the *insurance intermediary* in contact with the *customer*.

Part 3: Where?

Modifications to the general rule of application according to location

- 1 EEA territorial scope rule: compatibility with European law
- 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).

- (2) This *rule* overrides any other *rule* in this sourcebook.
- 1.2 R In addition to the *EEA* territorial scope *rule*, the effect of the *E-Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 8 of Part 4 for *guidance* on this).
- [**Note:** article 3(3) of, and Annex to, the *E-Commerce Directive*]
- 2 Exemption for insurers: business with non-EEA customers via non-UK intermediaries
- 2.1 R This sourcebook does not apply to an *insurer* if:
- (1) the intermediary (whether or not an *insurance intermediary*) in contact with the *customer* is not established in the *United Kingdom*; and
- (2) the *customer* is not *habitually resident* in, and, if applicable, the *State of the risk* is outside, an *EEA State*.
- 3 Exemption for insurers: business with non-UK EEA customers
- 3.1 R A *rule* in this sourcebook which goes beyond the minimum required by Community legislation does not apply to an *insurer* if the *customer* is *habitually resident* in (and, if applicable, the *State of the risk* is) an *EEA State* other than the *United Kingdom*, to the extent that the *EEA State* in question imposes measures of like effect.

Part 4: Guidance

- 1 The main extensions and restrictions to the general application rule
- 1.1 G The general application *rule* is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.
- 1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the general application *rule*, particularly in relation to territorial scope. However, for the majority of circumstances, the general application *rule* is likely to apply.
- 2 The Single Market Directives and other directives
- 2.1 G This *guidance* provides a general overview only and is not comprehensive.
- 2.2 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The *EEA* territorial scope *rule* is unlikely to apply if a *UK firm* is doing business from a *UK establishment* for a *client* located in

the *United Kingdom* in relation to a *UK* product. However, if there is a non-*UK* element, the *firm* should consider whether:

- (1) it is subject to the directive;
- (2) the business it is performing is subject to the directive; and
- (3) the particular *rule* is within the scope of the directive.

If the answer to all three questions is ‘yes’, the *EEA* territorial scope *rule* may change the effect of the general application *rule*.

2.3 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.

3 Insurance Mediation Directive: effect on territorial scope

3.1 G The *Insurance Mediation Directive's* scope covers most *firms* carrying on most types of *insurance mediation*. The *rules* in this sourcebook within the Directive's scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see *ICOBS* 4 (Information about the firm, its services and remuneration), *ICOBS* 5.2 (Statement of demands and needs), *ICOBS* 5.3.3R (Advice on the basis of a fair analysis) and *ICOBS* 6 (Product information)).

3.2 G The *rules* implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in *ICOBS* 4.1 (General requirements for insurance intermediaries), *ICOBS* 5.2 (Statement of demands and needs) and *ICOBS* 5.3.3R (Advice on the basis of a fair analysis).

3.3 G In the *FSA's* view, the responsibility for these minimum requirements rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 19 to and article 12(5) of the *Insurance Mediation Directive*.) Accordingly, the general *rules* on territorial scope are modified so that:

- (1) for a *UK firm* providing *passported activities* through a *branch* in another *EEA State* under the Directive, the *rules* implementing the Directive's minimum requirements apply, but the territorial scope of the additional *rules* within the Directive's scope is not modified;
- (2) for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive's minimum requirements do not apply, but the additional *rules* within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect; and
- (3) an *EEA firm* acting as the principal of an *appointed representative* is required to ensure that its *appointed representative* complies with this sourcebook as it applies to a *UK firm* that is an *authorised*

person.

- 4 Non-Life Directives: effect on territorial scope
- 4.1 G The *Non-Life Directives*' scope covers *insurers* authorised under those Directives conducting *general insurance business*.
- 4.2 G The *rules* in this sourcebook within the Directives' scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance* (see *ICOBS* 2.2 (Communications to clients and financial promotions), *ICOBS* 4 (Information about the firm, its services and remuneration), *ICOBS* 6 (Product information) and *ICOBS* 8 (Claims handling) except *ICOBS* 8.2 (Motor vehicle liability insurers)).
- 4.3 G The Directives specify minimum information requirements and permit *EEA States* to adopt additional mandatory rules. (See article 7 of the *Second Non-Life Directive*)
- 4.4 G If the *State of the risk* is an *EEA State*, the Directives provide that the applicable information rules shall be determined by that state. Accordingly, if the *State of the risk* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the risk* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directives explicitly permit *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 28 and 41 of the *Third Non-Life Directive*)
- 5 Consolidated Life Directive: effect on territorial scope
- 5.1 G The *Consolidated Life Directive's* scope covers *long-term insurers* authorised under that Directive conducting *long-term insurance business*.
- 5.2 G The *rules* in this sourcebook within the Directive's scope are the cancellation *rules* (see *ICOBS* 7) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance* (see *ICOBS* 2.2 (Communications to clients and financial promotions), *ICOBS* 4 (Information about the firm, its services and remuneration), *ICOBS* 6 (Product information) and *ICOBS* 8 (Claims handling) except *ICOBS* 8.2 (Motor vehicle liability insurers)).
- 5.3 G The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.
- 5.4 G If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial

scope of other *rules*, in particular *rules* on *financial promotions*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the *Consolidated Life Directive*)

6 Motor Insurance Directives: effect on territorial scope

6.1 G The scope of the *Fourth Motor Insurance Directive* and *Fifth Motor Insurance Directive* covers *insurers* conducting *motor vehicle liability insurance business*. The *rules* in this sourcebook within the Directives' scope are those regarding the appointment of claims representatives and handling of claims by *injured parties* (see *ICOBS 8.2*).

6.2 G The Directives require a *motor vehicle liability insurer* to appoint a claims representative in each *EEA State* other than its *Home State*. They specify minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by *injured parties*.

6.3 G The Directives' provisions apply to *motor vehicle liability insurers* for which the *United Kingdom* is the *Home State*. (See article 4 of the *Fourth Motor Insurance Directive*)

7 Distance Marketing Directive: effect on territorial scope

7.1 G In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information (see *ICOBS 2.2* ((Communications to clients and financial promotions), *ICOBS 4* (Information about the firm, its services and remuneration) and *ICOBS 6* (Product information)), the cancellation *rules* (see *ICOBS 7*) and the other specific *rules* implementing the Directive (see *ICOBS 3.1*).

7.2 G In the *FSA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a *branch*, in which case the responsibility rests with the *EEA State* in which the *branch* is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*)

7.3 G This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *United Kingdom* or of any other *EEA State* or *non-EEA state*).

7.4 G Conversely, the territorial scope of the relevant *rules* in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA State* if the *firm* is a national of the *United Kingdom* or of any other *EEA State*.

- 7.5 G In the *FSA's* view:
- (1) the 'country of origin' basis of the Directive is in line with that of the *Electronic Commerce Directive*; (see recital 6 to the *Distance Marketing Directive*)
 - (2) for business within the scope of both the *Distance Marketing Directive* and the *Consolidated Life Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and cancellation rules derived from the *Consolidated Life Directive* apply on a 'country of origin' basis rather than being based on the *State of the commitment*; (see articles 4(1) and 16 of the *Distance Marketing Directive* noting that the *Distance Marketing Directive* was adopted after the *Consolidated Life Directive*)
 - (3) for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the *Home State*, but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)
- 8 Electronic Commerce Directive: effect on territorial scope
- 8.1 G The *E-Commerce Directive's* scope covers every *firm* carrying on an *electronic commerce activity*. Every *rule* in this sourcebook is within the Directive's scope.
- 8.2 G A key element of the Directive is the ability of a *person* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. Accordingly, the territorial application of the *rules* in this sourcebook is modified so that they apply at least to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.
- 8.3 G Conversely, a *firm* that is a national of the *United Kingdom* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA State* with or for a *person* in the *United Kingdom*, need not comply with the *rules* in this sourcebook. (See article 3(1) and (2) of the *E-Commerce Directive*)
- 8.4 G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the *FSA* has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under, and carrying on an *electronic commerce activity* within, the scope of the *Insurance Directives* and permits *EEA States* to continue to

apply their advertising rules in the 'general good'.

- 8.5 G Where the derogation applies, the *rules on financial promotion* continue to apply for incoming *electronic commerce activities* (unless the *firm's* 'country of origin' applies rules of like effect), but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *E-Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03)
- 8.6 G In the *FSA's* view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
- (1) is in line with the *Distance Marketing Directive*;
 - (2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
- 8.7 G The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields. (See recital 19 to the *Insurance Mediation Directive*, recital 6 to the *Distance Marketing Directive*, article 3 of, and the Annex to, the *E-Commerce Directive*)

2 General matters

2.1 Client categorisation

Introduction

- 2.1.1 G Different provisions in this sourcebook may apply depending on the type of *person* with whom a *firm* is dealing:
- (1) A *policyholder* includes anyone who, upon the occurrence of the contingency insured against, is entitled to make a claim directly to the *insurance undertaking*.
 - (2) Only a *policyholder* or a prospective *policyholder* who makes the arrangements preparatory to him concluding a *contract of insurance* (directly or through an agent) is a *customer*. In this sourcebook, *customers* are either *consumers* or *commercial customers*.
 - (3) A *consumer* is any natural person who is acting for purposes which are outside his trade or profession.
 - (4) A *commercial customer* is a *customer* who is not a *consumer*.

Customer to be treated as consumer when status uncertain

- 2.1.2 R If it is not clear in a particular case whether a *customer* is a *consumer* or a *commercial customer*, a *firm* must treat the *customer* as a *consumer*.

Customer covered in both a private and business capacity

- 2.1.3 G If a *customer* is acting in the capacity of both a *consumer* and a *commercial customer* in relation to a particular *contract of insurance*, the *customer* is a *commercial customer*.

Customer classification examples

- 2.1.4 G In practice, private individuals may act in a number of capacities. The following table sets out a number of examples of how an individual acting in certain capacities should, in the *FSA*'s view, be categorised.

Customer classification examples	
Capacity	Classification
Personal representatives, including executors, unless they are acting in a professional capacity, for example, a solicitor acting as executor.	<i>Consumer</i>
Private individuals acting in personal or other family circumstances, for example, as trustee of a family trust.	<i>Consumer</i>
Trustee of a trust such as a housing or NHS trust.	<i>Commercial customer</i>
Member of the governing body of a club or other unincorporated association such as a trade body and a student union.	<i>Commercial customer</i>
Pension trustee.	<i>Commercial customer</i>
<i>Person</i> taking out a <i>policy</i> covering property bought under a buy-to-let mortgage.	<i>Commercial customer</i>
<i>Partner</i> in a <i>partnership</i> when taking out insurance for purposes related to his profession.	<i>Commercial customer</i>

2.2 Communications to clients and financial promotions

Application

- 2.2.1 R In addition to the general application *rule* for this sourcebook, this section applies to the *communication*, or *approval* for *communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *non-investment insurance contract* unless it can lawfully be *communicated* by an *unauthorised* communicator without *approval*.

Clear, fair and not misleading rule

- 2.2.2 R When a *firm* communicates information, including a *financial promotion*, to a *customer* or other *policyholder*, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.

Approving financial promotions

- 2.2.3 R (1) Before a *firm* approves a *financial promotion* it must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
- (2) If, subsequently, a *firm* becomes aware that a *financial promotion* is not clear, fair and not misleading, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.

Pricing claims: guidance on the clear, fair and not misleading rule

- 2.2.4 G (1) This *guidance* applies in relation to a *financial promotion* that makes pricing claims, including *financial promotions* that indicate or imply that a *firm* can reduce the *premium*, provide the cheapest *premium* or reduce a *customer's* costs.
- (2) Such a *financial promotion* should:
- (a) be consistent with the result reasonably expected to be achieved by the majority of *customers* who respond, unless the proportion of those *customers* who are likely to achieve the pricing claims is stated prominently;
 - (b) state prominently the basis for any claimed benefits and any significant limitations; and
 - (c) comply with other relevant legislative requirements, including The Control of Misleading Advertisements Regulations 1988.

2.3 Inducements

- 2.3.1 G (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under *Principles 1* and *6* to act with integrity and treat *customers* fairly.
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on

its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.

2.4 Record-keeping

- 2.4.1 G (1) The Senior Management Arrangements, Systems and Controls sourcebook contains high-level record-keeping requirements (see SYSC 3.2.20R). These require *firms* to take reasonable care to make and retain adequate records of matters and dealings which are the subject of requirements and standards under the *regulatory system*, which includes this sourcebook.
- (2) This sourcebook does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (3) *Firms* should bear in mind the need to deal with requests for information from the *FSA* as well as queries and complaints from *customers* which may require evidence of matters such as:
- (a) the reasons for *personal recommendations*;
 - (b) what documentation has been provided to a *customer*; and
 - (c) how claims have been settled and why.

2.5 Exclusion of liability and reliance on others

Exclusion of liability

- 2.5.1 R A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or other *policyholder* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.
- 2.5.2 G The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Reliance on others

- 2.5.3 G (1) Where it is compatible with the nature of the obligation imposed by a particular *rule* and with the *Principles*, in particular *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.

- (2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*. For example, where a *rule* imposes an absolute obligation (such as the requirement for an *insurer* to handle claims promptly and fairly) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

3 Distance communications

3.1 Distance marketing

Application

- 3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

Guidance on the Distance Marketing Directive

- 3.1.2 G *Guidance* on expressions derived from the *Distance Marketing Directive* and on the Directive's application in the context of *insurance mediation activity* can be found in *ICOBS 3 Annex 1G*.

The distance marketing disclosure rules

- 3.1.3 R A *firm* must provide a *consumer* with the distance marketing information (*ICOBS 3 Annex 2R*) in good time before conclusion of a *distance contract*.

[**Note:** article 3(1) of the *Distance Marketing Directive*]

- 3.1.4 G The *rules* setting out the responsibilities of *insurers* and *insurance intermediaries* for producing and providing information apply to requirements in this section to provide information (see *ICOBS 6.1.1R*).

- 3.1.5 R A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[**Note:** article 3(2) of the *Distance Marketing Directive*]

- 3.1.6 R When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[**Note:** article 3(3)(a) of the *Distance Marketing Directive*]

- 3.1.7 R A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[**Note:** article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

- 3.1.8 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[**Note:** article 5(1) of the *Distance Marketing Directive*]

- 3.1.9 G A *firm* will provide or communicate information or contractual terms and conditions to a *consumer* if another *person* provides or communicates it to the *consumer* on its behalf.

Commencing performance of the distance contract

- 3.1.10 R The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[**Note:** article 7(1) of the *Distance Marketing Directive*]

Exception: distance contract as a stage in the provision of another service

- 3.1.11 R This section does not apply to a *distance contract* to act as *insurance intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[**Note:** recital 19 to the *Distance Marketing Directive*]

Exception: successive operations

- 3.1.12 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[**Note:** article 1(2) of the *Distance Marketing Directive*]

- 3.1.13 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:
- (1) when the first operation is performed; and
 - (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

[**Note:** recital 16 and article 1(2) of the *Distance Marketing Directive*]

Exception: voice telephony communications

- 3.1.14 R (1) In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (*ICOB*S 3 Annex 3R) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a *firm* must still provide the distance marketing information (*ICOB*S 3 Annex 2R) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[**Note:** articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: Means of distance communication not enabling disclosure

- 3.1.15 R A *firm* may provide the distance marketing information (*ICOB*S 3 Annex 2R) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

[**Note:** article 5(2) of the *Distance Marketing Directive*]

Consumer's right to request paper copies and change the means of communication

- 3.1.16 R At any time during the contractual relationship the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[**Note:** article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

3.1.17 R (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.

(2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

[**Note:** article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer's rights

3.1.18 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[**Note:** article 12 of the *Distance Marketing Directive*]

3.1.19 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

3.2 E-Commerce

Application

3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

3.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

(1) its name;

(2) the geographic address at which it is established;

(3) the details of the *firm*, including its e-mail address, which allow it to be contacted and communicated with in a direct and effective manner;

(4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *FSA*

register and includes its *FSA register* number;

- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
- (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

- 3.2.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[**Note:** article 5(2) of the *E-Commerce Directive*]

- 3.2.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[**Note:** article 6 of the *E-Commerce Directive*]

- 3.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

- 3.2.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
 - (4) make available to an *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[**Note:** articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

- 3.2.7 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

- 3.2.8 R The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** article 10(4) and 11(3) of the *E-Commerce Directive*]

ICOBS 3 Annex 1G: Guidance on the Distance Marketing Directive

This Annex belongs to *ICOBS* 3.1.2G

Q1. What is a distance contract?

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.

Q2. What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

Q3. What is meant by "simultaneous physical presence"?

A *consumer* may visit the *firm's* local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been "simultaneous physical presence" of the *firm* and the *consumer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

Q4. Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

Q5. When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by an *insurer* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A *consumer* will provide all the information an *insurer* needs to decide whether to accept a risk and to calculate the *premium*. The *consumer* may do this orally, in writing or by completing a proposal form. The response by an *insurer*, giving a quotation to the *consumer* specifying the *premium* and the terms, is likely to amount to an offer of the terms on which

the *insurer* will insure the risk. Agreement by the *consumer* to those terms is likely to be an acceptance which concludes the contract.

In other cases where the *insurer* requires a signed proposal form (for example, some *pure protection contracts*), the proposal form may amount to an offer by the *consumer* on which the *insurer* decides whether to insure the risk and in such cases the *insurer's* response is likely to be the acceptance.

Q6. What if the contract has not been concluded but cover has commenced?

Where the parties to a contract agree that insurance cover should commence before all the terms and conditions have been agreed, the *consumer* should be provided with information required to be provided before conclusion of the contract to the extent that agreement has been reached.

Q7. How does the Directive apply to insurance intermediaries' services?

The *FSA* expects the *Distance Marketing Directive* to apply to *insurance intermediaries'* services only in the small minority of cases where:

- the *firm* concludes a *distance contract* with a *consumer* covering its *insurance mediation activities* which is additional to any insurance contract which it is marketing; and
- that *distance contract* is concluded other than merely as a stage in the *effecting* or *carrying out* of an insurance contract by the *firm* or another *person*: in other words it has some continuity independent of an insurance contract, as opposed, for example, to being concluded as part of marketing an insurance contract.

Q8. Can you give examples of when the Directive would and would not apply to insurance intermediaries' services?

The *rules* implementing the *Distance Marketing Directive* will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is involved in the *renewal* of that contract and handling claims under it.

Nor will the Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting *insurance mediation activities*, act contractually on behalf of, or for, the *consumer*.

An example of when the *Distance Marketing Directive* would apply would be a *distance contract* under which an *insurance intermediary* agrees to provide advice on a *consumer's* insurance needs as and when they arise.

Q9. When would the exception for successive operations apply?

We consider that the *renewal* of a *policy* falls within the scope of this exception. So, the distance marketing disclosure *rules* would only apply in relation to the initial sale of a *policy*, and not to subsequent *renewals* provided that the new *policy* is of the same nature as the initial *policy*. However, unless there is an initial service agreement in place, the exclusion would only apply where the *renewal* takes place no later than one year after the initial *policy*

was taken out or one year after its last *renewal*. If the *policy* terms have changed, *firms* will need to consider what information should be disclosed about those changes in accordance with the requirement to disclose appropriate information about a *policy* (see *ICOBS 6.1.5R*), as well as ensuring their effectiveness under contract law.

ICOBS 3 Annex 2R: Distance marketing information

This Annex belongs to *ICOBS 3.1.3R*

Distance marketing information	
The firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's EEA State</i> of residence, the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with the representative.
(3)	When the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant for the <i>consumer's</i> relations with that professional.
(4)	An appropriate statutory status disclosure statement (<i>GEN 4</i>), a statement that the firm is on the <i>FSA Register</i> and its <i>FSA</i> registration number.
The financial service	
(5)	A description of the main characteristics of the service the <i>firm</i> will provide.
(6)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related <i>fees</i> , charges and expenses, and all taxes paid through the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(7)	Where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.
(8)	Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it.
(9)	Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <i>firm's</i> offer applies as it stands.

(10)	The arrangements for payment and for performance.
(11)	Details of any specific additional cost for the <i>consumer</i> for using a means of distance communication.
The distance contract	
(12)	The existence or absence of a right to cancel under the cancellation <i>rules</i> (<i>ICOB</i> 7) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i> , as well as the consequences of not exercising the right to cancel.
(13)	The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
(14)	Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
(15)	Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
(16)	The <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.
(17)	Any contractual clause on law applicable to the contract or on the competent court, or both.
(18)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Redress	
(19)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
(20)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities, and information about any other applicable named compensation scheme.

[**Note:** Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

ICOBS 3 Annex 3R: Abbreviated distance marketing information

This Annex belongs to *ICOBS* 3.1.14R

Abbreviated distance marketing information	
(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid through the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it.
(5)	The existence or absence of a right to cancel in accordance with the cancellation <i>rules</i> (<i>ICOBS</i> 7) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) on the basis of those <i>rules</i> .
(6)	That other information is available on request and what the nature of that information is.
	[Note: article 3(3)(b) of the <i>Distance Marketing Directive</i>]

4 Information about the firm, its services and remuneration

4.1 General requirements for insurance intermediaries

Application: who?

4.1.1 R This section applies to an *insurance intermediary*.

Status disclosure: general

4.1.2 R Prior to the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*, a *firm* must provide the *customer* with at least:

- (1) its name and address;
- (2) the fact that it is included in the *FSA Register* and the means for verifying this;
- (3) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);

- (4) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing more than 10% of the voting rights or capital in the *firm*; and
- (5) the procedures allowing *customers* and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

[**Note:** article 12(1) of the *Insurance Mediation Directive*]

Status disclosure exemption: introducers

- 4.1.3 R A *firm* whose contact with a *customer* is limited to effecting introductions (see *PERG 5.6*) need only provide its name and address and whether it is a member of the same *group* as the *firm* to which it makes the introduction.
- 4.1.4 G If a *firm* goes further than putting a *customer* in contact with another *person* (for example, by *advising* him on a particular *policy* available from the *firm*) the full status disclosure requirements will apply.
- 4.1.5 R [not used]

Scope of service

- 4.1.6 R (1) Prior to the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*, a *firm* must tell the *customer* whether:
 - (a) it gives advice on the basis of a fair analysis of the market; or
 - (b) it is under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings*; or
 - (c) it is not under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market.
- (2) A *firm* that does not *advise* on the basis of a fair analysis of the market must inform its *customer* that he has the right to request the name of each *insurance undertaking* with which the *firm* may and does conduct business. A *firm* must comply with such a request.

[**Note:** article 12(1) of the *Insurance Mediation Directive*]

- 4.1.7 R Prior to conclusion of an initial *contract of insurance* with a *consumer* a *firm* must state whether it is giving a *personal recommendation* or information.

Guidance on using panels to advise on the basis of a fair analysis

- 4.1.8 G (1) One way a *firm* may give advice on a fair analysis basis is by using ‘panels’ of *insurance undertakings* which are sufficient to enable the *firm* to give advice on a fair analysis basis and are reviewed regularly.
- (2) A *firm* which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a *firm* should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better *premium*, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.
- (3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the ‘fair analysis’ criteria. Selection should be based on product features, *premiums* and services offered to *customers*, not solely on the benefit offered to the *firm*.

Means of communication to customers

- 4.1.9 R (1) All information to be provided to a *customer* in accordance with this chapter must be communicated:
- (a) on paper or on any other *durable medium* available and accessible to the *customer*;
 - (b) in a clear and accurate manner, comprehensible to the *customer*; and
 - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.
- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see *ICOBS* 3.1.14R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[**Note:** article 13 of the *Insurance Mediation Directive*]

4.2 Additional requirements for protection policies for insurance intermediaries and insurers

Application: what?

- 4.2.1 R This section applies in relation to a *pure protection contract* or a *payment protection contract* for a *consumer*.

Ensuring customers can make an informed decision

- 4.2.2 G In considering a *customer's* information needs for the purposes of *Principle 7*, a *firm* should have regard to the importance of information for a *customer's* purchasing decision when deciding when and how to give it.

- 4.2.3 G If a *firm* provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see *ICOBS 3.1.14R*).

Disclosing the limits of the service provided

- 4.2.4 R (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer* understands he is responsible for deciding whether a *policy* meets his demands and needs.
- (2) If this is done orally, the information must be provided to the *customer* in writing or any other *durable medium* no later than immediately after the conclusion of the contract.
- (3) If a *firm* anticipates providing, or provides, information on any main characteristic of a *policy* orally during a non-advised sale, taking reasonable steps includes explaining the *customer's* responsibility orally.
- (4) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

Status disclosure for insurers

- 4.2.5 R (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or *renewal*, an *insurer* must disclose to the *customer* at least:
- (a) the statutory status disclosure statement (see *GEN 4*);
- (b) whose *policies* it offers; and
- (c) whether it is providing a *personal recommendation* or information.

- (2) If this is done orally, the disclosure must be provided in writing or any other *durable medium* no later than immediately after the conclusion of the contract.

4.2.6 G *Insurers* cannot carry on an *insurance mediation activity* in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products (see the restriction of business in *INSPRU* 1.5.13R).

4.3 Fee disclosure

- 4.3.1 R (1) A *firm* must provide its *customer* with details of the amount of any *fees* other than *premium monies* for an *insurance mediation activity*.
- (2) The details must be given before the *customer* incurs liability to pay the *fee*, or before conclusion of the contract, whichever is earlier.
 - (3) To the extent that an actual *fee* cannot be given, a *firm* must give the basis for calculation.

4.3.2 G The *fee* disclosure requirement extends to all such *fees* that may be charged during the life of a *policy*.

4.4 Commission disclosure for commercial customers

Commission disclosure rule

- 4.4.1 R (1) An *insurance intermediary* must, on a *commercial customer's* request, promptly disclose the *commission* that it and any *associate* receives in connection with a *policy*.
- (2) Disclosure must be in cash terms (estimated, if necessary) and in writing or another *durable medium*. To the extent this is not possible, the *firm* must give the basis for calculation.
- 4.4.2 G An *insurance intermediary* should include all forms of remuneration from any arrangements it may have. This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance.
- 4.4.3 G (1) The commission disclosure *rule* is additional to the general law on the fiduciary obligations of an agent in that it applies whether or not the *insurance intermediary* is an agent of the *commercial customer*.
- (2) In relation to *contracts of insurance*, the essence of these fiduciary obligations is generally a duty to account to the agent's principal. But where a *customer* employs an *insurance intermediary* by way of business and does not remunerate him, and where it is usual for the

firm to be remunerated by way of *commission* paid by the *insurer* out of *premium* payable by the *customer*, then there is no duty to account but if the *customer* asks what the *firm's* remuneration is, it must tell him.

4.5 Initial disclosure document

- 4.5.1 G Using an *initial disclosure document* (see *ICOBS 4 Annex 1G*) or *combined initial disclosure document* satisfies the status disclosure, scope of service and *fee* disclosure requirements if it is used in accordance with its notes and provided to the *customer* at the correct time.

ICOBS 4 Annex 1G: Initial disclosure document

This annex belongs to *ICOBS* 4.5.1G.

A *firm* should omit the notes and square brackets in the following *initial disclosure document*, but must not include the keyfacts logo unless it uses the *initial disclosure document* in full and in accordance with its notes. Subject to this, a *firm* may use its own house style and brand.



keyfacts® **about our insurance services** [Note 1]



XYZ Financial Services [Note 3]

[123 Any Street
Some Town
ST21 7QB]

[Note 2]

1 The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. Use this information to decide if our services are right for you.

2 Whose products do we offer? [Note 4]

- We offer products from a range of insurers [for ...].
- We [can] [Note 5] only offer products from a limited number of insurers [for ...].
Ask us for a list of insurers we offer insurance from. [Note 6]
- We [can] [Note 5] only offer [a] product[s] from [a single insurer] [name of single insurance undertaking] [for ...]. [Note 7]

[or] [Note 8]

We only offer products from a single insurer.

[or] [Note 9]

We only offer our own products for [list the types of *policies*].

3 Which service will we provide you with? [Note 10] [Note 11]

- We will advise and make a recommendation for you after we have assessed your needs [for] [list the types of *policies*].
- You will not receive advice or a recommendation from us [for] [list the types of *policies*]. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

4 What will you have to pay us for our services? [Note 12]

- A fee [of £ []] [for] [list the types of insurance services provided].
- No fee [for] [list the types of insurance services provided].

You will receive a quotation which will tell you about any other fees relating to any particular insurance policy.

5 Who regulates us? [Note 13]

[Registered name and address as shown on *FSA Register* (trading name(s) may also be stated)] is authorised and regulated by the Financial Services Authority. Our FSA Register number is []. [Note 14]

Our permitted business is [short, plain language description of relevant *permitted* business].

[or] [Note 15]

[Name of *appointed representative*] [Note 2] is an appointed representative of [registered name and address of *principal* as shown on *FSA Register*] which is authorised and regulated by the Financial Services Authority. [Name of *principal*]'s FSA Register number is [].

[Name of *principal*]'s permitted business is [short, plain language description of relevant business].

You can check this on the FSA's Register by visiting the FSA's website www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234.

6 Ownership [Note 16]

[Short description of any direct or indirect holding representing more than 10% of the voting rights or capital in the *firm* held by an *insurance undertaking* (other than a *reinsurance undertaking*) or its *parent undertaking*, e.g. “B&C Insurer owns 20% of our share capital.”]

[Short description of any direct or indirect holding by the *firm* representing more than 10% of the voting rights or capital in a given *insurance undertaking* (other than a *reinsurance undertaking*), e.g. “We have 20% of the voting rights in Royal Edinburgh.”]

7 What to do if you have a complaint [Note 13]

If you wish to register a complaint, please contact us:

...in writing Write to [XYZ Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234] [Note 25]

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [Note 18] [Note 19]

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 13] [Note 20]

We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Insurance advising and arranging is covered for 100% of the first £2,000 and 90% of the remainder of the claim, without any upper limit.

[or] [Note 21]

For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit.

Further information about compensation scheme arrangements is available from the FSCS.

The following notes do not form part of the *initial disclosure document*.

Note 1 – For requirements on using the keyfacts logo, see *GEN 5.1* and *GEN 5 Annex 1G*.

Note 2 – Insert the *firm's* or *appointed representative's* name (either the name under which it is *authorised* or the name under which it trades). If an individual who is employed or engaged

by an *appointed representative* provides the information, the individual should not put his or her own name on the *initial disclosure document*. A corporate logo or logos may be included.

Note 3 – Insert the head office or if more appropriate the principal place of business from which the *firm* or *appointed representative* expects to conduct business with *customers*. An *appointed representative* should state its own name and address.

Section 2: Whose products do we offer?

Note 4 – Select, for example by ticking, the box(es) which are appropriate for the service that it expects to provide to the *customer*. More than one box can be selected if the scope of the service provided to a particular *customer* varies by type of contract, for example, if a *firm* deals with a single *insurance undertaking* for motor insurance and a range of *insurance undertakings* for household insurance. If more than one box is selected, specify which relates to which type of *policy*, by adding text to the *initial disclosure document*. This needs to be done only in relation to the service offered to a particular *customer*. Do not remove boxes that are not selected.

Note 5 – Insert “can” if the range of *policies* is determined by any contractual obligation. This does not apply to an *insurer* selling its own products.

Note 6 – This sentence is required only if this service option is selected.

Note 7 – If the *firm* deals with a different *insurance undertaking* for different types of *policy*, identify all the *insurance undertakings* and specify the types of contract to which they relate. This needs to be done only in relation to the service offered to a particular *customer*. For example, "we can only offer products from ABC Insurance for motor insurance and XYZ Insurance for household insurance".

Note 8 – If this box is not selected, use this alternative text.

Note 9 – An *insurer* offering only its own *policies*, or part of an *insurer* offering only *policies* sold under that part's trading name, should use this alternative text.

Section 3: Which service will we provide you with?

Note 10 – This section may be omitted if the *customer* receives this information as part of a demands and needs statement. Renumber remaining sections.

Note 11 – Select, for example by ticking, the box which is appropriate for the service expected to be provided to the *customer*. Both boxes can be selected if different services are offered in relation to different types of *policy*. If more than one box is selected, specify which box relates to which type of *policy*. Do not remove an unselected box.

Section 4: What will you have to pay us for our services?

Note 12 – If the *customer* will be charged a *fee* for *insurance mediation activities*, insert a plain language description of what each *fee* is for and when each *fee* is payable. This should include any *fees* over the life of the contract, for example, for mid-term adjustments. If a *firm* does not charge a *fee* the first box should be abbreviated to 'A fee'. If more than one type of service is offered, *fees* may be aggregated over all the services provided and the services for which there is no *fee* identified.

Section 5: Who regulates us?

Note 13 – This section may be omitted if the information is provided by other means. Renumber remaining sections.

Note 14 – Modify this section for *incoming EEA firms* (see GEN 4 Ann 1R(2)).

Note 15 – An *appointed representative* should use this text instead. It should give the details of its *principal* for each type of *policy* that it is offering to a particular *customer*.

Section 6: Ownership

Note 16 – Omit this section (and renumber remaining sections) if there are no relevant ownership arrangements under the following notes or the *firm* is an *insurer* selling its own *policies*. In an *initial disclosure document* provided by an *appointed representative*, cover holdings in or held by that *appointed representative*, as appropriate.

Section 7: What to do if you have a complaint

Note 17 – If different to the address in note 5, give the address and telephone number which is to be used by *customers* wishing to complain.

Note 18 – This text may be omitted for a *customer* who would not be an *eligible complainant*.

Note 19 – An *authorised professional firm* which is exclusively carrying on *non-mainstream regulated activities* should delete this sentence and refer to the alternative complaints handling arrangements.

Section 8: Are we covered by the Financial Services Compensation Scheme (FSCS)?

Note 20 – An *incoming EEA firm* should modify this section as appropriate. A *firm* which is not a *participant firm* must answer this question 'No' and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained.

Note 21 – Use this alternative text if providing a service in relation to a compulsory class of insurance, such as *employer's liability insurance*. If providing a service in relation to a contract which covers both a compulsory class of insurance and a class of insurance which is not compulsory, indicate the level of compensation that applies to each class.

5 Identifying client needs and advising

5.1 General

Eligibility to claim benefits: general insurance contracts and pure protection contracts

- 5.1.1 G (1) In line with *Principle 6*, a *firm* should take reasonable steps to ensure that a *customer* only buys a *policy* under which he is eligible to claim benefits.
- (2) If, at any time while *arranging a policy*, a *firm* finds that parts of the cover apply, but others do not, it should inform the *customer* so he can take an informed decision on whether to buy the *policy*.

Eligibility to claim benefits: payment protection contracts

- 5.1.2 R A *firm* *arranging a payment protection contract* must:
- (1) take reasonable steps to ensure that the *customer* only buys a *policy* under which he is eligible to claim benefits; and
- (2) if, at any time while *arranging the policy*, it finds that parts of the cover do not apply, inform the *customer* so he can take an informed decision on whether to buy the *policy*.
- 5.1.3 G For a typical *payment protection contract* the reasonable steps required in the first part of the *eligibility rule* are likely to include checking that the *customer* meets any qualifying requirements for different parts of the *policy*.

Disclosure of material facts

- 5.1.4 G A *firm* should bear in mind the restriction on rejecting claims for non-disclosure (*ICOBS 8.1.1R(3)*). Ways of ensuring a *customer* knows what he must disclose include:
- (1) explaining the duty to disclose all circumstances material to a *policy*, what needs to be disclosed, and the consequences of any failure to make such a disclosure; or
- (2) ensuring that the *customer* is asked clear questions about any matter material to the *insurance undertaking*.

5.2 Statement of demands and needs

Application: who? what?

- 5.2.1 R This section applies to:
- (1) an *insurance intermediary* in relation to any *policy*; and

- (2) an *insurer* when it has given a *personal recommendation* to a *consumer* on a *payment protection contract* or a *pure protection contract*.

Statement of demands and needs

- 5.2.2 R (1) Prior to the conclusion of a contract, a *firm* must specify, in particular on the basis of information provided by the *customer*, the demands and the needs of that *customer* as well as the underlying reasons for any advice given to the *customer* on that *policy*.
- (2) The details must be modulated according to the complexity of the *policy* proposed.

[**Note:** article 12(3) of the *Insurance Mediation Directive*]

Means of communication to customers

- 5.2.3 R (1) A statement of demands and needs must be communicated:
- (a) on paper or on any other *durable medium* available and accessible to the *customer*;
 - (b) in a clear and accurate manner, comprehensible to the *customer*; and
 - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.
- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see *ICOBS* 3.1.14R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[**Note:** article 13 of the *Insurance Mediation Directive*]

Statement of demands and needs: non-advised sales

- 5.2.4 G The format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a *personal recommendation* has not been given include:
- (1) providing a demands and needs statement as part of an application form, so that the demands and needs statement is made dependent upon the *customer* providing personal information on the application form. For instance, the application form might include a statement

along the lines of: “If you answer 'yes' to questions a, b and c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future”;

- (2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product. For example, “This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future”;
- (3) giving a *customer* a record of all his demands and needs that have been discussed; and
- (4) providing a *key features document*.

5.3 Advised sales

Suitability

- 5.3.1 R A *firm* must take reasonable care to ensure the suitability of its advice for any *customer* who is entitled to rely upon its judgment.

Suitability guidance for protection policies

- 5.3.2 G In taking reasonable care to ensure the suitability of advice on a *payment protection contract* or a *pure protection contract* a *firm* should:
- (1) establish the *customer's* demands and needs. It should do this using information readily available and accessible to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to *policies* nor *customer* needs that are not relevant to the type of *policy* in which the *customer* is interested;
 - (2) take reasonable care to ensure that a *policy* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions; and
 - (3) inform the *customer* of any demands and needs that are not met.

Advice on the basis of a fair analysis

- 5.3.3 R If an *insurance intermediary* informs a *customer* that it gives advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of *contracts of insurance* available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which *contract of insurance* would be adequate to meet

the *customer's* needs.

[**Note:** article 12(2) of the *Insurance Mediation Directive*]

6 Product information

6.1 General

Responsibilities of insurers and insurance intermediaries

- 6.1.1 R An *insurer* is responsible for producing, and an *insurance intermediary* for providing to a *customer*, the information required by this chapter and by the distance communication *rules* (see *ICOBS* 3.1). However, an *insurer* is responsible for providing information required on mid-term changes, and an *insurance intermediary* is responsible for producing price information if it agrees this with an *insurer*.
- 6.1.2 R If there is no *insurance intermediary*, the *insurer* is responsible for producing and providing the information.
- 6.1.3 R An *insurer* must produce information in good time to enable the *insurance intermediary* to comply with the *rules* in this chapter, or promptly on an *insurance intermediary's* request.
- 6.1.4 R These general *rules* on the responsibilities of *insurers* and *insurance intermediaries* are modified by *ICOBS* 6 Annex 1R if one of the *firms* is not based in the *United Kingdom*, and in certain other situations.

Ensuring customers can make an informed decision

- 6.1.5 R A *firm* must take reasonable steps to ensure a *customer* is given appropriate information about a *policy* in good time and in a comprehensible form so that the *customer* can make an informed decision about the arrangements proposed.
- 6.1.6 G The appropriate information *rule* applies pre-conclusion and post-conclusion, and so includes matters such as mid-term changes and *renewals*. It also applies to the price of the *policy*.
- 6.1.7 G The level of information required will vary according to matters such as:
- (1) the knowledge, experience and ability of a typical *customer* for the *policy*;
 - (2) the *policy* terms, including its main benefits, exclusions, limitations, conditions and its duration;
 - (3) the *policy's* overall complexity;
 - (4) whether the *policy* is bought in connection with other goods and

services;

- (5) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see *ICOBS* 3.1.14R)); and
- (6) whether the same information has been provided to the *customer* previously and, if so, when.

- 6.1.8 G In determining what is “in good time”, a *firm* should consider the importance of the information to the *customer’s* decision-making process and the point at which the information may be most useful. Distance communication timing requirements are also relevant (for example, the distance communication *rules* enable certain information to be provided post-conclusion in telephone and certain other sales (see *ICOBS* 3.1.14R and *ICOBS* 3.1.15R)).
- 6.1.9 G Cancellation rights do not affect what information it is appropriate to give to a *customer* in order to enable him to make an informed purchasing decision.
- 6.1.10 G A *firm* dealing with a *consumer* may wish to provide information in a *policy summary* or as a *key features document* (see *ICOBS* 6 Annex 2).

Providing evidence of cover

- 6.1.11 G Under *Principle 7* a *firm* should provide evidence of cover promptly after inception of a *policy*. *Firms* will need to take into account the type of *customer* and the effect of other information requirements, for example those under the distance communication *rules* (*ICOBS* 3.1).

Group policies

- 6.1.12 G Under *Principle 7*, a *firm* that sells a *group policy* should provide appropriate information to the *customer* to pass on to other *policyholders*. It should tell the *customer* that he should give the information to each *policyholder*.

Price disclosure: connected goods or services

- 6.1.13 R (1) If a *policy* is bought by a *consumer* in connection with other goods or services a *firm* must, before conclusion of the contract, disclose its *premium* separately from any other prices and whether buying the *policy* is compulsory.
- (2) In the case of a *distance contract*, disclosure of whether buying the *policy* is compulsory may be made in accordance with the timing requirements under the distance communication *rules* (see *ICOBS* 3.1.8R, *ICOBS* 3.1.14R and *ICOBS* 3.1.15R).

Exception to the timing rules: distance contracts and voice telephony

communications

- 6.1.14 R Where a *rule* in this chapter requires information to be provided in writing or another *durable medium* before conclusion of a contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see *ICOBS* 3.1.14R and *ICOBS* 3.1.15R).

6.2 Pre-contract information: general insurance contracts

Application: what?

- 6.2.1 R This section applies in relation to a *general insurance contract*.

Non-life insurance directive disclosure requirements

- 6.2.2 R Before a *general insurance contract* is concluded, a *firm* must inform a *customer* who is a natural *person* of:
- (1) the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the *firm* proposes to choose; and
 - (2) the arrangements for handling *policyholders'* complaints concerning contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the *policyholders'* right to take legal proceedings.

[**Note:** article 31 of the *Third Non-Life Directive*]

- 6.2.3 R (1) If the *insurance undertaking* is an *EEA firm*, the *firm* must inform the *customer*, before any commitment is entered into, of the *EEA State* in which the head office or, where appropriate, the *branch* with which the contract is to be concluded, is situated.
- (2) Any documents issued to the *customer* must convey the information required by this *rule*.

[**Note:** article 43(2) of the *Third Non-Life Directive*]

- 6.2.4 R The contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, must state the address of the head office, or, where appropriate, of the *branch* of the *insurance undertaking* which grants the cover.

[**Note:** article 43(2) of the *Third Non-Life Directive*]

Disclosure of cancellation right

- 6.2.5 R (1) A *firm* must provide a *consumer* with information on the right to cancel a *policy*.
- (2) The information to be provided on the right to cancel is:
- (a) its existence;
 - (b) its duration;
 - (c) the conditions for exercising it;
 - (d) information on the amount which the *consumer* may be required to pay if he exercises it;
 - (e) the consequences of not exercising it; and
 - (f) the practical instructions for exercising it.
- (3) The information must be provided in good time before conclusion of the contract and in writing or another *durable medium*.

6.3 Pre- and post-contract information: pure protection contracts

Life insurance directive disclosure requirements

- 6.3.1 R (1) Before a *pure protection contract* is concluded, a *firm* must inform a *customer* of the information in the table below.
- (2) The information must be communicated in a clear and accurate manner, in writing, and in an official language of the *State of the commitment* or in another language agreed by the parties.

Information to be communicated before conclusion	
(1)	The name of the <i>insurance undertaking</i> and its legal form.
(2)	The name of the <i>EEA State</i> in which the head office and, where appropriate, the agency or <i>branch</i> concluding the contract is situated.
(3)	The address of the head office and, where appropriate, of the agency or <i>branch</i> concluding the contract.
(4)*	Definition of each benefit and each option.
(5)*	Term of the contract.
(6)*	Means of terminating the contract.
(7)*	Means of payment of <i>premiums</i> and duration of payments.

(8)*	Information on the <i>premiums</i> for each benefit, both main benefits and supplementary benefits, where appropriate.
(9)	Arrangements for application of the cancellation period.
(10)	General information on the tax arrangements applicable to the type of <i>policy</i> .
(11)	The arrangements for handling complaints concerning contracts by <i>policyholders</i> , lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body (usually the <i>Financial Ombudsman Service</i>), without prejudice to the right to take legal proceedings.
(12)	The law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the <i>insurance undertaking</i> proposes to choose.
Note: The <i>rule</i> on mid-term changes applies to items marked with an asterisk (see <i>ICOBS 6.3.3R</i>).	

[**Note:** Annex III(A) to the *Consolidated Life Directive*]

- 6.3.2 G If the contract is concluded with a *commercial customer* by telephone, the information in this section may be provided immediately after conclusion.

Mid-term changes

- 6.3.3 R In addition to the *policy* conditions, both general and special, a *customer* must, throughout the term of a *pure protection contract*, receive:
- (1) any change in the name of the *insurance undertaking*, its legal form or the address of its head office and, where appropriate, of the agency or *branch* which concluded the contract; and
 - (2) all the information marked ‘*’ in the table of information to be communicated before conclusion, in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

[**Note:** Annex III(B) to the *Consolidated Life Directive*]

6.4 Pre- and post-contract information: protection policies

Application: what?

- 6.4.1 R This section applies in relation to a *payment protection contract* or a *pure protection contract* except as otherwise stated.

Oral sales: ensuring customers can make an informed decision

- 6.4.2 R (1) If a *firm* provides information orally during a sales dialogue with a *customer* on a main characteristic of a *policy*, it must do so for all the *policy's* main characteristics.
- (2) A *firm* must take reasonable steps to ensure that the information provided orally is sufficient to enable the *customer* to take an informed decision on the basis of that information, without overloading the *customer* or obscuring other parts of the information.
- 6.4.3 G (1) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.
- (2) A significant exclusion or limitation is one that would tend to affect the decision of *customers* generally to buy. In determining what exclusions or limitations are significant, a *firm* should particularly consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it. Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

Policy summary

- 6.4.4 R A *firm* must provide a *consumer* with a *policy summary* in good time before the conclusion of a contract.

Payment protection contracts: importance of reading documentation

- 6.4.5 R (1) A *firm* must draw a *consumer's* attention to the importance of reading *payment protection contract* documentation before the end of the cancellation period to check that the *policy* is suitable for the *consumer*.
- (2) This must be done orally if a *firm* provides information orally on any main characteristic of a *policy*.

Price information: general

- 6.4.6 R A *firm* must provide price information in a way calculated to enable the *customer* to relate it to a regular budget.
- 6.4.7 G Price information is likely also to include at least the total *premium* (or the basis for calculating it so that the *customer* can verify it) and, where relevant:
- (1) for *policies* of over one year with reviewable *premiums*, the period for which the quoted *premium* is valid, and the timing of reviews;
- (2) other *fees*, administrative charges and taxes payable by the *customer* through the *firm*; and

- (3) a statement identifying separately the possibility of any taxes not payable through the *firm*.

6.4.8 G Price information should be given in writing or another *durable medium* in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a *distance contract* concluded over the telephone, it may be provided in writing or another *durable medium* no later than immediately after conclusion.

Price information: premiums paid using a non-revolving credit agreement

- 6.4.9 R
- (1) This *rule* applies when a *premium* will be paid using a credit agreement other than a revolving credit agreement.
 - (2) A *firm* must provide price information in a way calculated to enable the *customer* to understand the additional repayments that relate to the purchase of the *policy*, and the total cost of the *policy*.
 - (3) Price information must reflect any difference between the duration of the *policy* and that of the credit agreement.
 - (4) A *firm* must explain to a *customer*, as applicable, that the *premium* will be added to the amount provided under the credit agreement and that interest will be payable on it.

Price information: policies sold in connection with revolving credit arrangements

- 6.4.10 G
- (1) This *guidance* applies to *policies* bought as secondary products to revolving credit agreements (such as store cards or credit cards).
 - (2) Price information should be given in a way calculated to enable a typical *customer* to understand the typical cumulative cost of taking out the *policy*. This does not require oral disclosure where there is a sales dialogue with a *customer*. However, consistent with *Principle 7*, a *firm* should ensure that this element of price information is not undermined by any information given orally.

Mid-term changes

- 6.4.11 R
- (1) Throughout the term of a *policy*, a *firm* must provide a *customer* with information about any change to:
 - (a) the *premium*, unless the change conforms to a previously disclosed formula; and
 - (b) any term of the *policy*, together with an explanation of any implications of the change where necessary.
 - (2) This information must be provided in writing or another *durable medium* in good time before the change takes effect or, if the change

is at the *customer's* request, as soon as is practicable provided the *firm* explains the implications of the change before it takes effect.

- 6.4.12 G (1) When explaining the implications of a change, a *firm* should explain any changes to the benefits and significant or unusual exclusions arising from the change.
- (2) *Firms* will need to consider whether mid-term changes are compatible with the original *policy*, in particular whether it reserves the right to vary *premiums*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations*.

ICOBS 6 Annex 1R – Responsibilities of insurers and insurance intermediaries in certain situations

This annex belongs to *ICOBS* 6.1.4R

The table in this annex modifies the general *rules* on the responsibilities of *insurers* and *insurance intermediaries* for producing and providing to a *customer* the information required by this chapter.

	Situation	<i>Insurance intermediary's</i> responsibility	<i>Insurer's</i> responsibility
(1)	<i>Insurance intermediary</i> operates from <i>UK</i> establishment <i>Insurer</i> does not operate from <i>UK</i> establishment	Production and providing	None
(2)	<i>Insurance intermediary</i> does not operate from <i>UK</i> establishment, is not <i>authorised</i> , is selling <i>connected contracts</i> or is an <i>authorised professional firm</i> carrying on <i>non-mainstream regulated activities</i> <i>Insurer</i> operates from <i>UK</i> establishment <i>Customer</i> <i>habitually resident</i> in the <i>EEA</i>	None	Production and providing (but no <i>policy summary</i> is required unless the <i>insurance intermediary</i> does not operate from a <i>UK</i> establishment)
(3)	As (2) but <i>customer</i> <i>habitually resident</i> outside the <i>EEA</i> and <i>insurer</i> not in contact with the <i>customer</i>	None	None
(4)	As (2) but <i>customer</i> <i>habitually resident</i> outside the <i>EEA</i> and <i>insurer</i> in contact with the <i>customer</i>	None	Production and providing

(5)	<i>Insurance intermediary</i> does not operate from UK establishment <i>Insurer</i> does not operate from UK establishment	None	Production and providing
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ICOBS 6 Annex 2: Policy summary for consumers

This annex belongs to *ICOBS* 6.1.10G and *ICOBS* 6.4.4R

1 Format

- 1.1 R (1) A *policy summary* must be in writing or another *durable medium*.
- (2) A *policy summary* must be in a separate document, or within a prominent separate section of another document clearly identifiable as containing key information that the *consumer* should read.
- 1.2 G The quality and presentation standard of a *policy summary* should be consistent with that used for other *policy* documents.

2 Content

- 2.1 R A *policy summary* must contain the information in the table below and no other information.

Policy summary content
<ul style="list-style-type: none"> • Keyfacts logo in a prominent position at the top of the <i>policy summary</i>. Further requirements regarding the use of the logo and the location of specimens are set out in <i>GEN</i> 5.1 and <i>GEN</i> 5 Annex 1G.
<ul style="list-style-type: none"> • Statement that the <i>policy summary</i> does not contain the full terms of the <i>policy</i>, which can be found in the policy document.
<ul style="list-style-type: none"> • Name of the <i>insurance undertaking</i>.
<ul style="list-style-type: none"> • Type of insurance and cover.
<ul style="list-style-type: none"> • Significant features and benefits.
<ul style="list-style-type: none"> • Significant or unusual exclusions or limitations, and cross-references to the relevant policy document provisions.
<ul style="list-style-type: none"> • Duration of the <i>policy</i>.
<ul style="list-style-type: none"> • A statement, where relevant, that the <i>consumer</i> may need to review and update the cover periodically to ensure it remains adequate.
<ul style="list-style-type: none"> • Price information (optional).

<ul style="list-style-type: none"> • Existence and duration of the right of cancellation (other details may be included).
<ul style="list-style-type: none"> • Contact details for notifying a claim.
<ul style="list-style-type: none"> • How to complain to the <i>insurance undertaking</i> and that complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> (or other applicable named complaints scheme).
<ul style="list-style-type: none"> • That, should the <i>insurance undertaking</i> be unable to meet its liabilities, the consumer may be entitled to compensation from the <i>compensation scheme</i> (or other applicable compensation scheme), or that there is no compensation scheme. Information on the extent and level of cover and how further information can be obtained is optional.

2.2 G A *policy summary* should properly describe the *policy* but, in line with *Principle 7*, should not overload the *consumer* with detail.

3 Significant or unusual exclusions or limitations

- 3.1 G (1) A significant exclusion or limitation is one that would tend to affect the decision of *consumers* generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts.
- (2) In determining what exclusions or limitations are significant, a *firm* should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it.
- (3) Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

Examples of significant or unusual exclusions or limitations
<ul style="list-style-type: none"> • Deferred payment periods
<ul style="list-style-type: none"> • Exclusion of certain conditions, diseases or pre-existing medical conditions
<ul style="list-style-type: none"> • Moratorium periods
<ul style="list-style-type: none"> • Limits on the amounts of cover
<ul style="list-style-type: none"> • Limits on the period for which benefits will be paid
<ul style="list-style-type: none"> • Restrictions on eligibility to claim such as age, residence or employment status
<ul style="list-style-type: none"> • Excesses

- 4 Key features document as an alternative to a policy summary
- 4.1 R A *firm* may provide a document that has the contents of a *key features document* instead of a *policy summary*. The document must include contact details for notifying a claim but need not include the title ‘key features of the [name of product]’.

7 Cancellation

7.1 The right to cancel

The right to cancel

- 7.1.1 R A *consumer* has a right to cancel, without penalty and without giving any reason, within:

- (1) 30 *days* for a *contract of insurance* which is, or has elements of, a *pure protection contract* or *payment protection contract*; or
- (2) 14 *days* for any other *contract of insurance* or *distance contract*.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to a *distance contract* and article 35 of the *Consolidated Life Directive* in relation to a *pure protection contract*]

- 7.1.2 G A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.

Exceptions to the right to cancel

- 7.1.3 R The right to cancel does not apply to:
- (1) a travel and baggage *policy* or similar short-term *policy* of less than one *month’s* duration;
 - (2) a *policy* the performance of which has been fully completed by both parties at the *consumer’s* express request before the *consumer* exercises his right to cancel;
 - (3) a *pure protection contract* of six *months’* duration or less which is not a *distance contract*;
 - (4) a *pure protection contract* effected by the trustees of an *occupational pension scheme*, an employer or a *partnership* to secure benefits for the *employees* or the *partners* in the *partnership*;
 - (5) a *general insurance contract* which is neither a *distance contract* nor a *payment protection contract*, sold by an intermediary who is an

unauthorised person (other than an *appointed representative*); and

(6) a *connected contract* which is not a *distance contract*.

[**Note:** articles 6(2)(b) and (c) of the *Distance Marketing Directive* and 35(1) and (2) of the *Consolidated Life Directive*]

7.1.4 G A ‘similar short-term *policy*’ is any *policy* where the event or activity being insured is less than one *month’s* duration. ‘Duration’ refers to the period of cover rather than the period of the contract.

Start of the cancellation period

7.1.5 R The cancellation period begins either:

(1) from the day of the conclusion of the contract, except in respect of a *pure protection contract* where the time limit begins when the *customer* is informed that the contract has been concluded; or

(2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[**Note:** article 35 of the *Consolidated Life Directive* and article 6(1) of the *Distance Marketing Directive*]

Exercising a right to cancel

7.1.6 R If a *consumer* exercises the right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if on paper or another *durable medium*, is dispatched before the deadline expires.

[**Note:** article 6(1) and (6) of the *Distance Marketing Directive*]

7.2 Effects of cancellation

Termination of contract

7.2.1 R By exercising the right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

7.2.2 R (1) When a *consumer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract.

(2) The amount payable must not:

- (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and
 - (b) in any case be such that it could be construed as a penalty.
- (3) A *firm* must not require a *consumer* to pay any amount:
- (a) unless it can prove that the *consumer* was duly informed about the amount payable; or
 - (b) if it commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.
- (4) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *pure protection contract*.
- (5) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *payment protection contract* unless a claim is made during the cancellation period and settlement terms are subsequently agreed.

[**Note:** article 7(1), (2) and (3) of the *Distance Marketing Directive*]

- 7.2.3 G The amount payable may include:
- (1) any sums that a *firm* has reasonably incurred in concluding the contract, but should not include any element of profit;
 - (2) an amount for cover provided (i.e. a proportion of the *policy's* exposure that relates to the time on risk);
 - (3) a proportion of the *commission* paid to an *insurance intermediary* sufficient to cover its costs; and
 - (4) a proportion of any *fees* charged by an *insurance intermediary* which, when aggregated with any *commission* to be repaid, would be sufficient to cover its costs.
- 7.2.4 G In most cases, the *FSA* would expect the proportion of a *policy's* exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an *insurer* could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.
- 7.2.5 G An *insurer* and an *insurance intermediary* should take reasonable steps to ensure that double recovery of selling costs is avoided, particularly where the contract for the *insurance intermediary's* services is a *distance contract*, or where both *commission* and *fees* are recouped by the *insurer* and *insurance intermediary* respectively.

Firm's obligation on cancellation

- 7.2.6 R (1) A *firm* must, without any undue delay and no later than within 30 *days*, return to a *consumer* any sums it has received from him in accordance with the contract, except as specified in this section.
- (2) This period shall begin from the day on which the *firm* receives the notification of cancellation.

[**Note:** article 7(4) of the *Distance Marketing Directive*]

Consumer's obligation on cancellation

- 7.2.7 R (1) A *firm* is entitled to receive from a *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 *days*.
- (2) This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[**Note:** article 7(5) of the *Distance Marketing Directive*]

- 7.2.8 G If an *insurer* has made a charge for services provided, the sums and property to be returned by a *consumer* should not include any money or property provided in settling a claim.

Set off

- 7.2.9 R Any sums payable under this section are owed as simple contract debts and may be set off against each other.

Automatic cancellation of an attached distance contract

- 7.2.10 G A *consumer's* notice to cancel a *distance contract* may also operate to cancel any attached contract which is also a distance financial services contract. This is unless the *consumer* gives notice that cancellation of the contract is not to operate to cancel the attached contract. (See the *Distance Marketing Regulations*.) Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

8 Claims handling

8.1 Insurers: general

- 8.1.1 R An *insurer* must:
- (1) handle claims promptly and fairly;
 - (2) provide reasonable guidance to help a *policyholder* make a claim and appropriate information on its progress;

- (3) not unreasonably reject a claim (including by terminating or avoiding a *policy*); and
- (4) settle claims promptly once settlement terms are agreed.

8.1.2 R A rejection of a *consumer policyholder's* claim is unreasonable, except where there is evidence of fraud, if it is for:

- (1) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably be expected to have disclosed; or
- (2) non-negligent misrepresentation of a fact material to the risk; or
- (3) breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a *pure protection contract*):
 - (a) under a 'life of another' contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an 'own life' contract, the *insurer* could have rejected the claim under this *rule*; or
 - (b) the warranty is material to the risk and was drawn to the *customer's* attention before the conclusion of the contract.

8.2 Motor vehicle liability insurers

Application: who? what?

- 8.2.1 R
- (1) This section applies to a *motor vehicle liability insurer*.
 - (2) The *rules* in this section relating to the appointment of claims representatives apply in relation to claims by *injured parties* resulting from accidents occurring in an *EEA State* other than the *injured party's EEA State* of residence which are caused by the use of *vehicles* insured through an establishment in, and *normally based* in, an *EEA State* other than the *injured party's EEA State* of residence.
 - (3) The *rules* in this section relating to claims handling apply in respect of claims arising from any accident caused by a *vehicle normally based* in the *United Kingdom*.

[**Note:** article 1 of the *Fourth Motor Insurance Directive* and article 4(4)(4e) of the *Fifth Motor Insurance Directive*]

Requirement to appoint claims representatives

- 8.2.2 G A *firm* must have a claims representative in each *EEA State* other than the *United Kingdom* (see *threshold condition 2A*).

Conditions for appointing claims representatives

- 8.2.3 R A *firm* must ensure that each claims representative:
- (1) is responsible for handling and settling a claim by an *injured party*;
 - (2) is resident or established in the *EEA State* where it is appointed;
 - (3) collects all information necessary in connection with the settlement of a claim and takes the measures necessary to negotiate its settlement;
 - (4) possesses sufficient powers to represent the *firm* in relation to an *injured party* and to meet an *injured party's* claim in full; and
 - (5) is capable of examining cases in the official language(s) of the *EEA State* of residence of the *injured party*.

[**Note:** article 4(1), (4) and (5) of the *Fourth Motor Insurance Directive*]

- 8.2.4 G The requirement to possess sufficient powers does not prevent a claims representative from seeking additional authority or instructions if needed. It does prevent it from declining to deal with, or transferring responsibility for, claims properly referred to it by an *injured party*, or their representative.

Notifying the appointment of claims representatives

- 8.2.5 R (1) A *firm* must notify to the *information centres* of all *EEA States*:
- (a) the name and address of the claims representative which they have appointed in each of the *EEA States*;
- [**Note:** article 5(2) of the *Fourth Motor Insurance Directive*]
- (b) the telephone number and effective date of appointment; and
 - (c) any material change to information previously notified.
- (2) Notification must be made within ten *business days* of an appointment or of a material change.

Motor vehicle liability claims handling rules

- 8.2.6 R Within three *months* of the *injured party* presenting his *claim* for compensation:
- (1) the *firm* of the *person* who caused the accident or its claims representative must make a reasoned offer of compensation in cases where liability is not contested and the damages have been

quantified; or

- (2) the *firm* to whom the claim for compensation has been addressed or its claims representative must provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

[**Note:** article 4(6) of the *Fourth Motor Insurance Directive* and article 4(4)(4e, first paragraph) of the *Fifth Motor Insurance Directive*]

- 8.2.7 R (1) If liability is initially denied, or not admitted, within three *months* of any subsequent admission of liability, the *firm* must (directly, or through a claims representative) make a reasoned offer of settlement, if, by that time, the relevant claim for damages has been fully quantified.
- (2) If an *injured party's* claim for damages is not fully quantified when it is first made, within three *months* of the subsequent receipt of a fully quantified claim for damages, the *firm* must (directly, or through a claims representative) make a reasoned offer of damages, if liability is admitted at that time.
- 8.2.8 R A claim for damages will be fully quantified for the purpose of this section when the *injured party* provides written evidence which substantiates or supports the amounts claimed.

Interest on compensation

- 8.2.9 R (1) If the *firm*, or its claims representative, does not make an offer as required by this section, the *firm* must pay simple interest on the amount of compensation offered by it or awarded by the court to the *injured party*, unless interest is awarded by any tribunal.
- (2) The interest calculation period begins when the offer should have been made and ends when the compensation is paid to the *injured party*, or his authorised representative.
- (3) The interest rate is the Bank of England's base rate (from time to time), plus 4%.

[**Note:** article 4(6) of the *Fourth Motor Insurance Directive*. Regulation 6 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 makes this *rule* actionable under section 150 of the Act (Actions for damages) by any person who suffers loss as a result of its contravention]

- 8.2.10 R A *firm* will be taken to have received a claim, or a fully quantified claim, for damages when the claim is delivered to it, or a claims representative, by any *person* by any method of delivery which is lawful in the *firm's*, or its claims representative's, respective State of residence or establishment.
- 8.2.11 G The provisions in this section are not intended to, and do not, restrict any rights which the *injured party*, or its *motor vehicle liability insurer*, or any

other *insurer* acting on its behalf, may have and which would enable any of them to begin legal proceedings against the *person* causing the accident or that *person's*, or the *vehicle's*, *insurers*.

8.3 Insurance intermediaries (and insurers handling claims on another insurer's policy)

Application: who?

- 8.3.1 G This section applies to an *insurance intermediary*, and to an *insurer* handling a claim on another *insurance undertaking's* policy.

Interaction with the general law

- 8.3.2 G A *firm* is expected to comply with the general law on the duties of an insurance intermediary. This section does not seek to set out the full extent of those duties.

Conflicts of interest

- 8.3.3 G (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly.
- (2) Generally, this means that a *firm* handling a claim should not put itself in a position where its own interest, or its duty to anyone for whom it acts, conflicts with its duty to a *customer*. If it does so, it should have the *customer's* prior informed consent.
- (3) If a *firm* acts for a *customer* in *arranging a policy*, it is likely to be the *customer's* agent (and that of any other *policyholders*). If the *firm* intends to be the *insurance undertaking's* agent in relation to claims, it needs to consider the risk of becoming unable to act without breaching its duty to either the *insurance undertaking* or the *customer* making the *claim*. It should also inform the *customer* of its intention.
- (4) A *firm* should consider whether it is possible to manage such a conflict through disclosure and consent. An example where these are unlikely to be sufficient is where the *firm* knows both that its *customer* will accept a low settlement to obtain a quick payment, and that the *insurance undertaking* is willing to settle for a higher amount.

Dealing with claims notifications without claims handling authority

- 8.3.4 G A *firm* that does not have authority to deal with a claim should forward any claim notification to the *insurance undertaking* promptly, or inform the *policyholder* immediately that it cannot deal with the notification.

TP 1 Transitional Provisions

Fifth Motor Insurance Directive

- 1 R In relation to a claim by an *injured party* received by a *motor vehicle liability insurer* or its claims representative on or before 10 June 2007, the motor vehicle liability claims handling *rules* (see *ICOBS* 8.2.6R to *ICOBS* 8.2.11G) only apply if the claim results from an accident occurring in an *EEA State* other than the *injured party's EEA State* of residence which was caused by the use of a *vehicle* insured through an establishment in, and normally based in, an *EEA State* other than the *injured party's EEA State* of residence.

Initial disclosure document

- 2 R A *firm* may use the keyfacts logo on a document that meets the requirements for an *initial disclosure document* except that it includes the sentence "It requires us to give you this document" in section 1 of the document. This *rule* applies until 5 January 2009.

Sourcebook implementation period

- 3 R A *firm* need not comply with any provision of this sourcebook to the extent that it complies with the corresponding provision of *ICOB* (if any) as it applied on 5 January 2008. This *rule* applies until 5 July 2008.
- 4 G *Firms* should consider what kind of records should be made of their reliance on the sourcebook implementation period transitional provision, in particular where they rely on the transitional provision for only some of their *insurance mediation activities*, or the extent of reliance changes during the implementation period.

Pure protection contracts: record of election

- 5 R A *firm* is not required to make, and retain a record of, an election to comply with the Conduct of Business sourcebook (see *ICOBS* 1 Ann 1, Part 2, 3.1R(3)). This *rule* applies until 5 June 2008.

ICOBS Schedule 1 Record keeping requirements

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Notes

1. The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
 2. It is not a complete statement of those requirements and should not be relied on as if it were.
-

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>ICOBS 1</i> Ann 1, Part 2 3.1R(3)	Record of election to comply with <i>COBS rules</i> for <i>pure protection policies</i> (including amendment or reversal)	Date of election and precise description of parts of the <i>firm's</i> business that will comply with <i>COBS</i> provisions	Not specified	Indefinitely

ICOBS Schedule 2: Notification requirements (to follow)

G

ICOBS Schedule 3: Fees and other required payments (to follow)

G

ICOBS Schedule 4: Powers exercised

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The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in this sourcebook:

section 138 (General rule-making power)

section 139(4) (Miscellaneous ancillary matters)

section 145 (Financial promotion rules)

section 149 (Evidential provisions)

section 156 (General supplementary powers)

regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706).

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in this sourcebook:

section 157(1) (Guidance).

ICOBS Schedule 5: Rights of action for damages (to follow)

G

ICOBS Schedule 6: Rules that can be waived (to follow)

G

**INSURANCE: NEW CONDUCT OF BUSINESS SOURCEBOOK
(CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (2) the other powers referred to in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Subject to (2), this instrument comes into force on 6 January 2008.
- (2) Part 2 of Annex A comes into force on 6 July 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Threshold Conditions (COND)	Annex B
General Provisions (GEN)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Client Assets sourcebook (CASS)	Annex F
Supervision manual (SUP)	Annex G
Credit Unions sourcebook (CRED)	Annex H

Electronic Money sourcebook (ELM)	Annex I
Professional Firms sourcebook (PROF)	Annex J
Perimeter Guidance manual (PERG)	Annex K
Unfair Contract Terms Regulatory Guide (UNFCOG)	Annex L

Citation

- E. This instrument may be cited as the Insurance: New Conduct of Business Sourcebook (Consequential Amendments) Instrument 2007.

By order of the Board
17 December 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text. Where definitions are being deleted, the deleted text is not shown.

Part 1: Comes into force on 6 January 2008.

<i>claim</i>	(1) ...
	(2) (in ICOB , INSPRU , LLD , and SUP and TC) a claim under a contract of insurance.
claims representative	[deleted]
<i>commercial customer</i>	(in <u>ICOBS</u> and CASS 5) a customer who is not a consumer.
<i>customer</i>	(1) (except in relation to, <u>ICOBS</u> , MCOB 3 and CASS 5) a client who is not an <i>eligible counterparty</i> for the relevant purposes.
	(2) ...
	(3) (in relation to <u>ICOBS</u>) a <i>policyholder</i> , or a prospective <i>policyholder</i> but (except in <u>ICOBS</u> 2 (general rules matters), ICOB 7 (claims handling) and (in respect of those chapters that chapter) <u>ICOBS</u> 1 (application and purpose)) excluding a <i>policyholder</i> or prospective <i>policyholder</i> who does not make the arrangements preparatory to him concluding the <i>contract of insurance</i> .
	(4) ...
distance non-investment mediation contract	[deleted]
<i>financial promotion rules</i>	... (2) (in relation to <u>ICOBS</u>) ICOB 3 <u>ICOBS 2.2</u>
<u>ICOBS</u>	<u>the Insurance: New Conduct of Business sourcebook.</u>
<i>initial disclosure document</i>	information about the <i>scope of advice</i> or <i>scope of basic advice</i> and nature of the services offered by a <i>firm</i> in relation to: ... (f) a <i>non-investment insurance contract</i> in accordance with ICOB 4.2.4G to 4.2.6R <u>ICOBS 4.5.1G</u> and set out in <u>ICOBS</u> 4

Annex 1G.

<i>injured party</i>	(in ICOB 7.6 <u>ICOBS</u>) ...
<i>insurance intermediary</i>	a firm carrying on <i>insurance mediation activity</i> <u>other than an insurer</u> .
<i>introducing</i>	[deleted]
<i>motor vehicle liability claims handling rules</i>	[deleted]
<i>non-investment financial promotion</i>	[deleted]
<i>normally based</i>	(in <u>ICOBS</u>) ...
<u>payment protection contract</u>	<u>A non-investment insurance contract which has elements of a general insurance contract and the benefits of which are described as enabling a policyholder to protect his ability to continue to make payments due to third parties, or can reasonably be expected to be used in this way.</u>
<i>policy document</i>	[deleted]
<i>policy summary</i>	a summary of a <i>non-investment insurance contract</i> in a durable medium <u>the format and</u> containing the information specified in ICOB 5.5.5R <u>ICOBS 6 Annex 2</u> .
<i>premium</i>	(1) (except in <u>ICOBS</u> and CASS 5) ... (2) (except in <u>ICOBS</u> and CASS 5) ... (2A) (in <u>ICOBS</u> and CASS 5) ...
<i>product provider</i>	(1) (except in ICOB) a firm which is: ... (2) (in ICOB) in relation to a <i>non-investment insurance contract</i> , an <i>insurer</i> not acting as an <i>insurance intermediary</i> .

Part 2: Comes into force on 6 July 2008

~~ICOB~~ [deleted]

Annex B

Amendments to the Threshold Conditions (COND)

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

- 2.2A.2 G *Threshold condition 2A* (Appointment of claims representatives), provides that if it appears to the *FSA* that any *person* is seeking to carry on, or carrying on, *motor vehicle liability insurance business*, that *person* must have a ~~*claims representative*~~ claims representative in each *EEA State* other than the *United Kingdom*.
- 2.2A.3 G *Rules and guidance* concerning a *motor vehicle liability insurer's* obligations in relation to the appointment of its ~~*claims representatives*~~ claims representatives, and the responsibilities and duties that the *motor vehicle liability insurer* must give to, or impose on, its ~~*claims representatives*~~ claims representatives are set out in ~~*ICOB 7.6*~~ *ICOB 8.2*.

Competent and prudent management and exercise of due skill, care and diligence

- 2.5.7 G In determining whether a *firm* will satisfy and continue to satisfy *threshold condition 5* ... relevant matters ... may include ... whether:

...

- (12) in the case of an ~~*insurance intermediary*~~ *firm that carries on insurance mediation activity*:

...

...

Annex C

Amendments to the General Provisions (GEN)

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

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

...

(3) for *non-investment insurance contracts*, in ~~ICOB 4 (Advising and selling standards)~~; and ~~ICOB 5 (Product disclosure)~~ distance communication requirements in ICOBS 3, initial disclosure requirements in ICOBS 4, disclosures relating to client needs and advice in ICOBS 5 and product information requirements in ICOBS 6;

(4) for *electronic commerce activities* carried on from an *establishment* in the *United Kingdom*, in ... ~~ICOB 2.6A~~ ICOBS 3.2 ...; and

...

4.4.2 G ~~ICOB 4.2.19 R contains provisions relating to communications by insurance intermediaries from outside the United Kingdom in connection with non-investment insurance contracts with or for a consumer. The definition of insurance intermediary includes an insurer when the insurer is carrying on insurance mediation activities.~~[deleted]

GEN 5 Annex 1

Licence for use of the FSA and keyfacts logos by authorised firms and appointed representatives or tied agents

...	
Permission to use the keyfacts logo	
...	
3A.2	The following are examples of places where the <i>rules</i> require or permit the keyfacts logo to be used:
	...
(2)	In <u>ICOBS</u> :

		(a)	in an initial disclosure document or combined initial disclosure document <i>initial disclosure document or combined initial disclosure document</i> (ICOB 4.2.4G to ICOB 4.2.7R);
		(b)	in a <i>policy summary</i> (ICOB 5.5.5R); and
		(c)	in a <i>key features</i> as an alternative to a <i>policy summary</i> (ICOB 5.5.4R).
	...		
...			

Annex D

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

Responsibility for insurance mediation activity

- 2.2.1 R ~~An insurance intermediary~~ A firm, other than a sole trader, must allocate the responsibility for the *firm's insurance mediation activity* to a director or senior manager.
- 2.2.3 G (1) Typically ~~an insurance intermediary~~ a firm will appoint a *person performing a governing function* (other than the *non-executive director function*) to direct its *insurance mediation activity*. ...
- ...
- 2.3.1 R ~~An insurance intermediary~~ A firm must establish on reasonable grounds that:
- ...

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

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

6.2.17 G A *firm* that carries on business in relation to a combination of packaged products, regulated mortgage contracts and home reversion plans can do so in relation to the whole market and therefore be "independent" for one but offer only a limited service for the others. If this is the case, the *firm* should explain the different nature of the services in a way which complies with the *fair, clear and not misleading rule*. (See also ~~MCOB and ICOB~~.)

6 Annex 2 G Combined initial disclosure document described in COBS 6.3, ~~ICOB 4.2.7R~~ ICOBS 4.5, MCOB 4.4.1R(1) and MCOB 4.10.2R(1)

...

Note 6 – if the *combined initial disclosure document* is provided by an *appointed representative*, the service described should be that offered by the *appointed representative*, ~~in accordance with ICOB 4.2.8R Note 1(e) and MCOB 4.3.10R~~.

...

Note 15 – ... For services provided in relation to *non-investment insurance contracts*, this is the list required by ~~ICOB 4.2.14R~~ ICOBS 4.1.5R(2).

...

Note 27 – ... This section may be omitted for services relating to *non-investment insurance contracts* if the *firm* provides the information ~~covered by this section where it is required by ICOB 4.2.8R to the client~~ by some other means. ...

Annex F

Amendments to the Client Assets sourcebook (CASS)

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

- 1.2.8 G ...
- (3) The *insurance client money chapter* does not generally distinguish between different categories of *client*. However, the term ~~*retail customer*~~ *consumer* is used for those to whom additional obligations are owed, rather than the term *retail client*. This is to be consistent with the *client* categories used in ~~relation to the obligations in *ICOB*~~ ~~in relation to *insurance mediation activities*~~ the Insurance: New Conduct of Business sourcebook.
- ...
- 5.5.7 G Where an insurance transaction involves more than one *firm* acting in a chain such that for example *money* is transferred from a "producing" broker who has received *client money* from a ~~*retail customer*~~ *consumer* to an intermediate broker and thereafter to an *insurance undertaking*, each broker *firm* will owe obligations to its immediate *client* to segregate *client money* which it receives (in this example the producing broker in relation to the ~~*retail customer*~~ *consumer* and the intermediate broker in relation to the producing broker). ...
- ...
- 5.5.14 R ...
- (2) A *firm* may not segregate *designated investments* unless it:
- (a) takes reasonable steps to ensure that any ~~*retail customers*~~ *consumers* whose *client money* interests may be protected by such segregation are aware that the *firm* may operate such an arrangement and have (whether through its *terms of business*, client agreements, or otherwise in writing) an adequate opportunity to give their informed consent;
- ...
- ...
- ...
- Interest and investment returns
- 5.5.30 R (1) In relation to ~~*retail customers*~~ *consumers*, a *firm* must, subject to (2), take reasonable steps to ensure that its *terms of business* or other

client agreements adequately explain, and where necessary obtain a *client's* informed consent to, the treatment of interest and, if applicable, investment returns, derived from its holding of *client money* and any segregated *designated investments*.

- (2) In respect of interest earned on *client bank* accounts, (1) does not apply if a *firm* has reasonable ground to be satisfied that in relation to *insurance mediation activities* carried on with or for a ~~*retail customer*~~ *consumer* the amount of interest earned will be not more than £20 per transaction.

5.5.31 G If no interest is payable to a ~~*retail customer*~~ *consumer*, that fact should be separately identified in the *firm's* client agreement or *terms of business*.

5.5.34 R A *firm* may allow another *person*, such as another broker to hold or control *client money*, but only if:

(1) ...

- (2) in the case of a ~~*retail customer*~~ *consumer*, that *customer* has been notified (whether through a client agreement, *terms of business*, or otherwise in writing) that the *client money* may be transferred to another *person*.

5.5.41 R A *firm* may hold *client money* with a bank that is not an *approved bank* if all the following conditions are met:

...

- (4) the *firm* notifies each relevant *client* and has, in relation to a ~~*retail customer*~~ *consumer*, a client agreement, or *terms of business* which adequately explain that:

...

...

...

Notification to clients: use of an approved bank outside the United Kingdom

5.5.53 R A *firm* must not hold, for a ~~*retail customer*~~ *consumer*, *client money* in a *client bank account* outside the *United Kingdom*, unless the *firm* has previously disclosed to the ~~*retail customer*~~ *consumer*...

...

Notification to ~~*retail customers*~~ *consumers*: use of broker or settlement agent outside the United Kingdom

5.5.58 R A *firm* must not undertake any transaction for a ~~*retail customer*~~ *consumer* that involves *client money* being passed to another broker or *settlement*

agent located in a jurisdiction outside the *United Kingdom*, unless the *firm* has previously disclosed to the ~~*retail customer*~~ *consumer* ...

Annex G

Amendments to the Supervision manual (SUP)

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

6.3.25 G Table

Information which may be required. See SUP 6.3.24G

Type of business	Information which may be required
...	...
<i>Insurance business</i>	1. ... 2. (If the application seeks to vary a <i>permission</i> to include <i>motor vehicle liability insurance business</i>) details of the claims representatives <u>claims representatives</u> required by <i>threshold condition 2A</i> (Appointment of claims representatives), if applicable.
...	...

8.2.7 G Rules which can be waived

Rules	Section of the Act or other provision under which rules are made	Chapters of the Handbook where such rules appear (Note 1)
...
Financial promotion rules	Section 145	COB 3, ICOB 3, MCOB 3 <u>the financial promotion rules, PRIN and SYSC</u>
...

10.6.3A G ~~MIPRU 2.2.1R provides that an insurance intermediary~~ A firm carrying on insurance mediation activity, other than a sole trader, must allocate to a director or senior manager the responsibility for the firm's insurance mediation activity (MIPRU 2.2.1R). ...

10.7.4A G ~~MIPRU 2.2.1R provides that an insurance intermediary~~ A firm carrying on insurance mediation activity, other than a sole trader, must allocate to a

director or senior manager the responsibility for the firm's insurance mediation activity (MIPRU 2.2.1R). ...

10.9.13A G ~~MIPRU 2.2.1R provides that an insurance intermediary~~ A firm carrying on insurance mediation activity, other than a sole trader, must allocate to a director or senior manager the responsibility for the firm's insurance mediation activity (MIPRU 2.2.1R). ...

12.4.5E G (1) Under the relevant ~~Advising and Selling~~ provisions in COBS, ICOBS and MCOB the customer will receive details of how to complain to the appointed representative and, when a product is purchased, details of the complaints procedure for the product provider, insurer or home finance provider.

13A Annex 1G Application of the Handbook to Incoming EEA Firms

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment ... in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment ... in the United Kingdom
...
<i>ICOB</i>	<p>As column (3) plus, in the case of a distance contract with a retail customer, unless the firm's Home State imposes measures which implement or correspond to obligations of the DMD:</p> <p>(1) ICOB 2.2.3 R (1) (Clear, fair and not misleading communication);</p> <p>(2) ICOB 2.5 (Exclusion of liability);</p> <p>(3) ICOB 2.7 (General provision related to distance contracts);</p> <p>(4) ICOB 4.7 (Unsolicited services);</p> <p>and</p> <p>(5) ICOB 8 (Distance non-investment mediation contracts with retail customers).</p>	<p>Only the following provisions of <i>ICOB</i> apply:</p> <p>(1) <i>ICOB</i> 3 (Financial promotion), but see the territorial scope in <i>ICOB</i> 3.4 (Application: where?);</p> <p>(2) <i>ICOB</i> 4.2.19R (Overseas business for UK retail customers);</p> <p>(3) <i>ICOB</i> 5.5.20R(1) to (3), but only in relation to <i>general insurance contracts</i> if the state of the risk is the <i>United Kingdom</i>;</p> <p>(4) <i>ICOB</i> 5.5.20R(4) to (15) and (22), but only in respect of <i>non-investment insurance contracts</i> which are <i>pure protection contracts</i> where the <i>habitual residence</i> of the customer, other than an <i>EEA ECA recipient</i>, is in the <i>United Kingdom</i>;</p> <p>(5) <i>ICOB</i> 6 (Cancellation), but only in respect of <i>non-investment insurance contracts</i> which are <i>pure protection contracts</i> where the <i>habitual residence</i> of the customer, other than an <i>EEA ECA recipient</i>, is in the <i>United Kingdom</i>.</p>

		<p>(6) unless the <i>firm's Home State regulator</i> has implemented articles 12 and 13 of the <i>IMD</i> for those activities:</p> <p>(a) <i>ICOB 4.2.2R</i> to <i>ICOB 4.2.8R</i>, <i>ICOB 4.2.11R</i>, <i>ICOB 4.2.14R</i> and <i>ICOB 4.2.20R</i> (Status disclosure);</p> <p>(b) <i>ICOB 4.3</i> (Suitability);</p> <p>(c) <i>ICOB 4.4</i> (Statement of demands and needs) except <i>ICOB 4.4.7R</i>;</p> <p>(d) <i>ICOB 4.8.1R</i> (Language of the information provided to customers);</p> <p>and</p> <p>(7) unless the <i>firm's Home State regulator</i> imposes measures of like effect that apply to those activities:</p> <p>(a) <i>ICOB 2.10</i> (Excessive charges to retail customers);</p> <p>(b) <i>ICOB 4.2.8R(9)</i> (Information on compensation);</p> <p>(c) <i>ICOB 4.4.7R</i> (Record keeping where a personal recommendation is made);</p> <p>(d) <i>ICOB 4.2.15R</i> (Fees other than product related fees); and</p> <p>(e) <i>ICOB 4.6</i> (Commission disclosure for commercial customers).</p>
<u>ICOBS</u>	<u>ICOBS</u> applies except to the extent necessary to be compatible with European law. <u>Guidance on the territorial application of ICOBS</u> is contained in <u>ICOBS 1 Ann 1 Part 4</u> .	<u>ICOBS</u> does not apply, except to the extent necessary to be compatible with European law. <u>Guidance on the territorial application of ICOBS</u> is contained in <u>ICOBS 1 Ann 1 Part 4</u> .

Annex H

Amendments to the Credit Unions sourcebook (CRED)

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

- 1.1.2 G ... for example ... a *credit union* seeking a *permission* to undertake *insurance mediation activity* in relation to *non-investment insurance contracts* would need to comply with the requirements in *ICOBS*.

Annex I

Amendments to the Electronic Money sourcebook (ELM)

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

1.5.2 G Application of other parts of the Handbook to ELMIs

Block	Module	Application
...
Business standards	...	...
	Insurance: Conduct of Business sourcebook (<u>ICOBS</u>)	Does not apply to an <i>ELMI</i> when issuing <i>e-money</i>
...

Annex J

Amendments to the Professional Firms sourcebook (PROF)

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

Insurance: Conduct of Business sourcebook

- 5.3.10 G (1) ~~ICOB 1.2.10R~~ provides that ICOBS does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see ICOBS 1 Ann 1, Part 1, 3.1R), except for:
- (a) ~~ICOB 2.2 (Clear, fair and not misleading communication)~~ the provisions on communications to clients and financial promotions (ICOBS 2.2);
 - (b) ~~ICOB 3 (Financial promotion)~~ the e-commerce provisions (ICOBS 3.2);
 - (c) ~~ICOB 4.2.2R~~ in relation to the information for *customers* in table ~~ICOB 4.2.8R~~ items numbered (8), (9) and Note 4 covering complaints and compensation status disclosure requirements in relation to complaints procedures (ICOBS 4.1); and
 - (d) ~~those sections~~ provisions in ICOBS which implement articles 12 and 13 of the *Insurance Mediation Directive (ICOBS 4.1 and ICOBS 5.2.3R)*, ~~unless~~ except to the extent that the firm is subject to equivalent rules of its designated professional body which have been approved by the *FSA*.
 - (i) ~~the designated professional body of the firm has made rules which implement articles of the Insurance Mediation Directive;~~
 - (ii) ~~those rules have been approved by the FSA under section 332(5) of the Act; and~~
 - (iii) ~~the firm is subject to the rules in the form in which they were approved.~~
- (2) ~~ICOB 1.2.11G(2)~~ provides that the effect of ~~ICOB 1.2.10R(4)~~ is that if the relevant *designated professional body* of an *authorised professional firm* does not make rules implementing articles 12 and 13 of the *Insurance Mediation Directive* applicable to ~~authorised professional firms~~ those authorised professional firms will need to comply with those sections of *ICOB* which implement articles 12 and 13 of the *Insurance Mediation Directive*, namely ~~ICOB 4.1 to ICOB 4.4 (but not ICOB 4.2.20R to 4.2.28G)~~, and ~~ICOB 4.8.~~ [deleted]

Annex K

Amendments to the Perimeter Guidance manual (PERG)

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

5.12.4 G Table

Territorial issues relating to overseas insurance intermediaries carrying on *insurance mediation activities* in or into the *United Kingdom*

	Needs Part IV permission	Schedule 3 EEA passport rights available	Overseas persons exclusion available
...	
<p><u>For EEA-based intermediaries this table assumes that the <i>insurance mediation activities</i> are within the scope of the <i>Insurance Mediation Directive</i>.</u></p>			

8.2.3 G ... this guidance may be relevant where an *authorised person* needs to know whether ~~COB 3, ICOB 3 or MCOB 3~~ applies the *financial promotion rules* apply to a particular communication. ...

8.2.4 G A *person* who is concerned to know whether his communications will require *approval* or, if he is an *authorised person*, whether ~~COB 3, ICOB 3 or MCOB 3~~ the appropriate *financial promotion rules* will apply to his communications will need to consider the following:

...

8.2.5 G If the answer to PERG 8.2.4G(8) is yes then ~~COB 3, ICOB 3 or MCOB 3~~ the appropriate *financial promotion rules* will apply ...

8.4.32 G ... *Authorised persons* should note that, where personal quotations or illustrations do amount to a *financial promotion* ~~COB 3, ICOB 3 or MCOB 3~~ the *financial promotion rules* will not usually apply to them (~~see, for example, COB 3.2.5R(6)~~).

8.9.1 G ... And it will not be enough that an *authorised person* has ensured that the *financial promotion* complies with ~~COB 3, ICOB 3 or MCOB 3~~ the appropriate *financial promotion rules* purely so that he can *communicate* it himself. ...

8.9.2 G ... However, ~~COB 3, ICOB 3 or MCOB 3~~ the appropriate *financial promotion rules* may apply wholly or partially to any such *financial promotion*.

8.12.13 G ...

In addition, the *financial promotion* may only be made in the circumstances in which it could be made by the *appointed representative's principal* under ~~COB 3, ICOB 3 or MCOB 3~~ the appropriate financial promotion rules. ...

8.18.2 G Most *persons* making *financial promotions* as referred to in this section are likely to be *authorised persons*. As such they will be subject to ~~COB 3, ICOB 3~~ the appropriate financial promotion rules. ...

Annex L

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

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

1.4.5 G ...

- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the Regulations. The powers available to the *FSA* under the *Act* may vary depending on the *regulated activities* which the firm carries out. For example, the use of the unfair term might involve a breach of a *Principle* or a *rule* in *COBS*, *MCOB* or *ICOB**S*. If so, the *FSA* might also address the issue as a *rule* breach.

...

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code);
 - (2) section 138 (General rule-making power);
 - (3) section 149 (Evidential provisions); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2007.

Amendments to the Handbook

- D. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 8) Instrument 2007.

By order of the Board
6 December 2007

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

Factors to be taken into account in determining whether or not behaviour amounts to market abuse (improper disclosure)

- 1.4.5 E In the opinion of the *FSA*, the following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:
- (1) whether the disclosure is permitted by the rules of a *prescribed market*, of the *FSA* or the *Takeover Code*; or
 - (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
 - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
 - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
 - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*); or
 - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
 - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf; or
 - (3) whether:
 - (a) the information disclosed is *trading information*;
 - (b) the disclosure is made by a person ("A") only to the extent necessary, and solely in order, to offer to dispose of the *investment* to, or acquire the *investment* from, the *person* receiving the information; and
 - (c) it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or

duties.

1.4.5A G MAR 1.4.5E(3) is intended only to apply to an actual offer of the *investment*. It is not intended to apply to a disclosure of *trading information* to gauge potential interest in the *investments* to be offered or to help establish the likely price that will be obtained.

**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 3) INSTRUMENT
2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force as follows:
- (1) Annex A and Parts 1, 2 and 3 of Annex B come into force on 1 January 2008;
 - (2) Part 4 of Annex B comes into force on 6 March 2008;
 - (3) Part 5 of Annex B comes into force on 1 May 2008; and
 - (4) Part 6 of Annex B comes into force on 30 September 2008.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Integrated Regulatory Reporting (Amendment No 3) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Glossary of definitions

This Annex comes into force on 1 January 2008.

In this Annex, underlining indicates new text.

drawn down capital

(in SUP 16, in the case of an *investment management firm* carrying out *venture capital business*) the total current value of contributions committed by investors under contractual agreement which has been invested by the *firm*.

Annex B

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 January 2008

Amendments to Transitional provisions

TP1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provisions	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
12 M	(1) <i>SUP</i> 16.12.5R	R	<p>Firms in <i>Regulated Activity Group</i> 1 are not required to submit the following data items:</p> <p>(i) for reporting dates falling prior to 30 June 2008: FSA001 FSA002 FSA008 FSA010 FSA012 FSA013 FSA016 FSA018 <u>FSA045</u> and</p> <p>(ii) for reporting dates falling prior to 31 August 2008: FSA005 FSA006 FSA007 FSA014 FSA020 FSA021 FSA022 FSA023 FSA024 FSA025 FSA026 <u>and</u></p>	<p>1 January 2008 to 30 August <u>29 September</u> 2008</p>	<p>1 January 2008</p>

				<p><u>(iii) for reporting dates falling prior to 30 September 2008:</u> <u>FSA015</u> <u>FSA044</u> <u>FSA046</u></p>		
	...					
	(5)	SUP 16.12.11R	R	<p><i>Firms in Regulated Activity Group 3 other than exempt BIPRU commodity firms, are not required to submit the following data items:</i></p> <p>(i) for reporting dates falling prior to 30 June 2008: FSA001 FSA002 FSA008 FSA016 FSA018 FSA019 <u>FSA045</u> and</p> <p>(ii) for reporting dates falling prior to 31 August 2008: FSA005 FSA006 FSA007 FSA039 FSA040 and</p> <p><u>(iii) for reporting dates falling prior to 30 September 2008:</u> <u>FSA046</u></p>	1 January 2008 to 30 August <u>29 September</u> 2008	1 January 2008
	(6)	SUP 16.12.15R	R	<p><i>Firms in Regulated Activity Group 4 are not required to submit the following data items:</i></p> <p>(i) for reporting dates falling prior to 30 June 2008: FSA001 FSA002 FSA008 FSA016 FSA018 FSA019 <u>FSA045</u> and</p> <p>(ii) for reporting dates falling prior to 31 August 2008: FSA005 FSA006</p>	1 January 2008 to 30 August <u>29 September</u> 2008	1 January 2008

				<p>FSA007 FSA038 FSA039 FSA040 FSA041 FSA042 <u>and</u> <u>(iii) for reporting dates falling prior to 30 September 2008:</u> FSA046</p>		
	(7)	SUP 16.12.22R	R	<p><i>Firms in Regulated Activity Group 7</i> are not required to submit the following data items: (i) for reporting dates falling prior to 30 June 2008: FSA001 FSA002 FSA008 FSA016 FSA018 FSA019 <u>FSA045</u> <u>and</u> (ii) for reporting dates falling prior to 31 August 2008: FSA005 FSA006 FSA007 <u>and</u> <u>(iii) for reporting dates falling prior to 30 September 2008:</u> <u>FSA046</u></p>	1 January 2008 to 30 August <u>29 September</u> 2008	1 January 2008
	(8)	SUP 16.12.25R	R	<p><i>Firms in Regulated Activity Group 8</i> are not required to submit the following data items: (i) for reporting dates falling prior to 30 June 2008: FSA001 FSA002 FSA008 FSA016 FSA018 FSA019 <u>FSA045</u> <u>and</u> (ii) for reporting dates falling prior to 31 August 2008: FSA005</p>	1 January 2008 to 30 August <u>29 September</u> 2008	1 January 2008

				FSA006 FSA007 FSA039 FSA040 and <u>(iii) for reporting dates falling prior to 30 September 2008:</u> FSA046		
				
	(21)	<u>SUP</u> 16.12.23R	<u>R</u>	<u>Firms in RAGs 3, 4, 6, 7 and 8 that are required to complete Section J of the RMAR, with an accounting reference date falling between 1 July 2007 and 31 August 2007 inclusive, must additionally report on section J of the RMAR at their half year (i.e. for reporting dates falling between 1 January 2008 and 29 February 2008 inclusive), to be submitted within 30 business days of the half year date.</u>	<u>1 January 2008 to 29 February 2008</u>	<u>1 January 2008</u>
12 N	...					

Part 2: Comes into force on 1 January 2008

SUP 16.12

...

Regulated Activity Group 1

Applicable data items

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to ~~firm~~ firm type in the table below:

Description of data item	Prudential category of firm <u>firm</u> and applicable data items (Note 1)						
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</i>	<i>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</i>	<i>Electronic money institutions</i>	<i>Credit union</i>
...							
Non-EEA sub-group	...					...
<u>Sectoral information, including arrears and impairment</u>	<u>FSA015</u>	<u>FSA015</u>					
<u>Maturity analysis of assets and deposits</u>	<u>FSA044</u> (note 11)	<u>FSA044</u> (note 11)					
<u>IRB portfolio risk</u>	<u>FSA045</u> (note 13)	<u>FSA045</u> (note 13)					
<u>Securitisation</u>	<u>FSA046</u> (note 14)	<u>FSA046</u> (note 14)					
Note 1	...						
...							
Note 11	Members of a <i>UK consolidation group</i> should only submit this <i>data item</i> at the <i>UK consolidation group</i> level. <i>Firms'</i> attention is drawn to SUP 16.3.25G regarding a single submission for all <i>firms</i> in the <i>group</i> .						

Note 12	...
Note 13	Only applicable to <i>firms</i> that have an IRB permission to use the IRB approach and <i>BIPRU 4</i> .
Note 14	Only applicable to <i>firms</i> that undertake <i>securitisations</i> .

16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in *SUP 16.12.5R* are set out in the table below according to ~~firm~~ *firm* type. Reporting frequencies are calculated from a *firm's* *accounting reference date*, unless indicated otherwise.

	Unconsolidated <i>UK banks and building societies</i>	Solo consolidated <i>UK banks and building societies</i>	Report on a <i>UK consolidation group</i> basis by <i>UK banks and building societies</i>	Other members of RAG 1
...				
FSA014	Half yearly			
FSA015	Quarterly		Half yearly	
FSA016		...		
...				
FSA044	Quarterly		Half yearly	
FSA045	Quarterly		Half yearly	
FSA046	Half yearly		Half yearly	
Note 1	...			
...				

16.12.7 R The applicable due dates for submission referred to in *SUP 16.12.4R* are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP 16.12.6R*.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
FSA014			...	
FSA015		<u>20 business days</u>	<u>45 business days</u>	
FSA016			...	
...				
FSA028			...	
FSA044		<u>25 business days</u>	<u>25 business days</u>	
FSA045		<u>20 business days</u>	<u>45 business days</u>	
FSA046			<u>30 business days</u> (note 3), <u>45 business days</u> (note 4)	

Note 1	...
...	
Note 3	Applicable to unconsolidated and solo consolidated reports
Note 4	Applicable to <i>UK consolidation group</i> reports

...

Regulated Activity Group 3

...

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU firms</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
CFTC	...	...	...	...	...	...	...	...
<u>IRB portfolio risk</u>	<u>FSA045 (note 22)</u>	<u>FSA045 (note 22)</u>	<u>FSA045 (note 22)</u>					
<u>Securitisation</u>	<u>FSA046 (note 23)</u>	<u>FSA046 (note 23)</u>	<u>FSA046 (note 23)</u>					
Note 1	...							
...								
Note 21	...							
<u>Note 22</u>	<u>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4.</u>							
<u>Note 23</u>	<u>Only applicable to firms that undertake securitisations.</u>							

16.12.12 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.16 R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA040

<u>FSA045</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Half yearly</u>	<u>Half yearly</u>	
<u>FSA046</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	
Section A RMAR					...
...					

16.12.13 R The applicable due dates for submission referred to in *SUP* 16.12.6R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.12R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
<u>FSA040</u>		...		
<u>FSA045</u>		<u>20 business days</u>	<u>30 business days (note 1), 45 business days (note 2)</u>	
<u>FSA046</u>			<u>30 business days (note 1), 45 business days (note 2)</u>	
Section A RMAR		...	...
...				
Note 1	For unconsolidated and solo-consolidated reports.			
Note 2	For <i>UK consolidation group</i> reports.			

Regulated Activity Group 4

...

16.12.15 R The applicable *data items* referred to in *SUP* 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
UCITS	...	...	...	...	...	...	...	...
<u>IRB</u>	<u>FSA04</u>	<u>FSA04</u>	<u>FSA04</u>					

<u>portfolio risk</u>	<u>5 (note 18)</u>	<u>5 (note 18)</u>	<u>5 (note 18)</u>					
<u>Securitisatio n</u>	<u>FSA04 6 (note 19)</u>	<u>FSA04 6 (note 19)</u>	<u>FSA04 6 (note 19)</u>					
Note 1:	...							
...								
Note 17	...							
Note 18	<u>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4.</u>							
Note 19	<u>Only applicable to firms that undertake securitisations.</u>							

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Firms' prudential category				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA042	...	...	...		...
<u>FSA045</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Half yearly</u>	<u>Half yearly</u>	
<u>FSA046</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	
...					
Note 1	...				

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
FSA042		...		
<u>FSA045</u>		<u>20 business days</u>	<u>30 business days (note 2); 45 business days (note 3)</u>	
<u>FSA046</u>			<u>30 business days (note 2); 45 business days (note 3)</u>	

...				
Note 1	[deleted]			
Note 2	For unconsolidated and solo-consolidated reports.			
Note 3	For <i>UK consolidation group</i> reports.			

...

Regulated Activity Group 7

...

16.12.22 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>Data item</i>	Firm prudential category and applicable <i>data item</i> (note 1)				
	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm and UCITS investment firm</i>	<i>BIPRU 50K firm</i>	IPRU(INV) Chapter 13 firms carrying out European – wide activities under MiFID	IPRU(INV) Chapter 13 firms not carrying out European-wide activities under MiFID
...					
Fees and levies	...	...	...	...	...
<u>IRB portfolio risk</u>	<u>FSA045</u> (note 13)	<u>FSA045</u> (note 13)	<u>FSA045</u> (note 13)		
<u>Securitisation</u>	<u>FSA046</u> (note 14)	<u>FSA046</u> (note 14)	<u>FSA046</u> (note 14)		
Note 1	...				
...					
Note 12	...				
<u>Note 13</u>	<u>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4.</u>				
<u>Note 14</u>	<u>Only applicable to firms that undertake securitisations.</u>				

16.12.23 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.22R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Frequency				
	Unconsolidated <i>BIPRU investment</i>	Solo consolidated <i>BIPRU</i>	Consolidated <i>BIPRU investment</i>	Annual regulated business	Annual regulated business

	<i>firm</i>	<i>investment firm</i>	<i>firm</i>	revenue up to and including £5 million	revenue over £5 million
...					
FSA031				...	...
<u>FSA045</u>	<u>Quarterly or half yearly (note 1)</u>	<u>Quarterly or half yearly (note 1)</u>	<u>Half yearly</u>		
<u>FSA046</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>		
Section A RMAR				..	...
...					
Note 1:	<i>BIPRU 730K firms and BIPRU 125 K firms – quarterly; BIPRU 50K firms – half yearly.</i>				
...					

16.12.24 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.23R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				
FSA031		...	...
<u>FSA045</u>		<u>20 business days</u>	<u>30 business days (note 1), 45 business days (note 2)</u>	
<u>FSA046</u>			<u>30 business days (note 1), 45 business days (note 2)</u>	
Section A RMAR		...	...
...				
Note 1	For unconsolidated and solo consolidated reports			
Note 2	For UK consolidation group reports			

Regulated Activity Group 8

...

16.12.25 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

A

Description of data item	<i>Firms prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
CFTC	...	...	...	...	...	...	...	...
<u>IRB portfolio risk</u>	<u>FSA04 5 (note 18)</u>	<u>FSA04 5 (note 18)</u>	<u>FSA04 5 (note 18)</u>					
<u>Securitisatio</u> <u>n</u>	<u>FSA04 6 (note 19)</u>	<u>FSA04 6 (note 19)</u>	<u>FSA04 6 (note 19)</u>					
Note 1:	...							
...								
Note 17								
Note 18	<u>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4.</u>							
Note 19	<u>Only applicable to firms that undertake securitisations.</u>							

16.12.26 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.25R are set out according to type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

	<i>BIPRU 730K firm</i>	<i>BIPRU 125K firm</i>	<i>BIPRU 50K firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firms other than BIPRU firms</i>
...					
FSA040	...	...	...	...	...
<u>FSA045</u>	<u>Quarterly</u>	<u>Quarterly</u>	<u>Half yearly</u>	<u>Half yearly</u>	
<u>FSA046</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	
...					
Note 1	...				

16.12.27 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.26R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...				

FSA040		...		
<u>FSA045</u>		<u>20 business days</u>	<u>30 business days</u> <u>(note 1);</u> <u>45 business days</u> <u>(note 2)</u>	
<u>FSA046</u>			<u>30 business days</u> <u>(note 1);</u> <u>45 business days</u> <u>(note 2)</u>	
...				
Note 1	For unconsolidated and solo consolidated reports.			
Note 2	For <i>UK consolidation group</i> reports			

...

Part 3: comes into force on 1 January 2008

SUP 16 Ann 18BG

Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Section J: data required for the calculation of fees

...

Personal investment firms and firms whose regulated activities are limited to one or more of: insurance mediation activity, home finance mediation activity, or retail investment activity, are required to complete section J of the RMAR.

For reporting dates up to and including end February 2008, ~~Firms~~ firms with an *accounting reference date* of between 1 February and 31 August (inclusive) ~~must~~ should report the information required in this section ~~solely~~ on their half year end *RMAR*. Thus a firm that is due to report on 29 February 2008, that has an *accounting reference date* of 31 August 2007, should report its fees data on that return. However, thereafter, it should, like ~~All~~ other firms, ~~must~~ report the information in their year end *RMAR*. ...

SUP 16 Ann 24R

The following 5 pages of data items are new and are not underlined, and should be inserted in numerical order. They are FSA015, FSA044, FSA045 and FSA046.

QRRE

25 Tick here if you have no exposures in this asset class
 26 Please indicate whether your PDs are PiT or TTC or Hybrid PiT
 27 Enter number of days in the definition of Default

A

	PD range at reporting date		Gross exposure value	Exposure at default estimate	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD bound	Upper PD bound						
	Above %	Up to %	A 000s	B 000s	C %	D %	E 000s	F 000s
1	0.000							
2								
3								
4								
5								
6								
7								
...								
n								
29	In default							
30	Total							

Other retail

31 Tick here if you have no exposures in this asset class
 32 Please indicate whether your PDs are PiT or TTC or Hybrid PiT
 33 Enter number of days in the definition of Default

A

	PD range at reporting date		Gross exposure value	Exposure at default estimate	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD	Upper PD						
	Above %	Up to %	A 000s	B 000s	C %	D %	E 000s	F 000s
1	0.000							
2								
3								
4								
5								
6								
7								
...								
n								
35	In default							
36	Total							

FSA046
Securitisation

Transaction level information - Where the firm is an originator or sponsor

A	
1	Location of BIPRU 11.5.17R disclosures
2	Additional capital requirement for BIPRU 9.3.1R

	A	B	C	D	E	F	G	H
3	Programme Name	Asset class	Originator's Interest	Investors' Interest	Location of Investor Reports	Assets appear on FSA001?	BIPRU 9.3.1R Applied?	BIPRU 9.13 applies?
1								
...								
n								

Risk Positions - standardised exposures

	A	B	C	D	E	F	
4		CQS1	CQS2	CQS3	CQS4	CQS5 and below	Deductions from capital
5	As Originator						
6	As sponsor of an ABCP programme						
7	Counterparty credit risk						
7	All other exposures						

Risk positions - IRB exposures

		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
		Firms applying BIPRU 9.12.16R	CQS1	CQS2	CQS3	CQS4	CQS5	CQS6	CQS7	CQS8	CQS9	CQS10	CQS11	Below CQS1 All other credit	Supervisory formula	Deductions from capital
			ST CQS1			ST CQS2			ST CQS3							
8	As Originator	A														
9		B														
10		C														
11	As Sponsor on an ABCP programme	A														
12		B														
13		C														
14	Counterparty credit risk	A														
15		B														
16		C														
17	All other exposures	A														
18		B														
19		C														

The following change is made to existing text.

...

FSA038

Volumes and Type of Business

Total Value of Funds Under Management		A
1	Total funds under management (000s)	
<u>5</u>	<u>Of which drawn down capital (000s)</u>	
2	Of which UK funds under management (000s)	
...	...	
...	...	
...	...	

SUP 16 Ann 25G

The following section is inserted after FSA014 – Forecast data validations. The text is all new and is not underlined.

FSA015 – Sectoral information, including arrears and impairment

This data item provides the *FSA* with information on the credit quality of a *firm's* portfolio, enabling the *FSA* to assess potential threats to the firm's viability. It also provides information to be used at a macro level to monitor changes in the economic climate. This *data item* relates only to credit risk.

Completion of this data item is acceptable on a best endeavours basis. Allocation between sectors is adequate at portfolio level; accuracy to individual account level is not required.

Valuation

For the general policy on valuation, please see the rules and guidance set out in *GENPRU* 1.3.

Currency

You should report in the currency of your annual audited accounts i.e. in either Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s.

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

Definitions

Column A: "All balances (customer) outstanding at period end"

This is the amount of total debt owed by the customer at the reporting date, and should comprise the total amount outstanding (after deducting any write-offs but without deduction for any provisions) in respect of:

- (i) the principal of the advance (including any further advances made);

(ii) interest accrued on the advance (but only up to the reporting date), including any interest suspended; and

(iii) any other sum which the borrower is obliged to pay the *firm* and which is due from the borrower, e.g. fees, fines, administration charges, default interest and insurance premiums.

The information in respect of balances to be reported in this column should not be fair-valued but should report the contractual position (i.e. between the lender and borrower).

The treatment of loan assets that are being operated as part of a current account offset mortgage product (or similar products where *deposit* funding is offset against loan balances in arriving at a net interest cost on the account) will depend on the conditions pertaining to the mortgage product. The balance outstanding on such loans will need to be reported on the basis of the contractually defined balance according to the terms of the mortgage product. This might be the amount of loan excluding any offsetting funds, or it might be the net amount.

It is not expected that these figures in this column will necessarily reconcile to any of the *firm's* published statutory data.

Columns B-G, rows 1-11: "Balances of accounts in arrears /default by band"

The analysis is based on expressing the amount of arrears on each loan as a percentage of the balance outstanding on the loan, allocating cases to relevant arrears bands, providing details of cases moving up into more serious arrears bands in the quarter (or half year in the case of a *UK consolidation group*), and giving information on loan performance during the quarter or half year. (In cases where there is more than one loan secured on a single property, these should be amalgamated, where possible, in reporting details of arrears cases.)

Arrears will arise through the borrower failing to service any element of his debt obligation to the *firm*, including capital, interest, or fees, fines, administrative charges, default interest or insurance premiums.

At the reporting date, the amount of arrears is the difference between:

(i) the accumulated total amounts of (monthly or other periodic) payments due to be received from the borrower; and

(ii) the accumulated total amount of payments actually made by the borrower.

Only amounts which are contractually due at the reporting date should be included in the above. That is:

(i) include accrued interest only up to the reporting date but not beyond;

(ii) only include a proportion of any annual insurance premium if the firm permits such amounts to be paid in periodic instalments. However if the terms of the loan or the lender's practice are such as to permit insurance premiums to be added to the loan principal then do not treat such amounts as contractually due;

(iii) similarly, where 'any other sum' has been added to the loan, only include such proportions as are contractually due (e.g. if it is the practice in particular circumstances to add the sum/charge to the loan and require repayment over the residual term of the loan);

(iv) in assessing 'payments due' when a borrower has a flexible loan, it is important to apply the contractual terms of the loan: for example, payment holidays which satisfy the terms of the loan should not be treated as giving rise to an arrears position;

(v) do not however include 'Deeds Store' loans in the arrears figures (that is, loans where the debt is de minimis e.g. £100, but the borrower still has insurance premiums to pay and perhaps some instalments are overdue).

In the case of annual review schemes the 'payment due to be received' is that calculated under the scheme. This may well differ from the amount charged to the account but should not of itself give rise to any arrears, providing the borrower is making the level of payments advised by the *firm*. The same principles apply to deferred interest products – if the borrower is making the payments that are required under the loan arrangements then he is not in arrears, even though the debt outstanding is increasing.

Where a firm makes a temporary 'concession' to a borrower (i.e., an agreement with the borrower whereby monthly payments are either suspended or less than they would be on a fully commercial basis) for a period, the amounts included are those contractually due (and at commercial rates of interest). Hence the borrower will continue to be in arrears and the level of arrears will in fact continue to increase until such time as he is able fully to service the debt outstanding.

Where the terms of the loan do not require payment of interest (or capital) until a stated date or until redemption or until certain conditions are triggered, as for example in the case of certain building finance loans, then the loan is not in arrears until such time as contractual repayments are overdue.

Where a 'capitalisation' case that has at one time been correctly removed as fully performing but at some later time defaults, then this should be treated as a new default and the amount of arrears taken as that arising from this new default. That is, the previously capitalised arrears should not be reinstated as current arrears. By 'capitalisation' we mean a formal arrangement agreed with the borrower to add all or part of a borrower's arrears to the amount of outstanding principal (i.e. advance of principal including further advances less capital repayments received during the period of the loan) and then treating that amount of overall debt as the enlarged principal. This enlarged principal is then used as the basis for calculating future monthly payments over the remaining term of the loan. Where less than the full amount of arrears is capitalised (or indeed where none of the arrears is capitalised) then, providing there are arrangements made for the borrower to repay the non-capitalised arrears over a shorter period ranging for example from 3 to 18 months, this type of arrangement should also be regarded as an equivalent of 'capitalisation'.

The decision to 'capitalise' (or treat as if capitalised) is a business decision between the *firm* and the borrower. However for the purposes of consistency in reporting arrears cases the following reporting criteria should be used where a *firm* has capitalised the loan (or treated as if capitalised) and reset the monthly payment:

(i) such an arrears case should continue to be included as an arrears case until the loan has been 'fully performing' (see (ii) below) for a period of six consecutive months (any temporary increase in arrears during this qualifying period has the effect of requiring six consecutive months of fully performing after such an event). Until that time it should be included in the table and be allocated to the arrears band applicable at each reporting date as if 'capitalisation' had not taken place;

(ii) for these purposes a loan is considered to be 'fully performing' only where the borrower has been meeting all obligations on the loan with regard to repayments of principal, interest (at a normal mortgage rate on the full balance outstanding, including as appropriate any relevant past arrears), any payment towards clearing past arrears as agreed with the *firm* and any default payments due levied in respect of previous missed repayments. That is, amounts may be either added to the principal of the loan or otherwise repaid over a shorter period than the residual term of the mortgage, as agreed between firm and borrower. But then this revised payment schedule must be fully maintained for a six month period before the arrears can qualify to be treated as capitalised for reporting purposes and hence removed from the arrears cases in this table.

Column B rows 12-26

Include here the amount of any payments that a counterparty has failed to make when they were contractually due.

Column C rows 12-26

Include here the amount by which any *exposures* in column B are also deemed to be impaired.

Column D rows 12-26

Include here the amount by which any other *exposures* which, whilst not past due, are deemed to be impaired.

Column E rows 12-26

Enter the total gross value, before deduction of impairment charges, of *exposures* against which impairment charges have been made (i.e. included in columns C and D) and where no collateral is held against the *exposure*; i.e. report here loans which are included in columns C and D because they are impaired, reporting the amount of the loan which is unsecured. Report the unsecured amount of the loan, irrespective of the impaired amount.

Column B rows 27-31

Include here any *exposures* where payments have not made on the date due and where there is little prospect for recovery of principal or interest.

Column C rows 27-31

Include here the amount by which any other *exposures* which, whilst not in default, are deemed to be impaired.

Column D rows 27-31

Include here the Mark-to-market value of any impaired *exposures* included in columns B and C.

Column H: All balances (accounting) at period end

This is the total value of the on balance sheet exposures in each category, valued in line with the *firm's* accounting policies.

Column J: Write-offs net of recoveries

Enter the net amount written off during the period, after any recoveries of exposures previously written off.

Columns K and L: Charge/credit to the Income statement (P&L)

Enter the net charge or credit to the income statement (profit & loss account) in respect of impairment charges during the period. A net credit should be shown with a minus sign (not brackets). The gross charge for new impairment charges should be offset by other items including any charges made in earlier periods but now released. The charge or credit for individual impairment charges should include the charge or credit for provisions in respect of suspended interest where it is the practice of the reporting institution to show suspended interest as interest receivable in the income statement (profit and loss account).

Column M: Other Adjustments

This includes any adjustments made as a result of an acquisition or disposal of a subsidiary company the balance sheet of which includes impairment balances and is included in the consolidation for the particular return. Also include any adjustments made for exchange rate movements in respect of impairment balances denominated in currencies other than the reporting currency. Where the adjustment is negative, report the amount with a minus sign (not brackets).

Column N: individual impairment balance

Enter the total value of individual impairment balances.

Column P: collective impairment balance

Enter the total value of collective impairment balances.

Column Q: balances of loans with individual impairment

Include the total balance of any *exposures* against which there is an individual impairment charge.

Sectors (rows)**UK and Non-UK**

Where a split of *exposures* between UK and non-UK is required, this should be done based on the location of the lending entity.

Retail sector

This section comprises all *Retail exposures*, including *exposures to retail SME*.

1 First charge mortgages to individuals

This comprises lending to individuals secured by mortgage on land and buildings, where such loans are fully secured by a first equitable or legal charge, where at least 40% of the land and buildings is used for residential purposes, and where the premises are for occupation by either the borrower (or dependant), or any other third party (e.g. it includes ‘buy to let’ lending to individuals). Both regulated and non-regulated mortgage contracts should be included.

Do not include here any residential loans to individuals that are part of a ‘business loans’ type package (involving multiple loans and multiple securities, where there is no one-to-one correspondence between a loan and a specific security), but report them under ‘other secured loans to individuals’.

2 Other fully secured loans to individuals

Include here all other *secured lending* in the UK to individuals where the *firm* does not have a first charge.

3 Partially secured exposures to individuals

Include here any lending in the UK to individuals where the exposure is only partially secured.

4 Card accounts

This includes UK charge card lending (even if the outstanding balance is required to be paid off in full at the end of each charging period).

5 Unsecured exposures to individuals

Report here all other *exposures* in the UK to individuals.

6 Retail SME

Include here all UK *exposures to retail SME* irrespective of security held.

7 Fully secured loans to individuals

Include here any lending outside the UK to individuals where the *exposure* is fully secured.

8 Partially secured exposures to individuals

Include here any lending outside the UK to individuals where the *exposure* is only partially secured.

9 Unsecured exposures to individuals

Comprises all other exposures outside the UK to individuals. Credit card lending outside the UK should be included here.

10 Retail SME

Include here all non-UK *exposures to retail SME* irrespective of security held.

Corporate sector

This section comprises all *corporate exposures*.

12 UK commercial real estate (secured and unsecured)

This will typically include any *exposures* defined by Basel as "Claims secured by commercial real estate" or "Income-producing real estate", or lending where the counterparty has been allocated to SIC code 70 and the lending is done in the UK.

13, 17 Other fully secured lending

Include here any lending where the *exposure* is fully secured

14, 18 Other partially secured lending

Include here any lending where the *exposure* is only partially secured.

15, 19 Unsecured lending

Include here all other *corporate exposures*.

16 Non-UK commercial real estate

This will typically include any *exposures* defined by Basel as "exposures secured by commercial real estate" or "Income-producing real estate", or lending where the counterparty has been allocated to SIC code 70 and the lending is done outside the UK.

Financial sector

This section comprises all *exposures* to the *financial sector*.

Non-financial institutions (inc government)

All other *exposures* other than those defined above.

Debt instruments (banking book)

27 UK collateralised debt obligations

Include here all CDOs issued by UK companies.

28 Other UK asset backed securities

Comprises holding of all other *asset backed securities*, except CDOs, issued by UK entities.

29 Other UK securities

Comprises holding of all other securities, except those listed above, issued by UK entities.

30 Other non-UK securities

Comprise holdings of any securities issued by non-UK companies.

FSA015– sectoral information, including arrears and impairment - validations

Internal validations

Data elements are referenced by row then column

Validation number	Data element		
1	1G	=	1B+1C+1D+1E+1F
2	2G	=	2B+2C+2D+2E+2F
3	3G	=	3B+3C+3D+3E+3F
4	4G	=	4B+4C+4D+4E+4F
5	5G	=	5B+5C+5D+5E+5F
6	6G	=	6B+6C+6D+6E+6F
7	7G	=	7B+7C+7D+7E+7F
8	8G	=	8B+8C+8D+8E+8F
9	9G	=	9B+9C+9D+9E+9F
10	10G	=	10B+10C+10D+10E+10F
11	11G	=	11B+11C+11D+11E+11F
12	11A	=	1A+2A+3A+4A+5A+6A+7A+8A+9A+10A
13	11B	=	1B+2B+3B+4B+5B+6B+7B+8B+9B+10B
14	11C	=	1C+2C+3C+4C+5C+6C+7C+8C+9C+10C
15	11D	=	1D+2D+3D+4D+5D+6D+7D+8D+9D+10D
16	11E	=	1E+2E+3E+4E+5E+6E+7E+8E+9E+10E
17	11F	=	1F+2F+3F+4F+5F+6F+7F+8F+9F+10F
18	11G	=	1G+2G+3G+4G+5G+6G+7G+8G+9G+10G
19	20B	=	12B+13B+14B+15B+16B+17B+18B+19B
20	20C	=	12C+13C+14C+15C+16C+17C+18C+19C
21	20D	=	12D+13D+14D+15D+16D+17D+18D+19D
22	20E	=	12E+13E+14E+15E+16E+17E+18E+19E
23	23B	=	21B+22B
24	23C	=	21C+22C
25	23D	=	21D+22D
26	23E	=	21E+22E
27	26B	=	24B+25B
28	26C	=	24C+25C
29	26D	=	24D+25D
30	26E	=	24E+25E
31	31B	=	27B+28B+29B+30B
32	31C	=	27C+28C+29C+30C
33	31D	=	27D+28D+29D+30D
34	11H	=	1H+2H+3H+4H+5H+6H+7H+8H+9H+10H
35	11J	=	1J+2J+3J+4J+5J+6J+7J+8J+9J+10J
36	11K	=	1K+2K+3K+4K+5K+6K+7K+8K+9K+10K
37	11L	=	1L+2L+3L+4L+5L+6L+7L+8L+9L+10L
38	11M	=	1M+2M+3M+4M+5M+6M+7M+8M+9M+10M
39	11N	=	1N+2N+3N+4N+5N+6N+7N+8N+9N+10N
40	11P	=	1P+2P+3P+4P+5P+6P+7P+8P+9P+10P
41	11Q	=	1Q+2Q+3Q+4Q+5Q+6Q+7Q+8Q+9Q+10Q
42	20H	=	12H+13H+14H+15H+16H+17H+18H+19H
43	20J	=	12J+13J+14J+15J+16J+17J+18J+19J
44	20K	=	12K+13K+14K+15K+16K+17K+18K+19K
45	20L	=	12L+13L+14L+15L+16L+17L+18L+19L

46	20M	=	12M+13M+14M+15M+16M+17M+18M+19M
47	20N	=	12N+13N+14N+15N+16N+17N+18N+19N
48	20P	=	12P+13P+14P+15P+16P+17P+18P+19P
49	20Q	=	12Q+13Q+14Q+15Q+16Q+17Q+18Q+19Q
50	23H	=	21H+22H
51	23J	=	21J+22J
52	23K	=	21K+22K
53	23L	=	21L+22L
54	23M	=	21M+22M
55	23N	=	21N+22N
56	23P	=	21P+22P
57	23Q	=	21Q+22Q
58	26H	=	24H+25H
59	26J	=	24J+25J
60	26K	=	24K+25K
61	26L	=	24L+25L
62	26M	=	24M+25M
63	26N	=	24N+25N
64	26P	=	24P+25P
65	26Q	=	24Q+25Q
66	31H	=	27H+28H+29H+30H
67	31J	=	27J+28J+29J+30J
68	31K	=	27K+28K+29K+30K
69	31L	=	27L+28L+29L+30L
70	31M	=	27M+28M+29M+30M
71	31N	=	27N+28N+29N+30N
72	31P	=	27P+28P+29P+30P
73	31Q	=	27Q+28Q+29Q+30Q
74	32H	=	11H+20H+23H+26H+31H
75	32J	=	11J+20J+23J+26J+31J
76	32K	=	11K+20K+23K+26K+31K
77	32L	=	11L+20L+23L+26L+31L
78	32M	=	11M+20M+23M+26M+31M
79	32N	=	11N+20N+23N+26N+31N
80	32P	=	11P+20P+23P+26P+31P
81	32Q	=	11Q+20Q+23Q+26Q+31Q
82	12C	<=	12B
83	13C	<=	13B
84	14C	<=	14B
85	15C	<=	15B
86	16C	<=	16B
87	17C	<=	17B
88	18C	<=	18B
89	19C	<=	19B
90	20C	<=	20B
91	21C	<=	21B
92	22C	<=	22B
93	23C	<=	23B

94	24C	<=	24B
95	25C	<=	25B
96	26C	<=	26B

External validations

There are no external validations for this data item.

...

Amend the following, as shown.

FSA038 – Volumes and Type of Business

Invested/uninvested funds

As far as possible, the amount reported should be a true reflection of the value of funds that are available to buy assets at the time of reporting, added to the value of the assets themselves. Funds 'in process' should not be included.

Discretionary/advisory clients

Firms should include any FUM relating to all investment management clients whether managed under a discretionary or an advisory arrangement.

Delegation and extent of delegation

- (a) FUM should exclude the value of those parts of the managed portfolios in respect of which the responsibility for the discretionary management has been formally delegated to another firm (and which firm will include the value of the assets in question in its own FUM total).
- (b) However, the firm must include FUM where:
 - (i) the firm to whom the management is delegated will not be reporting it – e.g. if it is not FSA-regulated, or is a non-UK firm; and
 - (ii) the reporting firm has discretion over the delegation or retains the right to terminate an arrangement for third party asset management, and the reporting firm may either bring the management of that FUM back in-house or delegate it to another party.

Valuation issues

As a general rule, firms should apply a consistent basis for valuation across the range of clients in respect of which they are reporting. Firms should be able to express and justify the basis of valuation they select and should, as far as possible, consistently apply the methodology, such that time-series analysis is meaningful.

The FSA is encouraged by the ongoing development of industry standards in relation to valuation and encourages reporters to make use of any relevant industry-agreed standards.

Debt gearing

The value of assets purchased through borrowing should be reported as FUM, including any cash amount available for investment as a result of debt gearing.

Value of derivatives

The value of derivative instruments and other assets is calculated on a mark-to-market basis.

Double-counting

Firms should make all reasonable efforts to eliminate double-counting in the submission of sums. However, it is accepted that reporting on the basis of our guidance may in certain circumstances lead to the overstatement of FUM.

Timing of calculation

In respect of the timing for calculating of total FUM, we expect firms to collect and aggregate the information to base their reporting on within a reasonable timeframe. However, the valuation point used for any client should be the last mandatory valuation point and the total valuation should not include the sum of valuations that are more than 30 days apart.

Client/fund domicile

The value of all clients' assets, regardless of domicile, should be included in the calculation.

Private equity and venture capital business

In relation to investment management firms carrying out venture capital business, those firms should report that element of their total FUM by reference to the value of their drawn down capital plus any remaining committed but un-drawn investor capital and loans. All the preceding guidelines apply to reporting by these firms.

Description	Data element	Guidance
<u>Total funds under management</u>	<u>1A</u>	<u>This should be reported by all firms with permission of managing investments.</u>
<u>Of which drawn down capital</u>	<u>5A</u>	<u>All firms carrying out venture capital business should report here the amount of drawn down capital included within data element 1A above.</u>
<u>UK funds under management</u>	<u>2A</u>	<u>This data element is intended to capture the proportion of UK clients as a percentage of total funds under management UK funds relate to management agreements that are directly contracted with UK resident clients. For example, a UK authorised collective investment scheme constitutes a UK client for the purposes of this question.</u>
...		

...

Insert the following after FSA043 – Key data [deleted]. The text is all new and is not underlined.

FSA044 – Maturity analysis of assets and deposits

This data item captures the funding profile, by sector and maturity, of *UK banks* and *building societies*, to monitor mismatches.

Valuation

For the general policy on valuation, please see the rules and guidance set out in *GENPRU* 1.3.

Currency

You should report in the currency of your annual audited accounts ie in either Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s.

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

Definitions

Maturity (columns A to G)

This is worked out on a residual maturity basis. There should be no netting of assets and deposits. Where a loan is made with a number of repayments spread over the period of the loan, the capital repayment elements should be in the relevant maturity bands. For example, a mortgage with 15 years remaining maturity would have in excess of 150 individual repayments; each of these should be classified in the appropriate maturity band.

Assets

1A - 1G Intra-group

Include here balances that relate to counterparties connected to the reporting institution.

2A - 2G Inter bank

This includes other *credit institutions*, but excludes any balances with intra-group firms, which should go in element 1 (i.e. intragroup).

3A - 3G Of which: unsecured loans

Include here any interbank exposures which are not backed by any form of collateral.

4A - 4G Of which: reverse repos

include here securities or other assets have been purchased from credit institutions for a finite period with a commitment to re-sell.

5A - 5G OFC exposures

Include here exposures to Other Financial Companies, i.e. excluding *banks* and *building societies*. This will include investment firms, insurance companies, pension funds, securities firms.

6A - 6G Of which: unsecured loans

Include here any exposures to OFC which are not backed by any form of collateral.

7A - 7G Of which: reverse repos

Include here securities or other assets have been purchased from OFC for a finite period with a commitment to re-sell.

8A - 8G Loans to Customers

Include here loans to all counterparties other than intra-group, *credit institutions* and OFC.

9A - 9G Of which: wholesale

This includes non-bank, non-connected corporate counterparties and will include those customers who deal directly with a *firm's* treasury/markets unit.

10A - 10G Other financial assets

This covers financial exposures not included in any of the above categories.

11A - 11G Of which: pledgable

These are assets which a reporting institution is freely able to pledge as collateral (i.e. where those assets remain on the reporting institution's balance sheet but have been charged as collateral)

12A - 12G Total financial assets

This will equal the sum of the above elements.

13A Other assets

Include here all other assets of a non-financial nature.

14A Total assets

This will equal the sum of financial plus other assets and also the sum of total liabilities.

Liabilities

15A -15G Intra-group

Include here balances that relate to counterparties connected to the reporting institution.

16A - 16G Interbank deposits

This includes other *credit institutions*, but excludes any balances with intra-group firms, which should go in element 1 (i.e. intragroup).

17A - 17G Of which: repos

Report sale and repurchase agreements ("repos"), ie when the reporting institution is the seller of the asset where the asset sold is not reported on the balance sheet

18A - 18G OFC Deposits

Include here deposits from Other Financial Companies, i.e. excluding *banks* and *building societies*. This will include investment firms, insurance companies, pension funds, securities firms.

19A - 19G Of which: repos

Report sale and repurchase agreements ("repos"), i.e. when the reporting institution is the seller of the asset where the asset sold is not reported on the balance sheet.

20A - 20G Debt securities in issuance

Include here all *debt securities* issued by the reporting entity.

21A - 21G Of which: CDs

This comprises all Certificates of Deposit issued by the reporting entity which are still outstanding, whether at fixed or floating interest rates, allocated to the appropriate maturity column. Include negotiable deposits taken on terms in all respects identical to those on which a certificate of deposit would have been issued, but for which it has been mutually convenient not to have issued a certificate.

22A - 22G Of which: unsecured bonds

Include here any bonds issued which are not backed by collateral

23A - 23G Of which: CP

Include here all Commercial Paper issued by the reporting institution

24A - 24G Of which: asset backed securities

Include here all *asset backed securities* issued by the reporting institution.

25A -25G Of which: covered bonds

Include here all *covered bonds* issued by the reporting institution.

26A - 26G Customer deposits

Include here deposits from all counterparties other than intra-group, *credit institutions* and OFC.

27A - 27G Of which: wholesale

This includes non-bank, non-connected corporate counterparties and will include those customers who deal directly with a *firm's* treasury/markets unit.

28A - 28G Other

Include all other non-capital liabilities here.

29A - 29G Subordinated liabilities

Include all subordinated debt issued by the reporting institution. *Building societies* should include *PIBS* here.

30A - 30G Capital

Includes called up share capital and reserves.

31A - 31G Total liabilities

This is the total of elements 15, 16, 18, 20, 26 and 28 and will also equal total assets.

Off-balance sheet elements**Maturity (columns B - D)**

Firms should include in column B any commitments, contingent liabilities or undrawn credit lines inward that are either unconditionally cancellable.

Commitments, contingent liabilities or undrawn credit lines inward with a residual maturity up to one year should be included in column C and commitments, contingent liabilities or undrawn credit lines inward with a residual maturity over one year should be included in column D.

32 Contingent liabilities

This includes:

- (a) transaction-related contingents, such as performance bonds, warranties and indemnities; bid or tender bonds; advance payment guarantees; VAT, customs and excise bonds; standby letters of credit relating to a particular contract or to non-financial transactions (including arrangements backing, inter alia, subcontractors' and suppliers' performance, labour and materials, contracts, and construction bids); and
- (b) trade-related contingents, including short-term, self liquidating trade-related items such as documentary letters of credit issued by the reporting entity which are, or are to be, collateralised by the underlying shipment; endorsements of bills; direct credit substitutes (including guarantees, standby letters of credit serving as financial guarantees, bills accepted by the reporting entity but not held by it, 'per aval' endorsements and other endorsements with equivalent effect); claims sold with recourse, where the credit risk remains with the reporting bank; transaction related contingents not having the character of direct credit substitutes (including tender and performance bonds, bid bonds, warranties, standby letters of credit related to particular transactions, retention money guarantees, import and export excise duty bonds, VAT bonds); undrawn documentary letters of credit issued or confirmed; and those arising from similar transactions entered into by the reporting institution.

The following should be excluded: indemnities in respect of lost share certificates and import/export carnets; bill endorsements on bills already endorsed by another bank; and where the reporting institution acts as a lessor, mortgagee, or owner of goods under a hire-purchase agreement, those contingent liabilities which may result from injuries, damage or loss suffered by third parties and caused by the goods.

33 Of which: subject to credit downgrade

Include any contingent liabilities that are cancellable by the reporting institution as a result of deterioration in the obligor's creditworthiness.

34 Commitments

Include commitments for loans and other on-balance sheet items with certain drawdown. Rolling or undated/open-ended commitments should be included providing that they are unconditionally cancellable at any time without notice and subject to credit review at least annually. Unused credit card lines and liquidity facilities provided to ABCP conduits should be reported.

35 Of which: subject to credit deterioration

Include any commitments that are cancellable by the reporting institution as a result of deterioration in the obligor's creditworthiness.

36 Of which: Liquidity facilities to third party ABCP conduits

Include any liquidity facilities provided to third party Asset Backed Commercial Paper conduits or equivalent structured vehicles.

37 Of which: Liquidity facilities to own (sponsored) ABCP conduits

Include any liquidity facilities provided to own (sponsored) Asset Backed Commercial Paper conduits or equivalent structured vehicles.

38 Undrawn credit lines inward

Report here any facilities which have been committed to the reporting institution and which at the reporting date remain undrawn.

39 Of which: subject to credit deterioration

Include any credit lines inward that are cancellable as a result of deterioration in the reporting institution's creditworthiness.

FSA044 – Maturity of assets and deposits - validations

Internal validations

Data elements are referenced by row then column

Validation number	Data element		
1	1A	=	1B+1C+1D+1E+1F+1G
2	2A	=	2B+2C+2D+2E+2F+2G
3	2A	>=	3A+4A
4	2B	>=	3B+4B
5	2C	>=	3C+4C
6	2D	>=	3D+4D
7	2E	>=	3E+4E
8	2F	>=	3F+4F
9	2G	>=	3G+4G
10	3A	=	3B+3C+3D+3E+3F+3G
11	4A	=	4B+4C+4D+4E+4F+4G
12	5A	=	5B+5C+5D+5E+5F+5G
13	5A	>=	6A+7A
14	5B	>=	6B+7B
15	5C	>=	6C+7C
16	5D	>=	6D+7D
17	5E	>=	6E+7E
18	5F	>=	6F+7F
19	5G	>=	6G+7G
20	6A	=	6B+6C+6D+6E+6F+6G
21	7A	=	7B+7C+7D+7E+7F+7G
22	8A	=	8B+8C+8D+8E+8F+8G
23	9A	=	9B+9C+9D+9E+9F+9G
24	9A	<=	8A
25	9B	<=	8B
26	9C	<=	8C
27	9D	<=	8D
28	9E	<=	8E
29	9F	<=	8F
30	9G	<=	8G
31	10A	=	10B+10C+10D+10E+10F+10G
32	11A	=	11B+11C+11D+11E+11F+11G

33	11A	<=	10A
34	11B	<=	10B
35	11C	<=	10C
36	11D	<=	10D
37	11E	<=	10E
38	11F	<=	10F
39	11G	<=	10G
40	12A	=	12B+12C+12D+12E+12F+12G
41	12A	=	1A+2A+5A+8A+10A
42	12B	=	1B+2B+5B+8B+10B
43	12C	=	1C+2C+5C+8C+10C
44	12D	=	1D+2D+5D+8D+10D
45	12E	=	1E+2E+5E+8E+10E
46	12F	=	1F+2F+5F+8F+10F
47	12G	=	1G+2G+5G+8G+10G
48	14A	=	12A+13A
49	15A	=	15B+15C+15D+15E+15F+15G
50	16A	=	16B+16C+16D+16E+16F+16G
51	17A	=	17B+17C+17D+17E+17F+17G
52	17A	<=	16A
53	17B	<=	16B
54	17C	<=	16C
55	17D	<=	16D
56	17E	<=	16E
57	17F	<=	16F
58	17G	<=	16G
59	18A	=	18B+18C+18D+18E+18F+18G
60	19A	=	19B+19C+19D+19E+19F+19G
61	19A	<=	18A
62	19B	<=	18B
63	19C	<=	18C
64	19D	<=	18D
65	19E	<=	18E
66	19F	<=	18F
67	19G	<=	18G
68	20A	=	20B+20C+20D+20E+20F+20G
69	20A	>=	21A+22A+23A+24A+25A
70	20B	>=	21B+22B+23B+24B+25B
71	20C	>=	21C+22C+23C+24C+25C
72	20D	>=	21D+22D+23D+24D+25D
73	20E	>=	21E+22E+23E+24E+25E
74	20F	>=	21F+22F+23F+24F+25F
75	20G	>=	21G+22G+23G+24G+25G
76	21A	=	21B+21C+21D+21E+21F+21G
77	22A	=	22B+22C+22D+22E+22F+22G
78	23A	=	23B+23C+23D+23E+23F+23G
79	24A	=	24B+24C+24D+24E+24F+24G
80	25A	=	25B+25C+25D+25E+25F+25G

81	26A	=	26B+26C+26D+26E+26F+26G
82	27A	=	27B+27C+27D+27E+27F+27G
83	27A	<=	26A
84	27B	<=	26B
85	27C	<=	26C
86	27D	<=	26D
87	27E	<=	26E
88	27F	<=	26F
89	27G	<=	26G
90	28A	=	28B+28C+28D+28E+28F+28G
91	29A	=	29B+29C+29D+29E+29F+29G
92	30A	=	30B+30C+30D+30E+30F+30G
93	31A	=	31B+31C+31D+31E+31F+31G
94	31A	=	14A
95	31A	=	15A+16A+18A+20A+26A+28A+29A+30A
96	31B	=	15B+16B+18B+20B+26B+28B+29B+30B
97	31C	=	15C+16C+18C+20C+26C+28C+29C+30C
98	31D	=	15D+16D+18D+20D+26D+28D+29D+30D
99	31E	=	15E+16E+18E+20E+26E+28E+29E+30E
100	31F	=	15F+16F+18F+20F+26F+28F+29F+30F
101	31G	=	15G+16G+18G+20G+26G+28G+29G+30G
102	32A	=	32B+32C+32D
103	33A	=	33C + 33D
104	33A	<=	32A
105	33C	<=	32C
106	33D	<=	32D
107	34A	=	34B+34C+34D
108	35A	=	35C + 35D
109	35A	<=	34A
110	35C	<=	34C
111	35D	<=	34D
112	36A	=	36B + 36C + 36D
113	36A	<=	34A
114	36B	<=	34B
115	36C	<=	34C
116	36D	<=	34D
117	37A	=	37B + 37C + 37D
118	37A	<=	34A
119	37B	<=	34B
120	37C	<=	34C
121	37D	<=	34D
122	38A	=	38B + 38C + 38D
123	39A	=	39C + 39D
124	39A	<=	38A
125	39C	<=	38C
126	39D	<=	38D

External validations

There are no external validations for this data item.

FSA045 – IRB portfolio risk

This data enables the FSA to understand the relationship between cyclicality and capital requirements under the CRD, help mitigate the risk of financial instability or economic recession, and be in a position to influence/contribute to international discussions on this. The information provided should be that used to calculate the *firm's* capital requirements. *Firms* should submit the data in their own PD bands.

Currency

You should report in the currency of your annual audited accounts ie in Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s, to 3 decimal places.

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

PiT, TTC or Hybrid PiT

This should be based on the firm's rating philosophy.

Point in Time (PiT): A rating system which explicitly estimates default risk over a fixed period, typically one year.

Through the Cycle (TTC): A rating system which seeks to take cyclical volatility out of the estimation of default risk by assessing a borrower's performance over the business cycle.

Hybrid PiT: A rating system which sits in-between the PiT and TTC ratings systems described above.

Definition of default – number of days

The exact number of days past due that is applied to each asset class as part of the definition of default.

PD range

The lower bound of the first band must start at 0.000. The upper bound of the last band must not exceed 100.000.

Gross exposure value

Exposure before taking into account credit risk mitigation and credit conversion factors (CCFs).

Exposure at default estimate

Calculate in accordance with *BIPRU* 4. This should be the downturn EAD.

Maturity

This is the exposure weighted average maturity in days.

PD – probability of default

The probability of default of a counterparty over a one year period, calculated in accordance with *BIPRU* 4. This should be the long-run PD.

LGD – Loss given default

The ratio of the loss on an *exposure* due to the default of a counterparty to the amount outstanding at default, calculated in accordance with *BIPRU* 4. This should be the downturn LGD.

Expected loss

Calculate in accordance with *BIPRU* 4.

Risk weighted exposure amount

Calculate in accordance with *BIPRU* 4.

FSA045 – IRB portfolio risk validations**Internal validations**

PD bands should be mutually exclusive and numerically sequential.

External validations

There are no validations for this data item.

FSA046 – Securitisation

This data item allows a greater understanding of the prudential risk profile of the firm and avoids the need for ad hoc data requests from firms. It also enables the FSA to lead debate on credit risk transfer in international discussions.

Currency

You should report in the currency of your annual audited accounts ie in either Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s.

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

3A Programme name

Enter the common name of the programme in the market.

3B Asset class

This is the class of assets securitised in accordance with the options in FSA004 with an additional entry for "Asset Backed Commercial Paper Programme".

3C Originator's interest

See *BIPRU* 9.13.4R (1). The exposure value should be used.

3D Investors' interest

See *BIPRU* 9.13.4R (3). The exposure value should be used.

3E Location of investor reports

Provide either a URL to the location of the investor reports published on the performance of the assets or, if not available via the internet, a description of where to find the investor reports.

3F Assets appear in FSA001?

Yes/No to indicate whether the assets appear on the balance sheet provided in FSA001.

3G BIPRU 9.3.1 applied?

Yes/No to indicate whether the assets have been excluded from the calculation of *risk weighted exposure amounts* under *BIPRU 9.3.1R*.

3H BIPRU 9.13 applies?

Yes/No to indicate whether the transaction is a *securitisation of revolving exposures* with an *early amortisation* provision.

Risk positions – standardised exposures

All *exposures* that are treated under *BIPRU 9.11* should be shown in this section, broken down by credit quality and how the *exposure* arose.

Row 4

This is for *exposures* where the *firm* originated the underlying assets.

Row 5

This is for *exposures* to *Asset backed commercial paper programmes*.

Row 6

This is the exposure values generated under *BIPRU 13* where the *exposure* is also a *securitisation* position.

Row 7

This is for any standardised *exposures* not included in *data elements 4 – 6* above.

Columns A – D

Positions should be split by credit rating according to *BIPRU 9.11.2R* and *BIPRU 9.11.3R*.

Column E

This is for positions deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

Risk positions – IRB exposures

All *exposures* that are treated under *BIPRU 9.12* should be shown in this section, broken down by credit quality, granularity and how the *exposure* arose.

Rows 8 – 10

This is for *exposures* where the *firm* originated the underlying *exposures*.

Rows 11 – 13

This is for *exposures* to *Asset backed commercial paper programmes*.

Rows 14 – 16

This is for exposure values generated under *BIPRU* 13 where the *exposure* is also a *securitisation* position.

Rows 17 – 19

This covers any IRB *exposures* not included above.

Columns A – M

This should be split by credit rating according to *BIPRU* 9.12.11R and *BIPRU* 9.12.12R.

Column N

This is for positions calculated under *BIPRU* 9.12.21R to *BIPRU* 9.12.23R.

Column O

This is for positions deducted from capital at part 1 of stage M of the capital calculations in *GENPRU* 2, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

FSA046 – Securitisation validations**Internal validations**

There are no validations for this data item.

External validations

There are no validations for this data item.

Part 4: Comes into force on 6 March 2008

Sup 16 Ann 18 BG

...

Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Section J: data required for the calculation of fees

...

For reporting dates ~~up to and including~~ after end February 2008, ~~firms with an *accounting reference date* of between 1 February and 31 August (inclusive) should report the information required in this section on their half year end RMAR.~~ Thus a firm that is due to report on 29 February 2008, that has an *accounting reference date* of 31 August, should report its fees data on that return. However, thereafter, it should, like all other *firms*, must report the information only in their year end *RMAR*. ...

Part 5: Comes into force on 1 May 2008

SUP 16

...

16.8.8 R A persistency report or data report must report on a *life policy* or stakeholder pension if:

...

- (3) the *person* who sold it or who was responsible for its promotion was, in so doing, subject to *rules in COBS* ~~or (before commencement) conduct of business rules made by a previous regulator.~~

...

SUP 16 Annex 5R

The following is text taken directly from .pdf versions of forms found in the "Forms" section of the online handbook. The references to page numbers are to the .pdf page numbers, and NOT the page numbers as they appear at the bottom of the pages.

p7

Own Funds Test (~~ISD firms subject to IPRU(INV) 5.2.3.(1).(b)R~~) (Firms subject to IPRU(INV) 5.2.3.(1).(b)R)

...

Own Funds Test (~~Non-ISD Firms subject to IPRU(INV) 5.2.3.(2)R~~) (Firms subject to IPRU(INV) 5.2.3.(2)R)

...

Surplus / Deficit of Liquid Capital

For an ~~ISD~~ Firm on a 6 week EBR = (A) – the greater of (B) or (C)

p9

4. LARGE EXPOSURES (~~ISD~~ MiFID Firms only)

p15

Own Funds Test (~~ISD firms subject to IPRU(INV) 5.2.3.(1).(b)R~~) (Firms subject to IPRU(INV) 5.2.3.(1).(b)R)

...

Own Funds Test (~~Non-ISD Firms subject to IPRU(INV) 5.2.3.(2)R~~) (Firms subject to IPRU(INV) 5.2.3.(2)R)

...

Surplus / Deficit of Liquid Capital

For an ISD Firm on a 6 week EBR = (A) – the greater of (B) or (C)

p16

4. LARGE EXPOSURES (~~ISD~~ MiFID Firms only)

p22

Own Funds Test (~~ISD firms subject to IPRU(INV) 5.2.3.(1).(b)R~~) (Firms subject to IPRU(INV) 5.2.3.(1).(b)R)

...

Own Funds Test (~~Non-ISD Firms subject to IPRU(INV) 5.2.3.(2)R~~) (Firms subject to IPRU(INV) 5.2.3.(2)R)

...

Surplus / Deficit of Liquid Capital

For an ISD Firm on a 6 week EBR = (A) – the greater of (B) or (C)

SUP 16 Annex 10 R

The following is text taken directly from .pdf versions of forms found in the "Forms" section of the online handbook. The references to page numbers are to the .pdf page numbers, and NOT the page numbers as they appear at the bottom of the pages.

p. 4

DECLARATION

- (a) This statement has been drawn up in accordance with the ~~rules in IPRU(INV) 10~~ relevant rules which are ~~relevant~~ applicable to the firm in calculating the firm's financial resources. It has been prepared from, and is in agreement with, the books and records of the firm.
- (b) The firm's accounting records, systems and controls are maintained in accordance with ~~IPRU(INV) 10~~ the relevant rules applicable to the firm based on the firm's business activities and SYSC 3.2.20R.
- (c) ...

(d) Since the date of the last reporting statement, the firm has/has not* been in compliance with ~~IPRU(INV) 10~~ the relevant rules applicable to the firm based on the firm's business activities except as already notified to the FSA. { * Delete as appropriate }

(e) ...

p. 12

Positions netted under ~~IPRU(INV) 10-83R~~

111		111		111	
----------------	--	----------------	--	----------------	--

p. 15

Positions netted under ~~IPRU(INV) 10-102R~~

110		111		111	
----------------	--	----------------	--	----------------	--

p. 26

Client Money And Other Assets (~~COB 9.3.141—COB 9.3.144~~ CASS 4.3.106AG – CASS 4.3.110R)

p. 30

DECLARATION

(a) This statement has been drawn up in accordance with the ~~rules in IPRU(INV) 10~~ relevant rules which are ~~relevant~~ applicable to the firm in calculating the firm's financial resources. It has been prepared from, and is in agreement with, the books and records of the firm.

(b) The firm's accounting records, systems and controls are maintained in accordance with ~~IPRU(INV) 10~~ the relevant rules applicable to the firm based on the firm's business activities and SYSC 3.2.20R.

(c) ...

(d) Since the date of the last reporting statement, the firm has/has not* been in compliance with ~~IPRU(INV) 10~~ the relevant rules applicable to the firm based on the firm's business activities except as already notified to the FSA. { * Delete as appropriate }

(e) ...

p.46

Client Money And Other Assets (~~COB 9.3.141—COB 9.3.144~~ CASS 4.3.106AG – CASS 4.3.110R)

p. 51

DECLARATION

- (a) This return has been drawn up in accordance with the ~~rules in IPRU(INV) 10~~ relevant rules based on the firm's business activities and guidance in SUP 16 Ann 11G relating to Large Exposures Monitoring.
- (b) The firm's accounting records systems and controls are maintained in accordance with ~~IPRU(INV) 10~~ the relevant rules based on the firm's business activities and SYSC 3.2.20R.
- (c) ...
- (d) Since the date of the last reporting statement, the firm has been in compliance with ~~IPRU(INV) 10~~ the relevant rules based on the firm's business activities except as already notified to the FSA.
- (e) ...

p. 54

DECLARATION

- (a) This return has been drawn up in accordance with the ~~rules in IPRU(INV) 10~~ relevant rules based on the firm's business activities and guidance in SUP 16 Ann 11G relating to Large Exposures Monitoring.
- (b) The firm's accounting records systems and controls are maintained in accordance with ~~IPRU(INV) 10~~ the relevant rules based on the firm's business activities and SYSC 3.2.20R.
- (c) ...
- (d) Since the date of the last reporting statement, the firm has been in compliance with ~~IPRU(INV) 10~~ the relevant rules based on the firm's business activities except as already notified to the FSA.
- (e) ...

p. 56

Please list all material holdings in Credit and Financial Institutions, ~~per IPRU(INV) 10-61R(7)~~ on the form provided.

SUP 16 Annex 11G

In the following is text, the references to page numbers are to the .pdf page numbers, and NOT the page numbers as they appear at the bottom of the pages.

p.3

~~IPRU(INV) 10-10R~~ Keeping of records

A firm must be able to demonstrate compliance with the relevant financial resources requirements and should be able to prepare, within a reasonable time, this reporting statement as at the close of business of any date. The audit trail, records, working papers and schedules supporting the production of this reporting statement must be retained for six years, maintained and secured in an orderly manner so as to permit ready access to any particular record required under SUP 2.

p.6

7. Cash at Bank and in Hand

Segregated client moneys on the balance sheet must be disclosed separately from other non segregated funds. Non segregated funds must be divided into qualifying and non qualifying deposits in accordance with the definition in IPRU(INV) 40 3 App 1.

p.8

F. EXPENDITURE

21. This section should show the expenditure for the period reported on under each of the headings specified below. Expenditure should be split between those items included in relevant annual expenditure and those excluded from relevant annual expenditure ~~under IPRU(INV) 10-73R~~ (see G below).

p.10

34. Exceptional items

A firm may exclude exceptional items as defined in IPRU(INV) 40 3 App 1.

p.18

~~IPRU(INV) 10-10R~~ Keeping of records

A firm must be able to demonstrate compliance with the relevant financial resources requirements and should be able to prepare, within a reasonable time, this reporting statement as at the close of business of any date. The audit trail, records, working papers and schedules supporting the production of this reporting statement must be retained for six years, maintained and secured in an orderly manner so as to permit ready access to any particular record required under SUP 2.

p.40

~~Group of connected third parties~~ Connected parties

~~A group of connected third parties is defined in IPRU(INV) 10 App 1. A pension fund or other trust fund of the group should not be classified as connected for the purposes of this return. Those counterparties which merge during the reporting period, should be included as connected counterparties from the date the offer goes unconditional. In such cases the exposure exposure to these individual counterparties should be aggregated and considered as a single exposure exposure to a group of closely related counterparties. Exposures Exposures to a number of public sector bodies, or local authorities are deemed not to constitute a single exposure exposure to a group of connected counterparties. Where consolidated quarterly reporting on a sub-group basis has been requested, then all group exposures exposures outside the sub-group should be included in Part 2.~~

p.41

Credit institutions/Investment firms/ Third Country Investment Firm/Clearing Houses and Exchanges

~~Definitions are provided in IPRU(INV) 10 App 1, the Handbook Glossary, with the exception of Exchanges which is defined in 9 App 1 and lists of recognised clearing houses and exchanges recognised for these purposes are shown in IPRU(INV) 10 Appendix 57.~~

Part 6: Comes into force on 30 September 2008

SUP 16 Annex 18AR

The following 14 pages set out the insertions and deletions within the Retail Mediation Activities Return ('RMAR')

SECTION A: Balance sheet

Fixed assets

Intangible assets	
Tangible assets	
Investments	
TOTAL FIXED ASSETS	

Current assets

Stocks	
Debtors	
Investments held as current assets	
Cash at bank and in hand	
Other assets	
TOTAL CURRENT ASSETS	

Liabilities: amounts falling due within one year

Bank loans and overdrafts	
Other liabilities falling due within one year	
TOTAL AMOUNTS FALLING DUE WITHIN ONE YEAR	

Net current assets

Total assets less current liabilities

Other liabilities falling due after more than one year

Provisions for liabilities and charges

Net assets

Memo: guarantees provided by firm

~~**Memo: personal net assets**~~

~~**Memo: Goodwill**~~

Capital and reserves

Capital account (incorporated businesses)

Ordinary share capital	
Preference share capital	
Share premium account	
Profit and Loss account	
Other reserves	
TOTAL CAPITAL AND RESERVES	

Was the firm's last annual accounts audit report qualified? **Y/N**

Capital account (unincorporated businesses)

Sole trader/Partners' capital account	
Sole trader/Partners' current account	
TOTAL CAPITAL AND RESERVES	

SECTION B: Profit and Loss account

B1: Regulated Business Revenue

	Commissions		Fees	Other income (reg activities)	Regulated business revenue (annual income)
	Gross	Net			
Regulated mortgage contracts					
Non-investment insurance					
Retail investments					
TOTAL					

B2: Other P&L

Income from other <u>FSA</u> regulated activities	
Other Revenue (income from non-regulated activities)	
TOTAL REVENUE	
TOTAL EXPENDITURE	
Profit/(Loss) on ordinary activities before taxation	
Profit/(Loss) on extraordinary activities before taxation	
Taxation	
Profit/(Loss) for the period before dividends and appropriations	
Dividends and other appropriations	
Retained Profit	

SECTION C: Client money and assets

Have any notifiable client money issues been raised, either in the firm's last client assets audit report or elsewhere, that have not previously been notified to the FSA?

Y / N

How is your client account(s) set up (tick all that apply)?

Non-investment insurance

Retail investments

Risk Transfer	Segregated Trusts	
	Statutory	Non-statutory
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If not risk transfer:

Client money credit total as at reporting date

Client money debit total as at reporting date

Net client money balance as at reporting date

Non-investment insurance		Retail investments
Statutory	Non-statutory	Statutory
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Yes / No

If non-statutory, has auditor's confirmation of systems and controls been obtained?

Yes / No

Is any client money invested (other than on deposit)?

Yes / No

Do you hold client money for business undertaken by an AR?

Does the firm hold any client assets (other than client money)?

Mortgage	Non-investment	
	insurance	Retail investments
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION D2: FINANCIAL RESOURCES - NON-ISD PERSONAL INVESTMENT FIRMS

OWN FUNDS (TEST 1)		ADJUSTED NET CURRENT ASSETS (TEST 1A)		EXPENDITURE-BASED REQUIREMENT (TEST 2)	
	£		£		£
1 Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)		18 Net current assets (from balance sheet)		25 Total assets less total liabilities (from balance sheet)	
2 Share premium account		less		26 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part I adjustments required against assets	
3 Audited retained profits		19 Long term assets adjustment		27 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for subordinated loans	
4 Verified interim profits		20 Connected persons adjustment		28 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for indemnity commission	
5 Revaluation reserves		21 Investments adjustments		29 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for deficiencies in subsidiaries	
6 Short term subordinated loans				30 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for contingent liabilities	
7 Debt capital				31 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for foreign exchange risk	
8 Balances on proprietors' or partners' capital accounts				32 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for redeemable preference shares	
9 Balances on proprietors' or partners' current accounts				33 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II adjustment for derivatives	
10 Personal assets				34 IPRU(INV) Table 13.12.3(1)/ 13.12.3(2) Part II other adjustments against liabilities	
11 Less intangible assets					
12 Less material current year losses					
13 Less excess of current year drawings over current year losses					
14 PASS Loan Adjustments					
15 OWN FUNDS (1+2+3+4+5+6+7+8+9+10-11-12-13+14)		22 ADJUSTED NET CURRENT ASSETS (18-19-20-21)		35 ADJUSTED CAPITAL/ LIQUID CAPITAL [(25+27)-26-28-29-30-31-32-33-34]	
16 Own funds requirement		23 Requirement		36 Expenditure requirement per IPRU(INV) 13.12	
17 SURPLUS/(DEFICIT) (15-16)		24 SURPLUS/(DEFICIT) (22-23)		37 SURPLUS/(DEFICIT) (35-36)	

SECTION D3: FINANCIAL RESOURCES – ISD PERSONAL INVESTMENT FIRMS

OWN FUNDS (TEST 1)

ADJUSTED NET CURRENT ASSETS (TEST 1A)

EXPENDITURE-BASED REQUIREMENT (TEST 2)

1 Paid up ordinary share capital		23 Net current assets (from balance sheet)		30 Total assets less total liabilities (from balance sheet)	
2 Share premium account		24 Less: long term assets adjustment		31 Illiquid asset adjustments	
3 Audited reserves (excluding revaluation reserve)		25 Less: connected persons adjustment		32 Counterparty risk adjustments	
4 Verified interim profits		26 Less: investments adjustments		33 Position risk adjustments	
5 Non-cumulative preference shares (if not redeemable by shareholders within 5 years)				34 Foreign exchange risk adjustments	
6 Balances on proprietors' or partners' capital accounts				35 Preference shares adjustments	
7 Balances on proprietors' or partners' current accounts (audited or verified)				36 Large exposure risk adjustments	
8 INITIAL CAPITAL (1+2+3+4+5+6+7)				37 Long term subordinated loans	
9 Less: investment in own shares				38 Short term subordinated loans	
10 Less: intangible assets				39 Sub total (30-31-32-33-34-35-36+37+38)	
11 Less: material current year losses				40 Preference shares (5+16+18)	
12 Less: material holdings in credit and financial institutions				41 Table 13.3.2(2) own funds restrictions	
13 Less: excess of current year drawings over current year profits				42 Balance A (38+40+41)	
14 ORIGINAL OWN FUNDS (8-9-10-11-12-13)				43 Balance B (14-33)	
15 Revaluation reserves				44 Balance C (43 x 250%)	
16 Cumulative preference share capital (if not redeemable by shareholders within 5 years)				45 If Balance A is greater than Balance C, enter difference	
17 Long term subordinated loans					
18 Preference share capital (if not redeemable by shareholders within 2 years) and debt capital					
19 OWN FUNDS (14+15+16+17+18)		27 ADJUSTED NET CURRENT ASSETS (23-24-25-26)		46 LIQUID CAPITAL (39-45)	
20 Own funds requirement IPRU(INV)13.3R		28 Requirement		47 Expenditure based requirement per IPRU(INV)13.5R	
21 Enter exchange rate € : £					
22 OWN FUNDS SURPLUS/(DEFICIT) (19-20)		29 SURPLUS/(DEFICIT) (27-28)		48 SURPLUS/ (DEFICIT) (46-47)	

SECTION E: Professional Indemnity Insurance (PII) Self-Certification

(The layout of this section has changed, but none of the data elements are new)

Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from holding PII in respect of any regulated activities (select as appropriate)?

H	I	J
Mortgage advising/arranging	Non-inv insurance advising/arranging/ dealing/assisting	Retail investment advising/arranging
Yes/No	Yes/No	Yes/No

If your firm does not hold a comparable guarantee or equivalent cover and is not exempt does the firm currently hold PII?

Yes / No	Yes / No	Yes / No
----------	----------	----------

Has your firm renewed its PII cover since the last reporting date

Yes / No	Yes / No	Yes / No
----------	----------	----------

PII Basic information										PII detailed information				
A	B			C	D	E	F	G	H	I	J	K	L	M
PII policy	Mortgage advising/arranging	Non-inv insurance advising/arranging /dealing/assisting	Retail investment advising/arranging	Retroactive start date (if any)	Annualised premium	Insurer (from list)	Start date	End date	Limit of indemnity received		Business line	Policy excess	Policy exclusions	
									Single	Aggregate				
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														

Annual income as stated on the most recent proposal form
 Amount of additional capital required for increased excess(es) (where applicable, total amount for all policies)
 Total amount of additional own funds required for policy exclusion(s)
 Total of additional own funds required
 Total of readily realisable own funds
 Excess /deficit of readily realisable own funds

H

SECTION F: Threshold conditions

~~Adequate resources~~

~~Does the firm have adequate resources in relation to its regulated activities?~~

Close links

Are you exempt from close links reporting requirements?

Has there been a notifiable change to the firm's close links?

~~If not, have there been changes to your close links since the FSA was last informed?~~

If yes, has the FSA been notified of it?

~~If yes, on what date did the changes take effect?~~

~~(if no notification has been made, please notify us separately of the changes)~~

~~Approved persons~~

~~Have there been changes to your approved persons' details since the FSA was last informed?~~

~~If yes, on what date did the changes take effect?~~

~~(if no notification has been made, please notify us separately of the changes)~~

Controllers

Are you exempt from the controllers reporting requirements?

Has there been a notifiable change to the firm's controllers including changes to the percentage of shares or voting power they hold in your firm?

~~If not, have there been changes to your controllers since the FSA was last informed?~~

If yes, has the FSA been notified of it?

~~If yes, on what date did the changes take effect?~~

~~(if no notification has been made, please notify us separately of the changes)~~

SECTION G: Training and Competence

	Mortgages		Advising on non-investment insurance (retail customers)	Retail investments		Total
	advising	arranging		advising	arranging	
Total number of all staff						
Of which:						
Number of staff that give advice						
Number of staff that give advice (Full time equivalent)						
Number of staff that supervise others to give advice						
Number of advisers that have been assessed as competent						
Number of advisers that have passed appropriate examinations						
Number of advisers that have left since the last reporting date						
Number of staff that take private customers through stakeholder pension-scheme decision trees						
Number of staff that supervise non-advised sales of lifetime mortgages						
Number of staff that design filtering questions for non-advised sales of lifetime mortgages						

What types of advice were provided?

(tick all that apply)

Independent (whole of market plus option of fee-only)

Whole of market (without fee-only option)

On the basis of a fair analysis of the market

Multi-tie / the products of a limited number of providers

Single-tie / the products of one provider

	<u>Mortgage</u>	<u>Non-Inv Insurance</u>	<u>Retail Investments</u>

Clawed back commission (retail investment firms only)

Clawed back commission by:

Number

Value

SECTION H: COBS Data

Sources of business: please tick all that apply

	Mortgage	Non-inv- insurance	Retail- investments
Marketing lists			
Referrals from non-authorized introducers			
Referrals from intermediaries			
Telephone sales			
Cold calling			
Sales visits			
Postal sales			
Direct offer financial promotions			
Repeat customers			
Internet Sales			
Other			

Advertising

Does your firm approve financial promotions and/or qualifying credit promotions?

--	--	--

Types of advertising: please tick all that apply

	Mortgage	Non-inv- insurance	Retail- investments
Newspaper			
Magazine			
T.V.			
Radio			
Internet			
Other			

Do you use one or more lists or panels of preferred product providers?

	y/n
--	-----

If yes, indicate the applicable types of business

	Mortgage	Non-inv- insurance	Retail- investments

What (if known) is the total number of providers on the panel(s)?

--

How often (if known) are the panel(s) reviewed?

--

General COBS data

Do FSA regulated activities form the core business of the firm?

--

If not, specify type of core business:

--

Do you give independent advice?

	Mortgage	Non-Inv- Insurance	Retail- Investments

Clawed back commission (retail investment firms only)

Clawed back commission by:

Number	Value

Complaints

Does the firm have complaints handling procedures?

	y/n
--	-----

Monitoring of Appointed Representatives ('ARs')

Number of ARs registered with the firm

--

Of which, number of 'secondary' ARs

--

Of which, number of introducer ARs

--

Number of advisers within ARs

--

(Only firms that have ARs)
Does the firm have appropriate systems and procedures to ensure that the activities of its ARs are effectively monitored and controlled?

--

Number of ARs that have been subject to monitoring visits by the firm during the reporting period.

--

Number of ARs that have been subject to file reviews by the firm during the reporting period.

--

Number of ARs that have been subject to financial checks by the firm during the reporting period.
Has any other monitoring of ARs by the firm taken place?

SECTION I: supplementary product sales data

(i) non-investment insurance product information

- 1 Total non-investment insurance premium derived from retail customers
- 2 Please indicate in column **A** each product type where the firm has advised or arranged transactions for retail customers during the reporting period
- 3 Please indicate in column **B** where the firm's business with retail customers in the product type formed more than 40% by premium of all of its retail non-investment insurance activities

(ii) non-investment insurance chains

- 3 Total non-investment insurance premium derived from retail customers
- 4 Of this business, please indicate in column C the products where retail sales were passed up a chain and in column D where this business is significant*
- 4 Of total non-investment insurance premiums derived from retail customers, please indicate in column D the products where these sales were passed up a chain and this business was significant*
 *significant is where premium collected from being in a chain for this product amounts to
 1) more than 40% of the premium collected for all non-investment insurance activities with retail customers, or
 2) more than 40% of premium collected for all retail business in this product
- 6 Please also indicate in column **E** where the firm has dealt directly with the retail customer within the chain

Product types:	A y/n	B y/n	C y/n	D y/n	E y/n	F y/n	G y/n
Private motor							
Household							
Creditor - Payment protection							
Travel							
Personal accident - sickness							
Legal expenses							
Private Medical Insurance (PMI)							
Critical illness							
Private Health Insurance (PHI)							
Life assurance (or term assurance)							
HealthCare cash plan							
Extended warranty (motor only)							

(iii) dealing as agent

- If you deal as agent for non-investment insurance contracts:
 Please provide:
- 7 Number of sales to retail customers during the reporting period where the firm dealt as agent
- 8 Premium paid by retail customers during the reporting period where the firm dealt as agent
- 9
- 10 Of the total of these sales, please indicate in column F the products where the firm dealt as agent and in column G where this business is significant*.
 *significant is where premium collected from dealing as agent in this product amounts to
 1) more than 40% of the premium collected for all non-investment insurance activities with retail customers, or
 2) more than 40% of premium collected for all retail business in this product

(iv) claims handling

- If you assist in the administration and performance of contracts of insurance:
 Please provide:
- 11 Number of claims handled on behalf of customers during the reporting period

(v) Lloyd's brokers - product sales data

	Retail	Commercial	Reinsurance	Total
12 % of regulated business revenue	<input type="text"/>	<input type="text"/>	<input type="text"/>	100%

Round to nearest 20% and ensure figures add to 100%

SECTION J: ~~date~~data required for calculation of fees

Income for fees calculations

	FSA	FOS	FSCS
Mortgage mediation	[See <i>FEES</i> 4 Annex 1R Part 2 fee block A18]	[See <i>FEES</i> 5 Annex 1R industry block 16]	<i>FEES</i> 6.5.10R
Non-investment insurance mediation	[See <i>FEES</i> 4 Annex 1R Part 2 fee block A19]	[See <i>FEES</i> 5 Annex 1R industry block 17]	<i>FEES</i> 6.5.11R
Investment mediation	[See <i>FEES</i> 4 Annex 1R Part 2 fee blocks A12/13]	[See <i>FEES</i> 5 Annex 1R industry block 8/9]	<i>FEES</i> 6.5.9R contribution groups A12/13

SUP 16 Annex 18BG

...

Introduction: general notes on the RMAR

...

Key abbreviations

5. The following table summarises the key abbreviations that are used in these notes:

...	...
COBS	The <u>New</u> Conduct of Business sourcebook, part of the FSA Handbook
...	...

Scope

6. The following *firms* are required to complete the ~~RMAR~~ RMAR:

...

(c) *firms* (defined as *retail investment firms*) that have retail customers ~~private customers~~

...

...

The practical effect of the retail customer ~~private customer~~ limitation in the definition of *retail investment firms* is to exclude from the requirements *firms* that carry on *retail investment activities* exclusively with or for professional clients ~~intermediate customers~~ or eligible counterparties ~~market counterparties~~.

...

Application of RMAR sections

7. *Firms* conducting home ~~financing~~ finance providing activity or administering a home finance transaction (including those that carry on an activity that is treated as arranging in COBS – see MCOB 1.2.12) that also conduct the above activities are required to complete the RMAR in addition to other data requirements.

...

NOTES FOR COMPLETION OF THE RMAR

...

Section A: Balance sheet

...

The frequency of reporting for this section is determined by ~~SUP 16.7~~ 16.12.

...

Section C: Client Money and Assets

...

Section C: guide for completion of individual fields

...	...
Do you hold client money for business	If the <i>firm</i> has appointed representatives that

undertaken by an AR?	receive <i>client money</i> , you should state 'yes' here. The requirements of CASS 4.3.15R (investment activities) and /or CASS 5.5.18 (<i>insurance mediation activity</i>) should be adhered to in these circumstances.
...	...

Section D: Regulatory Capital

...

'Higher of' requirements

...

(ii) *personal investment firms* that carry on *retail investment activities*, but no other *designated investment business*. Capital requirements are calculated in Sections D2 ~~or D3~~ below as applicable.

...

Note on the scope of Sections D2, ~~D3, D4 & D5~~: *firms* that carry on *designated investment business* and are subject to the RMAR, but do not meet the definition of *personal investment firm*, i.e. are not subject to *IPRU(INV)* Chapter 13, will **not** be subject to ~~these~~this sections. ...

...

D1: In this sub-section, *firms* are required to complete the regulatory capital sections that are applicable for the types of business undertaken. The *personal investment firms* referred to in (ii) above are required to complete ~~one of~~ sections D2 ~~or D3~~ to arrive at the totals required in D1.

D2: this section is completed by *personal investment firms* that are **not** subject to the requirements of *ISD* *MiFID* and the *Capital Adequacy Directive* (CAD). It is used to calculate the financial resources and financial resources requirements set out in Chapter 13.10-12 of the Interim Prudential Sourcebook for Investment Businesses (*IPRU(INV)*). This in turn will provide the totals to be submitted in the D1 fields marked A to I as applicable.

D3: this section is completed by *personal investment firms* that **are** subject to the requirements of the *ISD* and CAD. It is used to calculate the financial resources and financial resources requirements set out in *IPRU(INV)* 13.3-5. This in turn will provide the totals to be submitted in the D1 fields marked A to I as applicable.

D4: this section is also completed by *personal investment firms* that are subject to the requirements of the *ISD* and CAD. It is used to complete the quarterly financial resources statement that is required from these *firms* under CAD.

D5: this section relates to the requirements imposed by CAD on *ISD* *personal investment firms* in relation to *large exposures*.

Section D1: guide for completion of individual fields

...

Home finance and non-investment insurance mediation (see sub paragraph (i) above)	
...	
IPRU(INV) requirements for personal investment firms (retail investment activities only)	<i>Firms</i> that carry on <i>retail investment activities</i> , but no other <i>designated investment business</i> , are subject to this section. It is populated from section D2 or D3 as applicable (see sub paragraph (ii) above).
...	
Own funds requirement	See Section D2 or D3 as applicable ... ISD <i>Firms</i> see section IPRU (INV) 13.3 Non- ISD <i>MiFID Firms</i> see section IPRU (INV) 13.10 ...
<u>Additional own funds requirement for PII (if applicable)</u>	<u>If the <i>firm</i> has increased excesses or exclusions on its PII policies, the total of the additional capital requirements required by IPRU(INV) 13.1.4 should be recorded here. See also section E of the RMAR.</u>
<u>Other FSA capital requirements (if applicable)</u>	<u>The FSA may from time to time impose additional requirements on individual <i>firms</i>. If this is the case for your <i>firm</i>, you should enter the relevant amount here. This excludes capital requirements in relation to PII, which are recorded above.</u>
<u>Total own funds requirement</u>	<u>Appropriate totals from above.</u>
Own funds	See Section D2 or D3 as applicable This field should be filled in using the figure for own funds that is derived from the calculation in Section D2 or D3 as applicable. Own funds should be calculated in accordance with Chapter 13 of the Interim Prudential Sourcebook for Investment Firms. ISD <i>Firms</i> see IPRU (INV) 13.3 Non- ISD <i>MiFID Firms</i> see IPRU (INV) 13.10 Source data for the own funds calculation should be entered in the separate financial resources section for ISD <i>firms</i> or non-ISD <i>MiFID</i> firms as applicable.
Surplus/deficit of own funds	See Section D2 or D3 as applicable

	<p>This field should be filled in using the figure for own funds that is derived from the calculation in Section D2 or D3 as applicable.</p> <p>...</p>
Additional own funds requirement for PII (if applicable)	<p>If the <i>firm</i> has increased excesses or exclusions on its PII policies, the total of the additional capital requirements required by <i>IPRU (INV)</i> 13.1.4 should be recorded here. See also section E of the RMAR.</p>
Other <i>FSA</i> capital requirements (if applicable)	<p>The <i>FSA</i> may from time to time impose additional requirements on individual <i>firms</i>. If this is the case for your <i>firm</i>, you should enter the relevant amount here. This excludes capital requirements in relation to PII, which are recorded above.</p>
Adjusted net current assets requirement (if applicable)	<p>See Section D2 or D3 as applicable</p> <p>...</p>
Adjusted net current assets (if applicable)	<p>See Section D2 or D3 as applicable</p> <p>...</p> <p>This field should be filled in using the figure for adjusted net current assets that is derived from the calculation in Section D2 or D3 as applicable. ...</p> <p><i>ISD firms</i> see <i>IPRU (INV)</i> 13.4 Non-<i>ISD</i><u><i>MiFID</i></u> <i>firms</i> see <i>IPRU (INV)</i> 13.11</p>
Surplus/deficit (if applicable)	<p>See Section D2 or D3 as applicable</p> <p>...</p> <p>This field should be filled in using the figure for surplus/deficit that is derived from the calculation in section D2 or D3 of the data requirements.</p> <p>...</p>
Expenditure based requirement (if applicable)	<p>See Section D2 or D3 as applicable</p> <p>....</p> <p><i>ISD firms</i> see <i>IPRU (INV)</i> 13.5 Non-<i>ISD</i><u><i>MiFID</i></u> <i>firms</i> see <i>IPRU (INV)</i> 13.12</p>
Adjusted Capital/liquid capital (if applicable)	<p>See Section D2 or D3 as applicable</p> <p>This field should be filled in using the figure for adjusted capital/liquid capital that is derived from the calculation in Section D2 or D3 as applicable.</p> <p>...</p> <p><i>ISD firms</i> see <i>IPRU (INV)</i> 13.5 Non-<i>ISD</i><u><i>MiFID</i></u> <i>firms</i> see <i>IPRU (INV)</i> 13.12</p> <p>...</p>
Surplus/deficit (if applicable)	<p>See Section D2 or D3 as applicable</p> <p>This field should be filled in using the figure</p>

	for surplus/deficit that is derived from the calculation in Section D2 or D3 as appropriate. ...
--	---

...

Section D2: non-~~ISD~~MiFID personal investment firms

This section is for non-~~ISD~~MiFID personal investment firms. Its purpose is to assist in calculating the financial resources data that is required in section D1 above, based on the requirements of *IPRU(INV)* 13.10 to 13.12.

All non-~~ISD~~MiFID personal investment firms are required to meet the Own Funds financial resources test as follows:

Own Funds (test 1)

IPRU(INV) requires that all non-~~ISD~~MiFID personal investment firms have financial resources of at least £10,000 at all times.

...

Section D3: ~~ISD~~ personal investment firms

This section will no longer be applicable for reporting dates after 29 June 2008. Until then, firms should complete this section in accordance with the guidance give below. This section of the data requirements is provided for ~~ISD~~ personal investment firms, to assist in calculating the financial resources data that is required in section D1 above, based on the requirements of *IPRU(INV)* 13.2-5. All ~~ISD~~ personal investment firms are required to meet the following three financial resources tests:

Own Funds (test 1)

~~*IPRU(INV)* requires that ~~ISD~~ personal investment firms have appropriate financial resources in relation to their prudential category at all times. The Own Funds Requirements for these firms are:~~

- ~~for a Category A1 firm: €730,000;~~
- ~~for a Category A2 firm: €125,000;~~
- ~~for a Category A3 firm: €50,000.~~

~~The Own Funds test is designed to evaluate firms' adherence to these requirements.~~

~~Adjusted Net Current Assets (test 1A)~~

~~See Section D2 in relation to non-~~ISD~~ personal investment firms above.~~

~~Expenditure Based Requirement (test 2)~~

~~See Section D2 in relation to non-~~ISD~~ personal investment firms above.~~

Section D4: CAD 13 quarterly financial resources (~~ISD personal investment firms~~)

This section will no longer be applicable after 29 June 2008. Until then, firms should complete this section in accordance with the guidance given below.

The purpose of this section is to measure firms' compliance with the *Capital Adequacy Directive* ('CAD') on a quarterly basis, as required by the directive. *Firms* should use figures taken from their most recent audited accounts, unless they relate to a change in resources of a kind specified in this section of the RMAR, e.g. the introduction of a subordinated loan.

Section D5: reportable Large Exposures (ISD personal investment firms)

This section will no longer be applicable after 29 June 2008. Until then, firms should complete this section in accordance with the guidance given below.

This section relates to the requirements imposed by CAD on *ISD personal investment firms* in relation to *large exposures*.

A *large exposure* exists where a *firm* is owed a debt by, or is otherwise exposed to another person, or to two or more affiliated *persons*, and that exposure equals or exceeds 10% of its own funds. Under *IPRU(INV)*, a *firm* is required to ensure that its *large exposures* do not exceed 25% of its own funds (or the aggregate of exposure to its holding company, or a subsidiary company or a group of subsidiaries of its holding company does not exceed 20% of own funds).

The detailed requirements in relation to large exposures are set out in *IPRU(INV)* 13.6, including the types of *exempt exposures* that may be excluded from the calculations.

SUP 16 requires that large exposures be reported to the *FSA* on a quarterly basis. This part of the data requirements fulfils that requirement, and assists *firms* in calculating the level of reportable exposures (excluding *exempt exposures*) which then feeds into the calculation of the Expenditure Based Requirement.

...

Section E: Professional Indemnity Insurance

...

Data is required in relation to all PII policies that a *firm* has in place, up to a limit of ten (the system will prompt you to submit data on all applicable policies). If a *firm* has more than ten policies, it should report only the ten largest policies by premium.

...

Section E: guide for completion of individual fields

Part 1

...

Has the firm renewed its PII cover since the last reporting date?	This question will ensure that a firm does not fill in Part 2 of the PII section of the RMAR <u>PII basic and detailed information</u> each time it reports, if the information changes only annually.
---	--

	...
--	-----

Part 2

At this point, if the firm has PII policy details to report, it should do so by clicking in the 'add PII policy' button in the summary screen. This will then prompt you to name the sub-section, e.g., 'policy1'. You may enter one policy per line in the PII basic information table (up to a maximum of ten) and policy excess and exclusions in the PII detailed information table (up to a maximum of ten per policy) also add further sub-sections if the firm has two or more policies (up to a maximum of ten).

PII Basic information

...

What activities are Activities covered by the policy(ies)?	...
If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here, if not please insert 'n/a'	...
Annualised premium	This should be the annual premium that is paid by the <i>firm</i> , net of tax and any other add-ons.
Limit of Indemnity	<p>You should record here the indemnity limits on the <i>firm's</i> PII policy or policies, both in relation to single claims and in aggregate.</p> <p>Those firms subject to <i>Insurance Mediation Directive (IMD)</i> requirements should state their limit in Euros; those that are not subject to the <i>IMD</i> should select 'Sterling' from the drop-down list.</p> <p><i>Insurance intermediaries</i>, see <i>MIPRU 3.2.7R</i> and select either 'Euros' or 'Sterling' as applicable.</p> <p><i>Home finance intermediaries</i> should state their limit in Sterling (see <i>MIPRU 3.2.9R</i>).</p> <p>For <i>personal investment firms</i>, see <i>IPRU(INV) 13.1.4(2)R</i> and <i>13.1.4(5)E</i> and select either 'Euros' or 'Sterling' as applicable.</p> <p>If the <i>firm</i> is subject to more than one of the above limits (because of the scope of its <i>regulated activities</i>) and has one PII policy for all of its <i>regulated activities</i>, the different limits should be reflected in the policy documentation. If there is more than one limit, only the highest needs to be recorded in this field.</p>
Policy excess	For <i>insurance intermediaries</i> and <i>home</i>

	<p><i>finance intermediaries, see MIPRU 3.2.10-14R.</i></p> <p><i>For personal investment firms, see IPRU(INV) 13.1.4E.</i></p>
Increased excess(es) for specific business types (only in relation to business you have undertaken in the past or will undertake during the period covered by the policy)	<p>If the prescribed excess limit is exceeded for a type of types of business, the type(s) of business to which the increased excess applies and the amount(s) of the increased excess should be stated here</p> <p>(Some typical business types include pensions, endowments, FSAVCs, splits/zeros, precipe bonds, income drawdown, <i>lifetime mortgages</i>, discretionary management)</p>
Policy exclusions for specific business types (only in relation to business you have undertaken in the past or will undertake during the period covered by the policy)	<p>If there are any exclusions in the <i>firm's</i> PII policy which relate to any types of businesses or activities that the <i>firm</i> has carried out either in the past or during the lifetime of the policy, enter the business type(s) to which the exclusions relate here.</p> <p>(some typical business types include pensions, endowments, FSAVCs, splits/zeros, precipice bonds, income drawdown, lifetime mortgages, discretionary management)</p>
Start Date	The date the current cover began.
End Date	The date the current cover expires
Insurer name (please select from the drop-down list)	<p>The firm should select the name of the insurance undertaking of Lloyd's syndicate providing cover. If the PII provider is not listed you should select '<u>Multiple / Other other</u>' and enter the name of the insurance undertaking or Lloyd's syndicate providing cover in the free text box.</p> <p>If a policy is underwritten by more than one insurance undertaking of Lloyd's syndicate, you should select 'multiple' and state the names of all the insurance undertakings or Lloyd's syndicates in the free text box.</p>
Start date	<u>The date the current cover began.</u>
End date	<u>The date the current cover expires</u>
<u>Limit of indemnity received</u>	<p><u>You should record here the indemnity limits on the <i>firm's</i> PII policy or policies, both in relation to single claims and in aggregate.</u></p> <p><u>Those firms subject to <i>Insurance Mediation Directive (IMD)</i> requirements should state their limit in Euros; those that are not subject</u></p>

	<p>to the <i>IMD</i> should select 'Sterling' from the drop-down list.</p> <p><u><i>Insurance intermediaries</i>, see <i>MIPRU 3.2.7R</i> and select either 'Euros' or 'Sterling' as applicable.</u></p> <p><u><i>Home finance intermediaries</i> should state their limit in Sterling (see <i>MIPRU 3.2.9R</i>).</u></p> <p><u>For <i>personal investment firms</i>, see <i>IPRU(INV) 13.1.4(2)R</i> and <i>13.1.4(5)E</i> and select either 'Euros' or 'Sterling' as applicable.</u></p> <p><u>If the <i>firm</i> is subject to more than one of the above limits (because of the scope of its <i>regulated activities</i>) and has one PII policy for all of its <i>regulated activities</i>, the different limits should be reflected in the policy documentation. If there is more than one limit, only the highest needs to be recorded in this field.</u></p>
<p>Annual income as stated on the most recent proposal form</p>	<p>This should be the income as stated on the <i>firm's</i> most recent PII proposal form. For a <i>personal investment firm</i>, this is relevant income arising from all of the <i>firm's</i> activities for the last accounting year before the policy began or was renewed (<i>IPRU(INV) 13.1.3.(3)R</i>). For <i>insurance intermediaries</i> and <i>mortgage intermediaries</i> this is the annual income given in the <i>firm's</i> most recent annual financial statement from the relevant <i>regulated activity</i> or activities (<i>PRU 9.3.42R to 44R</i>).</p>
<p>Does the <i>firm</i> have any other PII policies?</p>	<p>If 'Y' is entered here, the <i>firm</i> will be required to submit the information above for further policies as applicable (up to a maximum of ten).</p>
<p>Amount of additional capital required for increased excess(es) (where applicable, total amount for all PII policies)</p>	<p>This should be calculated using the tables in <i>IPRU(INV) 13.1.4(12)E</i> or <i>MIPRU 3.2.14-16R</i> as applicable. The total of additional capital (i.e. in relation to all of the <i>firm's</i> PII policies) should have been reported under 'additional capital requirements for PII' and/or 'additional own funds for PII' in Section D1.</p>
<p>Amount of additional own funds required for policy exclusion(s)</p>	<p><i>Personal investment firms</i> only—this should be calculated in line with <i>IPRU(INV) 13.1.14(13)R</i>. The total of additional own funds (i.e. in relation to all of the <i>firm's</i> PII policies) should have been reported under 'additional capital requirements for PII'</p>

	and/or 'additional own funds for PII' in section D1.
Total of additional own funds required	<i>Personal investment firms only</i> —this is the same figure as in section D1, representing the total of additional own funds required under <i>IPRU(INV)</i> 13.1.4(8)R to 13.1.4(13)G for all of the <i>firm's</i> PII policies.
Total of readily realisable own funds	<i>Personal investment firms only</i> —you should state here the total of the own funds reported in section D that are classed as 'readily realisable' under the terms of <i>IPRU(INV)</i> 13.1.4(4)R.
Excess/deficit of readily realisable own funds	In this field, enter the result of the 'total of the additional own funds required' less the 'total of readily realisable own funds'.

PII detailed information

<u>Business line</u>	<p><u>Business lines for policy excesses should only be selected for FSA regulated business that you have undertaken in the past or will undertake during the period covered by the policy.</u></p> <p><u>Each such business line that has a policy excess should be selected from the drop-down list.</u></p> <p><u>If the <i>firm</i> has only one excess for all business lines, then you should select 'All'.</u></p> <p><u>If the <i>firm</i> has a policy excess for one specific business line (e.g. Endowments), it should select it from the drop-down list, and in the line beneath select 'All other' for the <i>firm's</i> remaining business lines.</u></p> <p><u>If the <i>firm</i> has a policy excess for a business line that is not in the drop-down list, then the most relevant 'other' should be selected.</u></p>
<u>Policy excess</u>	<p><u>For <i>insurance intermediaries</i> and <i>home finance intermediaries</i>, see <i>MIPRU</i> 3.2.10-14R.</u></p> <p><u>For <i>personal investment firms</i>, see <i>IPRU(INV)</i> 13.1.4E.</u></p> <p><u>The amount of the excess relating to the business line selected should be entered here.</u></p> <p><u>If the policy has more than ten excesses, you should report only on the ten largest by</u></p>

	excess.
<u>Policy exclusions for specific business types (only in relation to business you have undertaken in the past or will undertake during the period covered by the policy)</u>	<p>Select from the drop-down list any <u>exclusions in the firm's PII policy which relate to any types of businesses or activities that the firm has carried out either in the past or during the lifetime of the policy.</u></p> <p><u>If the firm has a policy exclusion for a business line that is not in the drop-down list, then the most relevant 'other' should be selected.</u></p>

<u>Annual income as stated on the most recent proposal form</u>	<u>This should be the income as stated on the firm's most recent PII proposal form. For a personal investment firm, this is relevant income arising from all of the firm's activities for the last accounting year before the policy began or was renewed (IPRU(INV) 13.1.3.(3)R). For insurance intermediaries and mortgage intermediaries this is the annual income given in the firm's most recent annual financial statement from the relevant regulated activity or activities (MIPRU 4.3.1R to 4.3.3R).</u>
<u>Amount of additional capital required for increased excess(es) (where applicable, total amount for all PII policies)</u>	<u>This should be calculated using the tables in IPRU(INV) 13.1.4(12)E or MIPRU 3.2.14-16R as applicable. The total of additional capital (i.e. in relation to all of the firm's PII policies) should have been reported under 'additional capital requirements for PII' and/or 'additional own funds for PII' in Section D1.</u>
<u>Total amount of additional own funds required for policy exclusion(s)</u>	<u>Personal investment firms only – this should be calculated in line with IPRU(INV) 13.1.14(13)R. The total of additional own funds (i.e. in relation to all of the firm's PII policies) should have been reported under 'additional capital requirements for PII' and/or 'additional own funds for PII' in section D1.</u>
<u>Total of additional own funds required</u>	<u>Personal investment firms only – this is the same figure as in section D1, representing the total of additional own funds required under IPRU(INV) 13.1.4(8)R to 13.1.4(13)G for all of the firm's PII policies.</u>
<u>Total of readily realisable own funds</u>	<u>Personal investment firms only – you should state here the total of the own funds reported</u>

	in section D that are classed as 'readily realisable' under the terms of <i>IPRU(INV)</i> 13.1.4(4)R.
Excess/deficit of readily realisable own funds	In this field, enter the result of the 'total of the additional own funds required' less the 'total of readily realisable own funds'.

...

Section F: The *threshold conditions*

Sub-heading: adequate resources

This section relates to *threshold condition 4*, by virtue of which the resources of *firms* must, in the opinion of the *FSA*, be adequate in relation to the *regulated activities* that they carry on.

The scope of this requirement is set out in Chapter 2.4 of the Threshold Conditions Sourcebook (*COND 2.4*). In summary, 'resources' refers to both financial and non-financial resources, and to the means of managing these resources. Examples of matters to which the *FSA* will have regard when assessing whether a *firm* satisfies *threshold condition 4* include, among others, the following;

- whether the *firm* has access to adequate capital by reference to the *FSA*'s prudential requirements;
- whether the *firm* can meet all its liabilities as they fall due; and
- whether the *firm* has taken steps to identify and measure any risks of regulatory concern, and has installed appropriate systems and controls to manage them.

Sub-heading: close links

...

Section F: guide for completion of individual fields

Adequate resources Does the firm have adequate resources in relation to its regulated activities?	In answering this question, you should carefully consider the <i>guidance</i> in <i>COND 2.4</i> , which sets out the criteria that the <i>FSA</i> will use in determining whether a <i>firm</i> is deemed to have adequate resources. <i>Authorised professional firms</i> should note that by ticking this box, they are providing confirmation that they are in compliance with <i>IPRU(INV)2.2</i> which requires them to be able to meet their liabilities as they fall due.
Close links Are you exempt from close links reporting requirements?	The categories of <i>firm</i> that are exempt from the reporting requirements are listed in the relevant parts of <i>SUP 16.1.3R</i> .
If not, have there been changes to your close links since the <i>FSA</i> was last informed?	For detailed guidance on what constitutes a <i>close link</i> , see <i>COND 2.3</i> .
If yes, on what date did these changes take effect?	See <i>SUP 11.9</i> . All <i>firms</i> should have notified the <i>FSA</i> immediately if they have become

<p>(if no notification has been made, please notify us separately of the changes)</p>	<p>aware that they have become or ceased to be <i>closely linked</i> with another person.</p> <p>If there have been changes in <i>close links</i> that have not been notified to the FSA, you should do this now.</p>
<p><u>Has there been a notifiable change to the firm's close links?</u></p>	<p><u>See SUP 11.9. All firms should have notified the FSA immediately if they have become aware that they have become or ceased to be closely linked with another person. If there have been any changes in close links that have not been notified to the FSA, you should do this now. For detailed guidance on what constitutes a close link, see COND 2.3.</u></p>
<p><u>If yes, has the FSA been notified of it?</u></p>	<p><u>See SUP 11.9. All firms should have notified the FSA immediately if they have become aware that they have become or ceased to be closely linked with another person. If there have been any changes in close links that have not been notified to the FSA, you should do this now. For detailed guidance on what constitutes a close link, see COND 2.3.</u></p>
<p>Approved persons</p> <p>Have there been any changes to your approved persons' details since the FSA was last informed?</p>	<p>State yes if, for example, any of the firm's approved persons have joined or left during the reporting period, but the FSA was not notified in accordance with normal procedures.</p>
<p>If yes, on what date did these changes take effect? (if no notification has been made, please notify us separately of the changes)</p>	<p>Any changes in the firm's approved persons e.g joiners and leavers, should have been notified at the time to the FSA. Detailed requirements in relation to approved persons are set out in SUP 10.13</p> <p>If the appropriate notification was not made at the time, you should state here the date the change took effect. If there has been more than one unnotified change, you should enter the date of the most recent change.</p> <p>If there have been changes in relation to approved persons that have not been notified to the FSA, you should do this now.</p>
<p>Controllers</p> <p>Are you exempt from the controllers reporting requirements?</p>	<p>The categories of firm that are exempt from the reporting requirement are listed in the relevant parts of SUP 16.1.3R.</p>
<p>If not, have there been changes to your controllers or to the percentage of shares or voting power in the firm held by any of them</p>	<p>See, generally, SUP 11.4.</p>

since the FSA was last informed?	
If yes, on what date did these changes take effect? (if no notification has been made, please notify us separately of the changes)	See, generally, <i>SUP 11.4</i> . If there have been changes in <i>controllers</i> that have not been notified to the <i>FSA</i> , you should do this by means of normal supervisory channels.
<u>Has there been a notifiable change to the firm's controllers including changes to the percentage of shares or voting power they hold in your firm?</u>	<u>See <i>SUP 11.4</i>. If there have been any changes in <i>controllers</i> that have not been notified to the <i>FSA</i>, you should do this by means of your usual supervisory channels.</u>
<u>If yes, has the FSA been notified of it?</u>	<u>See <i>SUP 11.4</i>. If there have been any changes in <i>controllers</i> that have not been notified to the <i>FSA</i>, you should do this by means of your usual supervisory channels</u>

Section G: Training & Competence ('T&C')

...

We will use the data we collect in this section to assess the nature of *firms'* compliance with training and competence requirements. It will also establish the extent and nature of *firms'* business, and thereby assess the potential risks posed by *firms'* business activities.

...

Section G: guide for completion of individual fields

...	
Number of staff that take private customers through pension decision trees	See <i>TC 2.1.4R Table (2)(e)</i> .
Number of staff that supervise non advised sales of lifetime mortgages	The reason this information is required is because the detailed requirements in <i>TC 2</i> are extended to staff that supervise non advised sales of <i>lifetime mortgages</i> where filtering questions are used, because of the higher risks associated with those products (see <i>TC 2.1.4R Table (2)(g)</i>).
Number of staff that design filtering questions for non advised sales of lifetime mortgages	The reason this information is required is because the detailed requirements in <i>TC2</i> are extended to staff involved in designing filtering questions for the non advised sale of <i>lifetime mortgages</i> , because of the higher risks associated with these products (see <i>TC 2.1.42R Table (1)(q)</i>). Note: we would expect this total to include staff that supervise and/or sign off filtering questions as well as those that actually design them.
What types of advice were provided? (tick all	If staff provide more than one type of advice,

<u>that apply)</u>	<u>or in relation to more than one business type (i.e. home finance transaction advising, advising on <i>non-investment insurance contracts</i>, or <i>retail investment products</i>), tick all that apply.</u>
<u>Independent (whole of market plus option of fee-only)</u>	<u>To provide independent advice, a <i>firm</i> must consider products from across the whole of the market, and offer its clients the opportunity to pay by fee (MCOB 4.3.7R, COBS 6.2.15R).</u>
<u>Whole of market (without fee-only option)</u>	<u>A <i>firm</i> provides whole of market recommendations when it has considered a large number of products that are generally available from the market as a whole.</u>
<u>On the basis of a fair analysis of the market</u>	<u>A <i>firm</i> gives recommendations on a fair analysis of the market when it has considered a large number of providers in the relevant sector(s) of the market (ICOB 4.2.11R).</u>
<u>Multi-tie / the products of a limited number of providers</u>	<u>A <i>firm</i> provides multi-tie advice when it recommends products selected from a limited number of provider firms only.</u>
<u>Single-tie / the products of one provider</u>	<u>A <i>firm</i> provides single-tie advice when it recommends products selected from one provider firm only.</u>

Sub heading: Clawed back commission (retail investment firms only)

Commission is typically paid to advisers in two main ways:

- non-indemnity commission – this is where payments from providers/lenders to advisers are non-refundable should the policy lapse, cancel or be surrendered.
- indemnity commission – this is colloquially known as 'up-front' commission and describes the situation where a provider would pay an adviser an amount of money based on a percentage of the first year's premiums for a regular premium contract. This sum is paid immediately on commencement, on the assumption that the policy will stay in force for a number of months/years ('the earnings period'). Should the customer stop paying premiums within the 'earnings period' (generally between 24 and 48 months), then the provider would ask the adviser to repay the 'unearned' commission. This is known as 'clawback'.

<u>Clawed back commission (retail investment firms only)</u>	
<u>Number</u>	<u>Number of policies where cancellations have led to commissions being clawed back during the reporting period.</u>
<u>Value</u>	<u>Total value of clawed back commission during the period.</u>

Section H: Conduct of Business ('COBS') Data

...

In this section we are seeking data from firms in relation to: general conduct of business and monitoring of appointed representatives.

- ~~the various sources of business;~~
- ~~advertising;~~
- ~~commission clawback (retail investment firms only);~~
- ~~monitoring of appointed representatives.~~

We will use data collected in this section to establish the extent and nature of firms' business, and thereby assess the potential risk posed by firms' business activities.

...

~~Sub-headings: sources of business/advertising~~

~~This information is being requested to provide high level data on the ways in which firms attract business. This will assist the FSA in targeting its supervisory resources towards those areas of the sales process and market where risks to consumers appear to be greatest. For example, we might supervisory resources to look at all firms in a certain area that advertise in print media.~~

...

~~Sub-heading: general COBS data~~

...

~~Sub-heading: Clawed back commission (retail investment firms only)~~

~~Commission is typically paid to advisers in two main ways:~~

- ~~non indemnity commission — this is where payments from providers/lenders to advisers are non-refundable should the policy lapse, cancel or be surrendered.~~
- ~~indemnity commission — this is colloquially known as 'up-front' commission and describes the situation where a provider would pay an adviser an amount of money based on a percentage of the first year's premiums for a regular premium contract. This sum is paid immediately on commencement, on the assumption that the policy will stay in force for a number of months/years ('the earnings period'). Should the customer stop paying premiums within the 'earnings period' (generally between 24 and 48 months), then the provider would ask the adviser to repay the 'unearned' commission. This is known as 'clawback'.~~

...

Section H: guide for completion of individual fields

Sources of Business Sources of business: please tick all that apply	
Marketing lists	This is where a firm uses a commercially obtained list of potential customers to carry out marketing of its services.

Referrals from non-authorised introducers	A non-authorised introducer is a <i>person</i> who is neither authorised by the <i>FSA</i> nor an <i>appointed representative</i> , and who introduces business to <i>firms</i> or <i>appointed representatives</i> . This would include a non-authorised professional firm that refers business to an <i>APF</i> .
Referrals from intermediaries	Referrals from other intermediaries, including <i>appointed representatives</i> .
Telephone sales	Sales arising solely from telephone conversations with the <i>customer</i> .
Cold calling	See <i>COB 3.10</i> , and <i>MCOB 3.7</i> .
Sales visits	Sales arising from a visit to a <i>customer</i> by the <i>firm</i> .
Postal sales	Sales arising solely by exchange of postal correspondence.
Direct offer financial promotions	See <i>Glossary</i> definition.
Repeat customers	Sales made to <i>customers</i> who had previously transacted business with the <i>firm</i> .
Internet Sales	Sales arising from the <i>customer's</i> use of the internet. This could include business originated from the <i>firm's</i> internet advertising (website or directory membership), or sales transacted online.
Other	Any other sources of business not covered in this section.
Advertising	
Does your firm approve financial promotions (including qualifying credit promotions)?	A financial promotion is an invitation or inducement to <i>engage in investment activity</i> . This question related to approval of the content of the <i>financial promotion</i> for the purposes of section 21 of the <i>Act</i> . 'Qualifying credit' is defined in the <i>Glossary</i> . See, generally, <i>AUTH</i> Appendix 1 for guidance on <i>financial promotion</i> and related activities.
Types of advertising: please tick all that apply	
Do you use one or more lists or panels of preferred product providers? If yes, indicate the applicable types of business	You should indicate here the types of business in respect of which the <i>firm</i> uses lists or panels.
What (if known) is the total number of providers on the panel(s)	If the <i>firm</i> compiles its own panel(s), you should state here the total number of product providers that are included as at the reporting date. It is acceptable to leave this field blank if, for example, the <i>firm</i> uses a panel or panels

	compiled by a product provider or packager firm.
How often (if known) are the panel(s) reviewed?	<p>If the <i>firm</i> compiles its own panel(s), you should state the frequency with which the panel or list is reviewed and amended as appropriate. The frequency should be given in months, e.g. if panels are reviewed quarterly, fill in "3".</p> <p>If separate panels are reviewed with different frequencies, you should state the least frequent.</p> <p>It is acceptable to leave this field blank if, for example, the <i>firm</i> uses a panel or panels compiled by a product provider or a packager firm.</p>
General COBS data	
...	
If not, specify type of core business	<p>Where applicable (The firm should specify its core business from the following: <u>drop-down list</u>.</p> <p>Motor Dealer (includes commercial vehicles, motorcycles and scooters, new & used vehicles) Hire/Lease of vehicles Mobility & Access Equip./Vehicles Other Associations or Utilities Institutions Trade Union University Housing Association & Trust Trade Body Sports Club & Association Other Retail – Goods Electrical Appliance Retailer Furniture Retailer Mobile Telephones Sports Equipment (e.g. Fishing Tackle, Golf) Caravans & Mobile Homes Other goods (e.g. Photographic, coin & stamp dealers) Service sector Travel (e.g. booking accommodation & holidays) Supermarket Veterinary Surgeon Removals (e.g. domestic, business & overseas) Property management (including overseas) Building improvements/extensions (e.g. bathroom, kitchen, conservatories)</p>

	Other services (e.g. Post Office, Hire Services) You should select Other if none of the above categories is applicable to the <i>firm's</i> business, e.g., loss assessor, professional services provided by an <i>authorised professional firm</i> .
...	
Clawed back commission (retail investment firms only)	
Number	Number of policies where cancellations have led to commissions being clawed back during the reporting period.
Value	Total value of clawed back commission during the period.
Complaints	
Does the firm have complaints handling procedures?	<i>DISP 1.2</i> requires that all <i>firms</i> that conduct business with <i>eligible complainants</i> have in place appropriate and effective written complaint handling procedures. Additionally, <i>firms</i> that carry on <i>insurance mediation</i> are required to have a complaints handling procedure for all complaints, including those from non-eligible complainants (see <i>DISP 1.2.1A R</i>).
...	

Section I: supplementary product sales data

...

Sub heading: (i) non-investment insurance product information

...

This information enables us to ascertain the importance of each product type to the *firm* and to target thematic work in this area.

<u>Total non-investment insurance premium derived from retail customers (annualised)</u>	<u>Regular policy premiums received for a policy should be reported only once as an annualised figure in the return for the period that covers the date of the sale. There is then no need to report in subsequent returns. An annualised figure is also required if a policy premium is paid in one single payment.</u>
--	--

Sub-heading: (ii) non-investment insurance chains

...

(1) the total of premium from *non-investment insurance contracts* that is derived from sales to *retail customers*;

(2) whether transactions in the listed product types have been passed up a chain;

(32) whether this business is significant. 'Significant', in this context, is where the premium collected in relation to business forming part of a chain amounts to (a) more than 40% of premium collected for all non-investment insurance business, or (b) more than 40% of premium collected for all retail business in a particular product; and
(43) whether, in relation to this business, the *firm* has dealt directly with the *customer* during the reporting period (i.e. has been the first intermediary in the chain).

...

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(AMENDMENT NO 3) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 247 (Trust scheme rules); and
 - (e) section 248 (Scheme particulars rules);
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 3) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, all the text is new and is not underlined.

Insert the following new definition in the appropriate alphabetical position.

intermediate holding vehicle a company, trust or partnership but not a *collective investment scheme*, whose purpose is to enable the holding of immovables on behalf of a *non-UCITS retail scheme* or a *qualified investor scheme*.

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to *COLL 3.2.4R* (Matters which must be included in the instrument constituting the scheme)

...	
	<u>Investment in property through an intermediate holding vehicle</u>
<u>28</u>	<u>If investment in an immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of immovables by the <i>scheme</i>.</u>

Table: contents of the prospectus

- 4.2.5 R This table belongs to *COLL 4.2.2R* (Publishing the prospectus)

...	
	<u>Investment in property through an intermediate holding vehicle</u>
<u>26A</u>	<u>If investment in an immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of immovables by the <i>scheme</i>.</u>
...	

Investment powers: general

- 5.6.4 R ...
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
- ...
- (f) immovables permitted under *COLL 5.6.18R* (Investment in property) ~~and to~~ *COLL 5.6.19R* (Investment limits for

immovables); and

...

Investment in property

5.6.18 R ...

(2) An immovable must:

...

(c) if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the scheme and provides as good a title as any of the interests in (b)(i) or (ii).

...

Investment in property through an intermediate holding vehicle

5.6.18A R (1) An immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an immovable shall be treated for the purposes of this chapter as if it were a direct investment in the immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

5.6.18B G (1) The authorised fund manager may transfer capital and income between an intermediate holding vehicle and the scheme by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the authorised fund manager should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the intermediate holding vehicle's reasonable

running costs (including tax).

- (2) An intermediate holding vehicle should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the scheme's investment objectives and policy.
- (3) Wherever reasonably practicable, an intermediate holding vehicle should have the same auditor and accounting reference date as the scheme.
- (4) The accounts of any intermediate holding vehicle should be consolidated into the annual and interim reports of the scheme.
- (5) The authorised fund manager should provide sufficient information to enable the depositary to fulfil its duties under COLL in relation to the immovables held through an intermediate holding vehicle.

Payments out of scheme property

6.7.4 R ...

- (4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of units on behalf of unitholders rather than on behalf of the authorised fund.

Payments out of scheme property: guidance

6.7.5 G ...

- (4) Payments to third parties as referred to in COLL 6.7.4R(4) include payment to providers of fund supermarket services and other similar platform services.

Prohibition on promotional payments: guidance

6.7.13 G Examples of payments which are not permitted by COLL 6.7.12R include:

...

- (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under COLL 6.7.12R(2)); ~~and~~
- (3) ~~payments to third parties, for maintaining details of beneficial unitholders.~~ [deleted]

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to COLL 8.2.5R

...	
-----	--

<u>10A</u>	<u>Investment in property through an intermediate holding vehicle</u>
	<u>If investment in an immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of immovables by the <i>scheme</i>.</u>
...	

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL 8.3.2R*.

...	
<u>18A</u>	<u>Investment in property through an intermediate holding vehicle</u>
	<u>If investment in an immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of immovables by the <i>scheme</i>.</u>
...	

Investment in property through an intermediate holding vehicle

8.4.11A R (1) An immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an immovable shall be treated for the purposes of this section as if it were a direct investment in the immovable.

(2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

8.4.11B G (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund*

manager should ensure the following:

- (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
 - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

RECOGNISED INVESTMENT EXCHANGES AND RECOGNISED CLEARING HOUSES (NOTIFICATION OBLIGATIONS) (AMENDMENT) INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 293 (Notification requirements); and
 - (5) section 300B (Duty to notify proposal to make regulatory provision).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 19 December 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Recognised Investment Exchanges and Recognised Clearing Houses (Notification Obligations) (Amendment) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Glossary of definitions

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

- notification rule*
- (1) ...
 - (2) (in relation to a *recognised body*) a *rule* made by the *FSA* under section 293 of the *Act* (Notification requirements) or section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses):
 - (a) requiring a *recognised body* to give the *FSA*:
 - ~~(a)~~ notice of, and specified information regarding,
 - (i) specified events relating to the body;
 - ~~(b)~~ (ii) specified information relating to the body at specified times or in respect of specified periods; and
 - ~~(c)~~ (iii) any other information required to be given by such a *rule*; or
 - (b) specifying descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty to notify the *FSA* of such *regulatory provision* in section 300B(1) of the *Act* does not apply or providing that the duty to notify applies only to specified descriptions of *regulatory provision* or in specified circumstances; or
 - (c) making provision as to the form and contents of the notice required under (b), and requiring *recognised bodies* to provide specified information in connection with that notification.
- regulatory provisions*
- ...
 - (c) (in relation to a *clearing house*):
 - (i) ...
 - (ii) if it provides, or proposes to provide, clearing services for persons other than *RIEs*, the criteria which it will apply when determining to whom it will provide those services;:
 - (d) (in *REC 3.26*) (in accordance with section 300E of the *Act*) *regulatory provision* means any rule, guidance, arrangements, policy or practice.

Annex B

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

3.26 Proposals to make regulatory provision

Statutory power

- 3.26.1 G Under section 300B(1) of the Act (Duty to notify proposal to make regulatory provision), a UK recognised body that proposes to make any regulatory provision must give written notice of the proposal to the FSA without delay.
- 3.26.2 G Under section 300B(2) of the Act, the FSA may, by rules under section 293 (Notification requirements):
- (1) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in section 300B(1) does not apply, or
- (2) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.
- 3.26.3 G Under section 300B(3) of the Act, the FSA may also by rules under section 293:
- (1) make provision as to the form and contents of the notice required, and
- (2) require the UK recognised body to provide such information relating to the proposal as may be specified in the rules or as the FSA may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision

- 3.26.4 R The duty in section 300B(1) of the Act does not apply to any of the following:
- (1) any regulatory provision which is required under Community law or any enactment or rule of law in the United Kingdom; or
- (2) (a) the specification of the standard terms of any derivative which a UK RIE proposes to admit to trading, or the amendment of the standard terms of any derivative already admitted to trading; or

- (b) the specification or any amendment of standard terms relating to the provision of clearing services for any *derivative*; or
- (c) the specification or any amendment of operating procedures which are reasonably consequential on any *regulatory provision* falling within (a) or (b); or
- (3) any *regulatory provision* which is expressed to have effect for no longer than three months which is made by a *UK recognised body* in response to an emergency event (including, without limitation, a war, terrorist attack or labour strike); or
- (4) any *regulatory provision* which does not impose a requirement (including any obligation or burden) on *persons* affected (directly or indirectly) by it; or
- (5) any other *regulatory provision* which has not been excluded under (1), (2), (3) or (4) other than any such provision which (taken together with any other *regulatory provision* not otherwise the subject of a notice under section 300B(1) of the Act):
 - (a) materially increases disclosure, reporting or corporate governance requirements imposed on any *person* (whether directly or indirectly); or
 - (b) imposes a material limitation affecting any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) on the type or nature of *financial instruments* which may be *listed* or the subject of *admission to trading* on the *facilities* operated by the *UK RIE* proposing to make the *regulatory provision*; or
 - (c) materially limits access to, or use by, any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) of the *facilities* operated by the *UK recognised body* proposing to make the *regulatory provision*; or
 - (d) materially adds to the circumstances in which any *person* (whether directly or indirectly) may be liable to penalties or other sanctions or have liability in damages.

Notice to the FSA

- 3.26.5 R A notice under section 300B(1) of the Act of a proposal to make a *regulatory provision* must be in writing and state expressly that it is a notice for the purpose of that section. To be effective, a notice must:
- (1) contain full particulars of the proposal to make a *regulatory provision* which is the subject of that notice; and

- (2) either be accompanied by sufficient supporting information to enable the FSA to assess the purpose and effect of the proposed *regulatory provision* or refer to such information in circumstances where such information has already been provided to the FSA.
- 3.26.6 G In determining whether a *UK recognised body* has provided sufficient supporting information, the FSA may have regard to the extent to which the information includes:
- (1) clearly expressed reasons for the proposed *regulatory provision*; and
- (2) an appropriately detailed assessment of the likely costs and benefits of the proposed *regulatory provision*.
- 3.26.7 R A *UK recognised body* must provide such additional information in connection with a notice under section 300B(1) of the Act as the FSA may reasonably require.
- 3.26.8 G Where a *UK recognised body* wishes to give notice to the FSA for the purposes of section 300B(1) of the Act, it should in the first instance inform its usual supervisory contact at the FSA.
- 3.26.9 G The FSA expects that an advanced draft of any consultation document a *UK recognised body* intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in *REC 3.26.5R*
- 4.8.1 G A decision to:
- ...
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision);
- is a serious one and section 298 of the Act (Directions and revocation: procedure) sets out a procedure (see *REC 4.8.9G*) which the FSA will follow...
- ...
- 5.2.1A G In addition, under section 290A of the Act (Refusal of recognition on ground of excessive regulatory provision), the FSA must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* or *UK RCH* if it appears to the FSA that an existing or proposed *regulatory provision* of the applicant in connection with the applicant's business as an investment exchange or the provision by the applicant of clearing services imposes, or will impose, an excessive requirement (as defined in section 300A of the Act) on *persons* directly or indirectly affected by it.

...

Sch 2	Notification requirements					
...						
Sch 2.2	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		UK recognised bodies				
		The <u>Aets Acts</u> s293(5)	Changes to <i>rules and guidance</i>	Details of change	Change to rule or guidance	Without delay
		The <u>Act</u> s300B(1)	<u>Proposal to make regulatory provision</u>	<u>Details of proposal</u>	<u>Proposal to make regulatory provision</u>	<u>Without delay</u>
		Companies Act 1989 s157	...			
		...				
		<i>Notification rules for UK recognised bodies</i> (see Notification rules for UK recognised bodies)				
		...				
		<i>REC 3.25</i>	...			
		<i>REC 3.26</i>	<u>Proposal to make regulatory provision</u>	<u>Details of proposal</u>	<u>Proposal to make regulatory provision</u>	<u>Without delay</u>
		...				

Sch 4	Powers exercised	
Sch 4.1	G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>REC</i> :
		...
		Section 295 (Notification: overseas investment exchanges and overseas clearing houses) Paragraph 17(1) of Schedule 1 (Fees).
		<u>Section 300B (Duty to notify proposal to make regulatory provision).</u>
		...

**LISTING RULES (INVESTMENT ENTITIES SINGLE REGIME) (AMENDMENT)
INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
 - (2) section 79 (Listing particulars and other documents);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 157(1) (Guidance); and
 - (6) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 6 March 2008.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules (Investment Entities Single Regime) (Amendment) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendment to the Glossary of definitions

In this Annex, underlining indicates new text.

Insert the following definition in the appropriate alphabetical position:

investment entity

(in LR) an entity whose primary object is investing and managing its assets with a view to spreading or otherwise managing investment risk.

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

For the benefit of stakeholders, we have set out the full text of LR 15 even though parts of it have not changed.

9.2 Requirements with continuing application

Control of assets and independent business

- 9.2.2A R A *listed company* that has *shares listed*, or *securities* convertible into its own *shares listed*, must comply with LR 6.1.4R(2) and (3) at all times. This rule does not apply to a *mineral company*, a *scientific research based company*, ~~*venture capital trust or other investment entity*~~, a *closed-ended investment fund* or an *open-ended investment company*.

14 Secondary listing of overseas companies

Application

- 14.1.1 R This chapter applies to an *overseas company* with, or applying for, a *secondary listing of equity securities* other than an *overseas company* that is an *investment entity*.

...

15 Closed-Ended Investment Funds

15.1 Application

- 15.1.1 R This chapter applies to a *closed-ended investment fund* applying for, or with, a *primary listing of equity securities*.

15.2 Requirements for listing

- 15.2.1 R To be *listed*, an *applicant* must comply with:
- (1) LR 2 (Requirements for listing);
 - (2) only the following provisions of LR 6 (Additional requirements for listing for equity securities);

- (a) *LR 6.1.3R(1)(d) and (e), if the applicant is a new applicant for the admission of shares or securities convertible into its own shares and it has published or filed audited accounts;*
 - (b) *LR 6.1.3R(2);*
 - (c) *LR 6.1.16R to LR 6.1.24G; and*
- (3) *LR 15.2.2R to ~~LR 15.2.13G~~ LR 15.2.13AR.*

Investment activity

- 15.2.2 R *An applicant must invest and manage its assets in a way which is consistent with its object of spreading investment risk.*

Control of investee companies

- 15.2.3 G ~~Although there is no restriction on a closed-ended investment fund taking a controlling stake in an investee company, to ensure a spread of investment risk a closed-ended investment fund should avoid:~~

- ~~(1) cross-financing between the businesses forming part of its investment portfolio including, for example, through the provision of undertakings or security for borrowings by such businesses for the benefit of another; and~~
- ~~(2) the operation of common treasury functions as between the closed-ended investment fund and investee companies. [deleted]~~

- 15.2.3A R (1) An applicant and its subsidiary undertakings must not conduct any trading activity which is significant in the context of its group as a whole.
- (2) This rule does not prevent the businesses forming part of the investment portfolio of the applicant from conducting trading activities themselves.

Trading activity

- 15.2.4 R (1) ~~A closed-ended investment fund and its subsidiaries must not conduct any trading activity which is significant in the context of its group as a whole.~~
- (2) ~~This rule does not prevent the businesses forming part of the investment portfolio of the closed-ended investment fund from conducting trading activities themselves. [deleted]~~

- 15.2.4A G Although there is no restriction on an applicant taking a controlling stake in an investee company, to ensure a spread of investment risk an applicant should avoid:

- (1) cross-financing between the businesses forming part of its investment portfolio including, for example, through the provision of undertakings

or security for borrowings by such businesses for the benefit of another; and

- (2) the operation of common treasury functions as between the *applicant* and investee companies.

Cross-holdings

- 15.2.5 R (1) No more than 10%, in aggregate, of the value of the total assets of a ~~*closed-ended investment fund*~~ an *applicant* at admission may be invested in other *listed closed-ended investment funds*.
- (2) The restriction in (1) does not apply to *investments* in *closed-ended investment funds* which themselves have published investment policies to invest no more than 15% of their total assets in other *listed closed-ended investment funds*.

Feeder funds

- 15.2.6 R (1) If an *applicant* principally invests its funds in another *company* or fund (“A”) ~~and A~~ that invests in a portfolio of *investments* (a “master fund”), the *applicant* must ensure that: control the investment policy of A and ensure that A complies with the requirements relating to the spread of investment risk set out in this chapter (see LR 15.2.2R to LR 15.2.5R).
- (a) the master fund's investment policies are consistent with the *applicant's* published investment policy and provide for spreading investment risk; and
- (b) the master fund in fact invests and manages its investments in a way that is consistent with the *applicant's* published investment policy and spreads investment risk.
- (2) Paragraph (1) applies whether the *applicant* invests its funds in the master fund directly or indirectly through other intermediaries.
- (3) Where the *applicant* invests in the master fund through a chain of intermediaries between the applicant and the master fund, the *applicant* must ensure that each intermediary in the chain complies with paragraphs (1)(a) and (b).

Investment policy

- 15.2.7 R An *applicant* must have a published investment policy that contains information about the policies which the *closed-ended investment fund* will follow relating to asset allocation, risk diversification, and gearing, and that includes maximum exposures.
- 15.2.8 G The information in the investment policy, including quantitative information concerning the exposures mentioned in LR 15.2.7R, should be sufficiently

precise and clear as to enable an investor to:

- (1) assess the investment opportunity;
- (2) identify how the objective of risk spreading is to be achieved; and
- (3) assess the significance of any proposed change of investment policy.

~~Sufficient and appropriate experience of directors and investment managers~~

15.2.9 R ~~An *applicant* must ensure that, collectively, its *directors* and *investment managers* have sufficient and appropriate experience in the management of assets on a scale and type in which the *applicant* proposes to invest. [deleted]~~

- 15.2.10 G (1) ~~An *applicant* is likely to have sufficient and appropriate experience if:~~
- (a) ~~its assets are or will be managed by a *person* or *persons* who have permission from the *FSA* or from a *competent authority* to manage *investments*; or~~
 - (b) ~~it can otherwise demonstrate that the *persons* who will have responsibility for managing its assets have appropriate experience (over at least the preceding three years) of managing a portfolio of assets which is comparable to its portfolio.~~
- (2) ~~An *applicant* will have appropriate experience under (1)(b) if the *persons* within the entity responsible for managing the assets have managed a portfolio of *investments* that has a value of at least 50% of the funds the *applicant* is proposing to raise. [deleted]~~

Independence

15.2.11 R The board of *directors* or equivalent body of the *applicant* must be able to act independently of any *investment manager* appointed to manage *investments* of the *applicant*:

- (1) of any *investment manager* appointed to manage *investments* of the *applicant*; and
- (2) if the *applicant* (either directly or through other intermediaries) has an investment policy of principally investing its funds in another *company* or fund that invests in a portfolio of investments ("a master fund"), of the master fund and of any *investment manager* of the master fund.

15.2.11A R *LR 15.2.11R(2)* does not apply if the *company* or fund which invests its funds in another *company* or fund is a *subsidiary undertaking* of the *applicant*.

15.2.12 G To satisfy *LR 15.2.11R*, a majority of the board or equivalent body of the *applicant* (including the Chairman) should not be:

- (1) ~~*directors*, *employees*, *partners*, *officers* or professional advisers of or to:~~

- (a) ~~an investment manager of the applicant; or~~
- (b) ~~any other company in the same group as the investment manager of the applicant; or~~
- (2) ~~directors, employees or professional advisers of or to other investment entities or funds that are:~~
 - (a) ~~managed by the same investment manager as the investment manager to the applicant; or~~
 - (b) ~~managed by any other company in the same group as the investment manager to the applicant. [deleted]~~

15.2.12A R For the purposes of LR 15.2.11R, a majority of the board or equivalent body of the applicant (including the Chairman) must not be:

- (1) directors, employees, partners, officers or professional advisers of or to:
 - (a) an investment manager of the applicant; or
 - (b) a master fund or investment manager referred to in LR 15.2.11R(2); or
 - (c) any other company in the same group as the investment manager of the applicant; or
- (2) directors, employees or professional advisers of or to other investment companies or funds that are:
 - (a) managed by the same investment manager as the investment manager to the applicant; or
 - (b) managed by any other company in the same group as the investment manager to the applicant.

15.2.13 G To comply with LR 15.2.11R:

- (1) ~~the board of the applicant should have no more than one director who is also a director, partner, employee or professional adviser of or to:~~
 - (a) ~~the investment manager to the applicant; or~~
 - (b) ~~any other company in the same group as the investment manager to the applicant; and~~
- (2) ~~a director described in (1) should be subject to annual re-election by shareholders. [deleted]~~

15.2.13A R A person referred to in LR 15.2.12AR(1) or (2) who is a director of the applicant must be subject to annual re-election by the applicant's shareholders.

15.3 Listing applications and procedures

15.3.1 G An *applicant* is required to comply with LR 3 (Listing applications).

Sponsors

15.3.2 G An *applicant* that is seeking *admission* of its *equity securities* is required to retain a *sponsor* in accordance with LR 8 (Sponsors).

15.3.3 R In addition to the circumstances set out in LR 8.2.1R when a *sponsor* must be appointed, an *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission* of *equity securities* which requires the production of *listing particulars*.

Multi-class fund or umbrella fund

15.3.4 R An application for the *listing* of *securities* of a multi-class fund or umbrella fund must provide details of the various classes or designations of *securities* intended to be issued by the *applicant*.

15.4 Continuing obligations

Compliance with LR 9

15.4.1 R A *closed-ended investment fund* must comply with all of the requirements of LR 9 (Continuing obligations) subject to the modifications and additional requirements set out in this section.

Investment policy

15.4.1A R A closed-ended investment fund must, at all times, have a published investment policy which complies with LR 15.2.7R.

15.4.1B G A closed-ended investment fund should have regard to the guidance in LR 15.2.8G at all times.

Investment activity and compliance with investment policy

15.4.2 R A *closed-ended investment fund* must, at all times, invest and manage its assets:

(1) in a way which is consistent with its object of spreading investment risk;
and

(2) in accordance with its published investment policy.

Control of investee companies

15.4.3 G ~~A closed-ended investment fund should have regard to the guidance in LR 15.2.3G at all times.~~ [deleted]

15.4.3A R A closed-ended investment fund must comply with LR 15.2.3AR at all times.

Trading activity

15.4.4 R ~~A closed-ended investment fund must comply with LR 15.2.4R at all times.~~ [deleted]

15.4.4A G A closed-ended investment fund should have regard to the guidance in LR 15.2.4AG at all times.

Cross-holdings

15.4.5 R A closed-ended investment fund must, when making an acquisition of a constituent investment, observe the principles relating to cross-holdings in LR 15.2.5R.

Feeder funds

15.4.6 R If a closed-ended investment fund principally invests its funds ~~in another company or fund ("A") and A invests in a portfolio of investments in the manner set out in LR 15.2.6R~~, the closed-ended investment fund must ensure that LR 15.2.6R is complied with at all times.

15.4.6A G LR 15.2.6R and LR 15.4.6R are not intended to require the closed-ended investment fund to be able to control or direct the master fund or intermediary (as the case may be). But if the closed-ended investment fund becomes aware that the master fund or intermediary (as the case may be) is not investing or managing its investments in accordance with that rule it will need to immediately consider withdrawal of its funds from the master fund or intermediary (as the case may be) or other appropriate action so that it is no longer in breach of the rules.

Independence

15.4.7 R ~~LR 15.2.11R = to LR 15.2.13G~~ LR 15.2.13AR apply at all times to a closed-ended investment fund.

Shareholder approval for material changes to investment policy

15.4.8 R A closed-ended investment fund must obtain the prior approval of ~~the holders of the majority of its ordinary equity shares~~ its shareholders to any material change to its published investment policy.

15.4.9 G In considering what is a material change to the published investment policy, the closed-ended investment fund should have regard to the cumulative effect of all the changes since its ~~shareholders~~ shareholders last had the opportunity to vote on the investment policy or, if they have never voted, since the admission to listing.

Conversion of an existing listed class of equity securities

- 15.4.10 R An existing *listed class of equity securities* may not be converted into a new *class* or an unlisted *class* unless prior approval has been given by the ~~holders of the majority shareholders of the closed-ended investment fund's ordinary equity shares~~ in that existing *class*.

Further issues

- 15.4.11 R (1) Unless authorised by ~~the holders of the majority of its shares~~ its shareholders, a *closed-ended investment fund* may not issue further *shares* of the same class as existing *shares* (including issues of *treasury shares*) for cash at a price below the net asset value per *share* of those *shares* unless they are first offered pro rata to existing holders of *shares* of that class.
- (2) When calculating the net asset value per *share*, *treasury shares* held by the *closed-ended investment fund* should not be taken into account.

15.5 Transactions

Compliance with the Model Code

- 15.5.1 R (1) A *closed-ended investment fund* must comply with the provisions of the *Model Code*.
- (2) LR 9.2.7R to LR 9.2.10R do not apply to a *closed-ended investment fund*.
- (3) Paragraph (1) does not apply to:
- (a) dealings by *persons discharging managerial responsibilities* in the *closed-ended investment fund*;
 - (b) purchases by the *closed-ended investment fund* of its own *securities*; and
 - (c) sales of *treasury shares* for cash or transfers (except for sales and transfers by the *closed-ended investment fund* of *treasury shares* in the circumstances set out in LR 12.6.2R);
- if the *closed-ended investment fund* satisfies the requirements of (4).
- (4) The transactions described in (3) may be entered into during a *close period* if:
- (a) the *closed-ended investment fund* is satisfied that all *inside information* which the *directors* and the entity may have in periods leading up to an announcement of results has

previously been notified to a *RIS*; and

- (b) the *closed-ended investment fund* notifies a *RIS* that it is satisfied that all *inside information* has previously been notified.

Significant transactions

- 15.5.2 R A *closed-ended investment fund* must comply with *LR 10* (Significant transactions), except in relation to transactions that are executed in accordance with the scope of its published investment policy.

Transactions with related parties

- 15.5.3 G *LR 11* (Related party transactions) applies to a *closed-ended investment fund*.
- 15.5.4 R In addition to the definition in *LR 11.1.4R* a *related party* includes any *investment manager* of the *closed-ended investment fund*.

Additional exemption from related party requirements

- 15.5.5 R (1) *LR 11.1.7R to LR 11.1.11R* do not apply to an arrangement between a *closed-ended investment fund* and its *investment manager* where the arrangement is such that each invests in or provides finance to an entity or asset and the investment or provision of finance is either:
 - (a) made at the same time and on substantially the same economic and financial terms; or
 - (b) referred to in the *closed-ended investment fund's* published investment policy; or
 - (c) made in accordance with a pre-existing agreement between the *closed-ended investment fund* and its *investment manager*.
- (2) For the purposes of paragraph (1)(c), a pre-existing agreement is an agreement which was entered into at the time the *investment manager* was appointed.

15.6 Notifications and periodic financial information

Changes to tax status

- 15.6.1 R A *closed-ended investment fund* must notify any change in its taxation status to a *RIS* as soon as possible.

Annual financial report

- 15.6.2 R In addition to the requirements in *LR 9.8* (Annual financial report), a *closed-ended investment fund* must include in its annual financial report:

- (1) a statement (including a quantitative analysis) explaining how it has invested its assets with a view to spreading investment risk in accordance with its published investment policy;
- (2) a statement, set out in a prominent position, as to whether in the opinion of the *directors*, the continuing appointment of the *investment manager* on the terms agreed is in the interests of its shareholders as a whole, together with a statement of the reasons for this view;
- (3) the names of the fund's *investment managers* and a summary of the principal contents of any agreements between the *closed-ended investment fund* and each of the *investment managers*, including but not limited to any provisions relating to compensation payable in the event of termination of the agreement;
 - (a) an indication of the terms and duration of their appointment;
 - (b) the basis for their remuneration; and
 - (c) any arrangements relating to the termination of their appointment, including compensation payable in the event of termination;
- (4) ~~the name of the *investment managers* together with an indication of the terms and duration of their appointment, the basis for their remuneration and any arrangements relating to the termination of their appointment; [deleted]~~
- (5) the full text of its ~~*investment policy*~~ current published investment policy; and
- (6) a comprehensive and meaningful analysis of its portfolio.

Annual financial report – additional requirements for property investment entities

- 15.6.3 R A *closed-ended investment fund* that, as at the end of its financial year, has invested more than 20% of its assets in *property* must include in its annual financial report a summary of the valuation of its portfolio, carried out in accordance with LR 15.6.4R.
- 15.6.4 R A valuation required by LR 15.6.3R must:
- (1) either:
 - (a) be made in accordance with the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or
 - (b) where the valuation does not comply in all applicable respects with the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors, include a statement which sets out a full explanation of such non-

compliance; and

- (2) be carried out by an external valuer as defined in the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors.

15.6.5 R The summary described in LR 15.6.3R must include:

- (1) the total value of *properties* held at the year end;
- (2) totals of the cost of *properties* acquired;
- (3) the net book value of *properties* disposed of during the year; and
- (4) an indication of the geographical location and type of *properties* held at the year end.

Statement regarding compliance with Combined Code

- 15.6.6 R
- (1) This *rule* applies to a *closed-ended investment fund* that has no executive *directors*.
 - (2) A *closed-ended investment fund's* statement required by LR 9.8.6R(6) need not include details about the following principles and provisions of the *Combined Code* except to the extent that those principles or provisions relate specifically to non-executive *directors*:
 - (a) Principle B.1 (including Code Provisions B.1.1 to B.1.6); and
 - (b) Principle B.2 (including Code Provisions B.2.1 to B.2.4).

Annual financial and half yearly report

- 15.6.7 R In addition to the requirements in LR 9 (Continuing obligations), half-yearly reports and, if applicable, preliminary statements of annual results must include information showing the split between:
- (1) dividend and interest received; and
 - (2) other forms of income (including income of associated companies).

Notification of ~~investments~~ cross-holdings

- 15.6.8 R A *closed-ended investment fund* must notify to a RIS of the following: within five business days of the end of each quarter a list of all investments in other listed closed-ended investment funds, as at the last business day of that quarter, which themselves do not have stated investment policies to invest no more than 15% of their total assets in other listed closed-ended investment funds.
- (1) ~~within two business days of the end of each calendar month, a list of all investments in other listed closed-ended investment funds, as at the last business day of that month, which themselves do not have stated~~

investment policies to invest no more than 15% of their total assets in other listed closed-ended investment funds; and

- (2) ~~within two business days of the end of each quarter, a list of all investments with a value greater than 5% of the closed-ended investment fund's total assets and at least the 10 largest investments as at the last business day of that quarter.~~

16.4 Requirements with continuing application

16.4.1 R An open-ended investment company must comply with:

- (1) LR 9 (Continuing obligations) except LR 9.2.6BR and LR 9.2.15R;

...

Appendix 1

Relevant definitions

1.1 Relevant Definitions

App ...
1.1.1 ...

investment entity an entity whose primary object is investing and managing its assets with a view to spreading or otherwise managing investment risk.

... ..

LR TR

LR TR 1 Transitional Provisions for Sponsors and Venture Capital Trusts

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...	...				

2	<i>LR</i> 15.2.11R – <i>LR</i> 15.2.13G <i>LR</i> 15.2.13AR and <i>LR</i> 15.4.7R	R	Do not apply in respect of a <i>venture capital trust</i> listed before the date this instrument comes into force.	From 28 September 2007 to 28 September 2010	28 September 2007
...	...				
4	<i>LR</i> 11.1.5R(2)	R	Does not apply to arrangements between a <i>venture capital trust</i> and its <i>investment manager</i> where: (1) the arrangements are such that each invests in or provides finance to a <i>company</i> and the investment or provision of finance is made either (a) at the same time and on the same terms; or (b) in accordance with a pre-existing agreement between the <i>venture capital trust</i> and its <i>investment manager</i> ; and (2) the <i>venture capital trust</i> was listed before the date this instrument comes into force.	From 28 September 2007 to 28 September 2010	28 September 2007
...					

LR TR 2 Transitional Provision for closed-ended investment funds listed before 28 September 2007

<u>(1)</u>	<u>(2)</u> Material to which the transitional provisions applies	<u>(3)</u>	<u>(4)</u> Transitional provision	<u>(5)</u> Transitional provision: dates in force	<u>(6)</u> Handbook provision coming into force
<u>1</u>	<i>LR</i> 15.4.1AR and <i>LR</i> 15.4.1BG	<u>R</u>	<i>LR</i> 15.4.1AR and <i>LR</i> 15.4.1BG do not apply to a <i>closed-ended investment fund</i> listed before 28 September 2007 until the date of the publication of its first annual	<u>6 March 2008</u>	<u>6 March 2008</u>

		report after 28 September 2007.	
--	--	---------------------------------	--

LR TR 3 Transitional Provisions for *Investment Entities* already listed under LR 14

Transitional Provisions for *Investment Entities* already listed under LR 14

<u>(1)</u>	<u>(2)</u> <u>Material to which the transitional provisions applies</u>	<u>(3)</u>	<u>(4)</u> <u>Transitional provision</u>	<u>(5)</u> <u>Transitional provision: dates in force</u>	<u>(6)</u> <u>Handbook provision coming into force</u>
1.	<u>LR 14, LR 15 and LR 16</u>	R	<u>These transitional provisions apply to an entity that is an <i>overseas company</i> and an <i>investment entity</i> and that immediately before 6 March 2008 did not comply with the requirements of LR 15 or LR 16 but complied with the requirements of LR 14.</u>	<u>6 March 2008</u> <u>Indefinite</u>	<u>6 March 2008</u>
2.	<u>LR 14, LR 15 and LR 16</u>	R	<u>LR 14 continues to apply to the entity for so long as it is listed after that date (and LR 15 and LR 16 do not apply) unless the entity makes an election under rule 3 of these transitional provisions.</u>	<u>6 March 2008</u> <u>Indefinite</u>	<u>6 March 2008</u>
3.	<u>LR 14, LR 15 and LR 16</u>	R	<u>The entity may by notice in writing given to the FSA elect to comply with the requirements of LR 15 or LR 16 (whichever is applicable to the entity) instead of the requirements in LR 14 from a date specified in the notice. An entity should not give notice under this transitional rule unless it has come to a reasonable opinion, after having made due and careful enquiry, that it can satisfy the requirements of LR 15 and 16 (as the case may be).</u>	<u>6 March 2008</u> <u>Indefinite</u>	<u>6 March 2008</u>
4.	<u>LR 14, LR 15 and LR 16</u>	R	<u>If an entity gives a notice under TR3 3R of these transitional provisions it must comply with the requirements of LR 15 or LR 16 (as</u>	<u>6 March 2008</u>	<u>6 March 2008</u>

			<u>the case may be) from the date specified in the notice and the requirements of LR 14 no longer apply to the entity from that date.</u>	<u>Indefinite</u>	
--	--	--	---	-------------------	--

Note: An entity which intends to give notice under LR 3 TR3 3R should consult with the FSA at the earliest possible stage if it intends to comply with the requirements of LR 15 or LR 16 (whichever is applicable to the entity) instead of the requirements in LR 14.

COMPLAINTS RETURN INSTRUMENT 2007

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 157(1) (Guidance);
 - (3) article 15 (Record keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001; and
 - (4) article 9 (Record keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex A comes into force on 14 December 2007;
 - (2) the remainder of this instrument comes into force on 1 August 2009.

Amendments to the Handbook

- D. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex A.
- E. The Credit Unions sourcebook (CRED) is amended in accordance with Annex B to this instrument

Citation

- F. This instrument may be cited as the Complaints Return Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1: Comes into force on 14 December 2007

...

1.10 Complaints reporting rules

...

Joint reports

1.10.1A R [Text to follow]

1.10.1B G [Text to follow]

1.10.1C R *Firms* that are part of a *group* may submit a joint report to the FSA. The joint report must contain the information required from all *firms* concerned and clearly indicate the *firms* on whose behalf the report is submitted. The requirement to provide a report, and the responsibility for the report, remains with each *firm* in the *group*.

1.10.1D G Not all the *firms* in the *group* need to submit the report jointly. *Firms* should only consider submitting a joint report if it is logical to do so, for example, where the *firms* have a common central *complaints* handling team and the same *accounting reference date*.

TP1		Transitional provisions			
(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
10	<i>DISP</i> 1.10.1R and <i>DISP</i> 1.10.2R	R	Expired <i>DISP</i> 1.10.1R and <i>DISP</i> 1.10.2R do not apply to a <i>firm</i> with permission to carry on only <i>insurance mediation activity</i>, <i>mortgage mediation activity</i>, or both.	(1) In respect of <i>mortgage mediation activities</i> ; 31.10.04 – 31.3.05; (2) in respect of <i>insurance</i>	

							<i>mediation activities, 14.1.05 – 31.3.05.</i>	
11	<i>DISP 1.10.1R and DISP 1.10.2R</i>	R	<u>Expired</u> Where a firm is required under 1.10.1R and <i>DISP 1.10.2R</i> to submit information using a report in the format set out in <i>DISP 1 Ann 1R</i> on a half yearly basis, this must be read as a reference to providing the first and second report in accordance with transitional provision 12R.				From 01.4.05, expiring on 31.3.06	1 April 2005
12	<i>DISP 1.10.1R and DISP 1.10.2R</i>	R	<u>Expired</u> If transitional provision 11R applies, the <i>firm's</i> first and second report must be provided as follows:					
			Accounting reference date	Reporting period starts	Reporting period ends	Report to be provided		
			Between 1 January 2005 and 31 March 2005	1 st report: 1 April 2005	6 months after the accounting reference date within 2005	30 business days after period end		
				2 nd report: the day after the end of the 1 st reporting period	the accounting reference date within 2006			
			Between 1 April 2005 and 30 June 2005	1 st report: 1 April 2005	6 months after the accounting reference date within 2005	30 business days after period end		
				2 nd report: the day after the end of the 1 st reporting period	the accounting reference date within 2006			
			Between 1 July 2005 and 30 September 2005	1 st report: 1 April 2005	the accounting reference date within 2005	30 business days after period end		
				2 nd report: the day following the accounting	6 months after the accounting reference date			

				<i>reference date within 2005</i>	<i>within 2005</i>			
			Between 1 October 2005 and 31 December 2005	1 st report: 1 April 2005	the <i>accounting reference date</i> within 2005	30 <i>business days</i> after period end		
				2 nd report: the day following the <i>accounting reference date</i> within 2005	6 <i>months</i> after the <i>accounting reference date</i> within 2005			
13	DISP 1	R	<u>Deleted</u> Where, at the <i>relevant commencement date</i> , a firm is still dealing with a complaint that is capable of being referred to the <i>Financial Ombudsman Service</i> as a <i>relevant transitional complaint</i> :			31 October 2004 (for a complaint to which the <i>MCAS Scheme</i> applied immediately before that date)	31 October 2004	
			(1)	it may continue to try to resolve the complaint in accordance with the complaints procedures that applied previously; but	14 January 2005 (for a complaint to which the <i>GISC Facility</i> applied immediately before that date)			
			(2)	it must, within eight weeks of the <i>relevant commencement date</i> , send the complainant a response which satisfies <i>DISP 1.4.5R</i> , unless <i>DISP 1.4.3AR</i> or <i>DISP 1.4.9R</i> applies.				
14		G	<u>Expired</u> <i>DISP TP 13R</i> recognises that where a <i>firm</i> has already received, but only partly completed the handling of, a complaint which is capable of becoming a <i>relevant transitional complaint</i> , it may not always be practicable to handle the complaint in accordance with <i>DISP 1</i> after the <i>relevant commencement date</i> .					
15	FEES 5.4.1R	R	<u>Expired</u> A <i>firm</i> which falls within <i>industry block 16</i> or <i>17</i> needs to provide a statement to the <i>FSA</i> by the end of February 2005 only if it is providing the <i>FSA</i> with a statement of the total amount of <i>relevant business</i> .			31 October 2004 to 28 February 2005 for <i>firms</i> falling in <i>industry block 16</i>	31 October 2004	

				14 January 2005 to 28 February 2005 for firms falling in industry block 17	
16	FEES 5.4.1R	R	<u>Expired</u> In respect of the year 2005/06, the FSA will already have a statement of the total amount of the firm's annual income as part of the firm's application for a Part IV permission or to vary a Part IV permission. There is thus no need for a firm to repeat this information if it decides not to report annual income for relevant business in accordance with DISP TP 15R.	31 October 2004 to 28 February 2005 for firms falling in industry block 16 14 January 2005 to 28 February 2005 for firms falling in industry block 17	31 October 2004
17	DISP 1.3.12R – DISP 1.3.17G	R	<u>Deleted</u> A firm must apply DISP as it applied before amendment by the Depolarisation Instrument to complaints received before 14 January 2005.	From 14 January 2005.	14 January 2005.
...					
19	DISP 1.10.1CR and DISP 1.10.1DG	R	Firms that submit a joint report before 31 July 2009 must clearly indicate in writing to the FSA the firms on whose behalf the report is submitted.	From 14 December 2007 to 31 July 2009	14 December 2007

Part 2: Comes into force on 1 August 2009

1.10 Complaints reporting rules

...

1.10.1A R [Text to follow] A firm must not include in the report a complaint that has been forwarded in its entirety to another respondent under the complaints forwarding rules.

1.10.1B G [Text to follow] Where a firm has forwarded to another respondent only part of a complaint or where two respondents may be jointly responsible for a complaint, then the complaint should be reported by both firms.

...

1.10.2 R DISP 1 Annex 1R requires (for the relevant reporting period) information about:

- (1) the total number of *complaints* received by the *firm*, ~~broken down according to the categories and generic product types described in *DISP* 1 Annex 1R which are relevant to the *firm*;~~
- (2) the total number of *complaints* closed by the *firm*:
 - (a) within four weeks or less of receipt;
 - (b) ~~within more than four weeks and up to eight weeks of receipt; and~~
 - (c) more than eight weeks after receipt;
- (3) the total number of *complaints*:
 - (a) upheld by the *firm* in the reporting period; and
 - ~~(b) that the *firm* knows have been referred to, and accepted by, the *Financial Ombudsman Service* in the reporting period;~~
 - ~~(c)~~ outstanding at the beginning of the reporting period; and
 - ~~(d) outstanding at the end of the reporting period; and~~
- (4) the total amount of redress paid in respect of *complaints* during the reporting period.

1.10.3 G For the purpose of *DISP* 1.10.2R, upon completing the return, the *firm* should note that:

- (1) ...
- (2) Under *DISP* 1.10.2R(3)(a), a *firm* should report any *complaint* to which it has given a ~~*final response*~~ response which upholds the *complaint*, even if any redress offered is disputed by the complainant. For this purpose, 'response' includes a response under the complainant's written acceptance rule (*DISP* 1.6.4R), the two stage *complaints* procedures rule (*DISP* 1.6.5R) (unless a *final response* was sent later) and a *final response*. Where a *complaint* is upheld in part or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the ~~whole~~ *complaint* as upheld for reporting purposes. However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.
- (3) ...

...

DISP 1 Ann 1R is deleted and replaced with the following text. The text is not underlined.

DISP 1 Ann 1R

Illustration of the reporting requirements, referred to in *DISP 1.10.1R*

Complaints Return (DISP 1 Ann 1R)

GROUP REPORTING / NIL RETURN DECLARATION

- 1 Does the data reported in this return cover complaints relating to more than one entity? If 'Yes', then list the *firm* reference numbers (FRNs) of all the entities included in this return. Yes / No

- 2 We wish to declare a nil return Yes / No

RETURN DETAILS REQUIRED

- 3 Total complaints outstanding at reporting period start date

Complaints closed

	A	B	C	D	E
Product/service grouping	Complaints closed within 4 weeks	Complaints closed > 4 but within 8 weeks	Complaints closed > 8 weeks	Total complaints upheld by firm	Total redress paid
4 Banking					
5 Home finance					
6 General insurance and pure protection					
7 Decumulation, life and pensions					
8 Investments					

Complaints opened

		A	B	C	D	E
	Product/service grouping	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
9	Banking	Current accounts				
10		Credit cards				
11		Unregulated loans				
12		Savings (inc. Cash ISA) and other banking				
13	Home finance	Equity release products				
14		Impaired credit mortgages				
15		Other regulated home finance products				
16		Other unregulated home finance products				
17	General insurance & pure protection	Payment protection insurance				
18		Other general insurance				
19		Critical illness				
20		Income protection				
21		Other pure protection				
22	Decumulation, life and pensions	Personal pensions and FSAVCs				
23		Investment linked annuities				
24		Income drawdown products				
25		Endowments				
26		Other decumulation, life and pensions				
27	Investments	Investment bonds				
28		PEPs/ISAs (exc. cash ISAs)				
29		Investment trusts				
30		Unit trusts/OEICs				
31		Structured products				
32		Other investment products/funds				
33		Investment management/services (inc. platforms)				

NOTES ON THE COMPLETION OF THIS RETURN

Nil returns

If no *complaints* have been received during the reporting period and no *complaints* were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box.

Product/service groupings

Complaints should be allocated to these groupings based on the product or service the *complaint* relates to.

Complaints opened

Firms operating the two-stage process (*DISP* 1.6.5R) may decide to re-open a closed *complaint* after more than eight weeks from the complainant's receipt of its non-final response where the complainant has indicated he remains dissatisfied. These re-opened *complaints* should be reported in this return as new *complaints*.

Product and cause categories

The 'other' categories should only be used in exceptional circumstances when none of the specific product or cause categories are appropriate.

A *complaint* should be reported against the product/service element complained about; this may be different to the main policy itself. For example, for a term assurance policy with an attaching critical illness option, where the *complaint* relates to the term assurance element, it should be reported under 'other pure protection' but where the *complaint* relates to the critical illness element, it should be reported under 'critical illness'.

...

Annex B

Amendments to the Credit Unions sourcebook (CRED)

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

...

- 17.6.3 R A *credit union* must provide the *FSA*, once a year, with a report in the format set out in *CRED 17 Annex 1R* (Credit Union complaints return) which contains (for the relevant reporting period) information about:
- (1) the total number of complaints received by the *credit union* (except those referred to in *CRED 17.4.1R*) ~~broken down according to the categories and in respect of each of the generic product types described in *CRED 17 Annex 1R* (Credit union complaints return) which are relevant to the *credit union*;~~
 - (2) the number of complaints closed by the *credit union*:
 - (a) within eight weeks of receipt; and
 - (b) more than eight weeks after receipt;
 - (3) the total number of complaints:
 - (a) upheld by the *credit union* in the reporting period;
 - ~~(b) that the *credit union* knows have been referred to, and accepted by, the *FOS* during the reporting period; and~~
 - (be) outstanding at the ~~end~~ start of the reporting period; and
 - (4) the total amount of redress paid in respect of complaints during the reporting period; ~~and~~
 - ~~(5) the single contact within the *credit union* for complainants.~~
- 17.6.4 G For the purpose of *CRED 17.6.3R*, and upon completing the return, the *credit union* should note that:
- (1) ...

- (2) Where a complaint has been upheld under *CRED* 17.6.3R(3)(a), a *credit union* should report any complaints to which it has given a final response which accepts the complaint and, where appropriate, offers redress, even if the redress offered is disputed by the complainant. Where a complaint is upheld in part, or where the *credit union* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, the *credit union* should treat the ~~whole~~ complaint as upheld for reporting purposes. Where a *credit union* rejects a complaint, yet chooses to make an ex-gratia payment to the complainant, the complaint should be recorded as rejected.

...

CRED 17 Annex 1R is deleted and replaced with the following text. The text is not underlined.

CRED 17 Ann 1R

(for FSA use only)

Credit union complaints return

FSA Handbook Reference: CRED 17 Ann 1R
This is the report referred to in CRED 17.6.3R

Please read the notes on completion before completing this return

Firm details and reporting period

Section 1

1.01	FSA firm reference number	<input type="text"/>					
1.02	Name of <i>credit union</i>	<input type="text"/>					
1.03	Reporting period	From	<input type="text"/>	<input type="text"/>	To	<input type="text"/>	<input type="text"/>

Nil return declaration

Section 2

SECTIONS 1 AND 6 MUST STILL BE COMPLETED.

2.01	We wish to declare a Nil Return (Tick the box if applicable)	Nil return	<input type="checkbox"/>
------	---	------------	--------------------------

Complaints outstanding

Section 3

3.01	Number of complaints outstanding as at reporting period start date	<input type="text"/>
------	--	----------------------

Complaints opened during reporting period
Section 4

Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
Banking	Current accounts					
	Credit cards					
	Unregulated loans					
	Savings (inc. Cash ISA) and other banking					
Home finance	Equity release products					
	Impaired credit mortgages					
	Other regulated home finance products					
	Other unregulated home finance products					
General insurance and pure protection	Payment protection insurance					
	Other general insurance					
	Critical illness					
	Income protection					
	Other pure protection					
Decumulation, life and pensions	Personal pensions and FSAVCs					
	Investment linked annuities					
	Income drawdown products					
	Endowments					
	Other decumulation, life and pensions					
Investments	Investment bonds					
	PEPs/ISAs (exc. cash ISAs)					
	Unit trusts/OEICs					
	Investment trusts					
	Structured products					
	Other investment products/funds					
	Investment management/services (inc. platforms)					

Complaints closed during reporting period

Section 5

Product/service grouping	Number of complaints closed within 8 weeks	Number of complaints closed after more than 8 weeks	Number of complaints upheld by the <i>credit union</i> in the period	Total amount of redress paid to consumers in the period
Banking				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				

Declaration and signature

Section 6

Knowingly or recklessly giving the *FSA* information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000) and a breach of regulatory requirements.

In signing this form, the *credit union* acknowledges that the data supplied may be used by the *FSA* in a variety of different ways (including making it publicly available) in support of its principal functions and statutory objectives as provided for under the Financial Services and Markets Act 2000.

I confirm that I have read the notes and that the information given in this return about complaints received by the *credit union* named at Section 1.02 is accurate and complete to the best of my knowledge and belief.

6.01	Name of <i>person</i> completing on behalf of the <i>credit union</i>	
6.02	Job title	
6.03	Signature	
6.04	Date	

Notes on completion of this return

Completing this return

The return must be completed in black ink and (if in manuscript) in BLOCK LETTERS.

All dates must be provided in numeric form (for example: 29/02/2006 for 29 February 2006).

The *credit union* is responsible for the accuracy of the data and completion of the return.

Section 2 – Nil Returns

If no complaints (except those referred to in *CRED 17.4.1R*) have been received during the reporting period, and no complaints were outstanding at the beginning of the period, the *credit union* may submit a **NIL RETURN** by ticking the relevant box on the front of the form.

Sections 1 and 6 must still be completed.

Section 4 – Complaints opened during reporting period

Enter the number of complaints for each product according to the category of complaint.

Leave blanks where no complaints have been received.

All *credit unions* provide the products “Savings (inc Cash ISA) and other banking” (members’ shares) and “Unregulated loans” (members’ loans not secured on land), and may receive complaints for those products. The corresponding rows in the form have been left shaded to help *credit unions* with completion; all other rows are clear. Some categories of complaint (shown in the column headings) may not apply to those products.

Some *credit unions* may also provide other products (for which they may require further permission). If so they should enter the number of complaints received for these products in the relevant boxes, even though they are clear.

Section 5 – Complaints closed during reporting period

Credit unions will usually receive complaints relating to the 'Banking' product/service grouping only and this row is shaded to help with completion. As above – some credit unions may also provide other products; if so they should also fill in the appropriate row even though it is not shaded.

Section 6 – Declaration & signature

The declaration must be signed by an appropriate individual for the *credit union* submitting this return.

If you have any questions or need help with this return, please approach your usual supervisory contact at the FSA.

REPORTS SENT BY POST MUST BE ADDRESSED TO:

THE FINANCIAL SERVICES AUTHORITY
P O BOX 35747
LONDON E14 5WP
UNITED KINGDOM

Hand delivered returns should be marked for **the attention of Contract Revenue and Information Management Division** and be delivered to 25 The North Colonnade, Canary Wharf, London E14 5HS.