

TRAINING AND COMPETENCE SOURCEBOOK

(AMENDMENT No 3) INSTRUMENT 2002

Powers exercised

A. The Financial Services Authority amends the Training and Competence sourcebook 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).

B. The provisions of the Act relevant to rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force immediately.

Amendments to the Training and Competence sourcebook

D. The Training and Competence sourcebook is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Training and Competence sourcebook (Amendment No 3) Instrument 2002.

By order of the Board
17 January 2002

ANNEX

TC INTERIM APPROVED EXAMINATION ANNEXES

The amendments are shown as follows:

Deleted text : ~~Red—strike through~~

Inserted text: **Yellow**

Annex 1R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (a) Employees engaging in advising on investments which are, and dealing with or for clients in, securities (other than stakeholder pension schemes or broker funds) and derivatives

Examination that must be passed before starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
Y	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Associateship – must include a pass in the Investment Management paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the Investment paper *	Chartered Institute of Bankers
1	Associateship – must include a pass in the Investment paper	Chartered Institute of Bankers in Scotland
1	Certificate in Derivatives plus Certificate in Securities – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Certificate in Securities plus Certificate in Derivatives – Paper 2	Securities Institute
1	Diploma (including Regulation and Compliance paper and Financial Derivatives paper)	Securities Institute
1	Diploma (including Regulation and Compliance paper and * Financial Futures and Options paper)	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Examination that must be passed before starting the activity		
1	* SFA Futures and Options Representative Examination plus * Securities Representative Examination – Part 2	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* SFA Securities Representative plus * Financial Derivatives Module	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst Examination	Association for Investment Management and Research
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

Table 2 TC 2.1.4 R (1) (b) *Employees engaging in advising on investments which are, and dealing with or for clients in, securities (other than stakeholder pension schemes or broker funds) only*

Examination that must be passed before starting the activity

K E Y	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
	3	UK regulatory module

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Associateship – must include a pass in the Investment Management paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the Investment paper *	Chartered Institute of Bankers
1	Associateship - must include a pass in the Investment paper	Chartered Institute of Bankers in Scotland
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance paper)	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Canadian Securities course plus Conduct and Practices Handbook	Canadian Securities Institute
2	Certificate	New Zealand Stock Exchange
2	Certificate in Financial Markets	Securities Institute of Australia
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Diploma	Association of Belgian Financial Analysts
2	Diploma	The Swiss Stock Exchange
2	Diploma of Financial Markets	Securities Institute of Australia
2	Dealers Representative Examination	Singapore Exchange
2	Elementary, Intermediate and International Capital Markets courses	Korea Securities Training Institute

Examination that must be passed before starting the activity		
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	The French Society of Investment Analysts
2	General Certification Programme	ISMA/University of Reading
2	International Capital Markets Qualification (ICMQ) (including the Fixed Interest and Bond Markets Module)	Securities Institute/South African Institute of Financial Markets
2	Irish Registered Representatives Examination	Irish Stock Exchange/Dublin City University
2	Membership Examinations	Johannesburg Stock Exchange
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	Promotore Finanziario Examination	Italian Exchange
2	* Registered Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
2	Series 7 - General Securities Representatives Examination	National Association of Securities Dealers
2	Trainee Dealers Representatives examination	Kuala Lumpur Stock Exchange
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

Table 3 TC 2.1.4 R (1) (c) *Employees engaging in advising on investments which are, and dealing with or for clients in, derivatives only*

Examination that must be passed before starting the activity

Examination that must be passed before starting the activity

K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
Y	3	UK regulatory module

*** The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.**

1	Associateship – must include a pass in the Investment Management paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the * Investment paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the Investment paper	Chartered Institute of Bankers in Scotland
1	Certificate in Derivatives	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (including Regulation and Compliance paper and Financial Derivatives paper)	Securities Institute
1	Diploma (including Regulation and Compliance paper and * Financial Futures and Options paper)	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	ACI Diploma	ACI
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst	Association for Investment Management and Research
2	Derivatives Fundamentals course and Futures/Options Licensing course	Canadian Securities Institute
2	Diploma including passes in both the Australian Futures Trading and Options Trading papers	Securities Institute of Australia
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	Norwegian Society of Financial Analysts
2	Financial Derivatives paper of Diploma	Securities Institute
2	* Financial Futures and Options paper of the Diploma	Securities Institute
2	International Capital Markets Qualification (ICMQ)	Securities Institute/South African

Examination that must be passed before starting the activity		
	including passes in Futures, Options and other Derivative Products paper	Institute of Financial Markets
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Representative of Public Securities Qualifications – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualifications – Type 1	Japanese Securities Dealers Association
2	Registered Representatives Examination	Sydney Futures Exchange
2	Secondary Examination	Analyst Association of Japan
2	Series 3 - National Commodity Futures Examination	National Futures Association
2	Singapore Exchange Futures Trading Test	Singapore Institute of Banking and Finance
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

Annex 2R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (d) *Employees engaging in managing investments*

Examination that must be passed within 30 months of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
Y	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		

Examination that must be passed within 30 months of starting the activity

1	Associate – achieved by examination passed before 1 December 2001 [must include a pass in Subject 301 - Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	* Fellow or Associate achieved by examination [must include a pass in Investment paper E (post – May 1992 syllabus in force until 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow - achieved by examination [must include a pass in Subjects 301 and 401 Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Associate – achieved by examination passed after 30 November 2001 [must include a pass in Subject 301 - Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
2	Certificate in Investment Management (at least three papers passed by examination)	Society of Investment Analysts in Ireland
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Chartered Member	Securities Analysts' Association of Japan
2	Investment Management Asset Allocation Qualification	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute

Examination that must be passed within 30 months of starting the activity		
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 2 TC 2.1.4 R (1) (e) Employees engaging in managing investments in relation to venture capital investments only

Examination that must be passed within 30 months of starting the activity		
K	1 Interim approved examinations which meet the requirements of TC 2.4.5 R (2)	
E	2 Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module	
Y	3 UK regulatory modules	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Associate – achieved by examination passed before 1 December 2001 [must include a pass in Subject 301 - Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	* Fellow or Associate achieved by examination [must include a pass in Investment paper E (Post–May-1992 syllabus in force until 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow – achieved by examination [must include a pass in Subjects 301 and 401 – Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment

Examination that must be passed within 30 months of starting the activity		
		Management and Research
2	Associate – achieved by examination passed after 30 November 2001 [must include a pass in Subject 301 – Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
2	Certificate in Corporate Finance	Securities Institute
2	Certificate in Investment Management (at least three papers passed by examination)	Society of Investment Analysts in Ireland
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified Diploma in Accounting and Finance	Association of Chartered Certified Accountants
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Chartered Member	Securities Analysts' Association of Japan
2	Diploma – Corporate Finance paper	Securities Institute
2	Investment Management Asset Allocation Qualification	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* SFA Corporate Finance Representative Examination	Securities Institute
2	Professional qualification which provides the particular discipline relevant to their responsibilities in relation to venture capital investments	
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Annex 3R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (f) *Employees engaging in advising on investments which are packaged products (other than broker funds or as in (g) or (h))*

Examination that must be passed within two years of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
Y	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associateship (post-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Diploma (including Private Client Investment Advice and Management paper)	Securities Institute
1	Fellow or Associate (life and pensions route only)	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Paper (post-August - 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning Paper 2	Institute of Bankers in Ireland
2	Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales

Examination that must be passed within two years of starting the activity		
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
3	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Advice Certificate – Paper 1	Securities Institute

Table 2 *TC 2.1.4 R (1) (g) Employees engaging in advising on investments which are friendly society tax exempt policies only*

Examination that must be passed within two years of starting the activity		
Interim approved examinations which meet the requirements of TC 2.4.5 R (2)		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
1	Investment Advice Certificate – Paper 1	Securities Institute

Table 3 *TC 2.1.4 R (1) (h) Employees engaging in advising on investments which are packaged products (where the employee sells only life policies issued by a friendly society and is not reasonably expected to receive remuneration of more than £1,000 a year in respect of such sales)*

No examination requirement

Table 4 *TC 2.1.4 R (1) (i) Employees engaging in advising on investments in the course of corporate finance business only*

Examination that must be passed within two years of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
Y	3	UK regulatory modules

Examination that must be passed within two years of starting the activity

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Diploma – Corporate Finance paper	Securities Institute
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association

Examination that must be passed within two years of starting the activity		
2	* Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Class 4	Japanese Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
3	Diploma (Regulation and Compliance)	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 5 *TC 2.1.4 R (1) (j) Employees engaging in advising on investments which are (but not dealing in) securities (other than stakeholder pension schemes or broker funds) and derivatives. For employees engaging in advising in relation to venture capital investments only – see Annex 2R, Table 2.*

Examination that must be passed within two years of starting the activity		
K E Y	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associate or Fellow (life and pensions route only)	Chartered Insurance Institute
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Derivatives plus Certificate in Securities – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute

Examination that must be passed within two years of starting the activity		
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Certificate in Securities plus Financial Derivatives Module	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate	Chartered Insurance Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Investment paper (post - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	* SFA Futures and Options Representative Examination plus * Securities Representative Examination – Part 2	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* SFA Securities Representative Examination plus * Financial Derivatives Module	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst Examination	Association for Investment Management and Research
2	Investment Management paper from the Associateship	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland

Examination that must be passed within two years of starting the activity		
2	Investment Planning – Paper 2	Institute of Bankers in Ireland
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	* Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 6 TC 2.1.4 R (1) (k) *Employees engaging in advising on investments which are (but not dealing in) securities (other than stakeholder pension schemes or broker funds) only. For employees engaging in advising in relation to venture capital investments only – see Annex 2R, Table 2.*

Examination that must be passed within two years of starting the activity		
KEY	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associate or Fellow (life and pensions route only)	Chartered Insurance Institute
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate	Chartered Insurance Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Investment paper (post - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute

Examination that must be passed within two years of starting the activity		
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Canadian Securities course plus Conduct and Practices Handbook	Canadian Securities Institute
2	Certificate	New Zealand Stock Exchange
2	Certificate in Financial Markets	Securities Institute of Australia
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Dealers Representative Examinations	Singapore Exchange
2	Diploma	Association of Belgium Financial Analysts
2	Diploma of Financial Markets	Securities Institute of Australia
2	Elementary, Intermediate and International Capital Markets course	Korea Securities Training Institute
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	French Society of Investment Analysts
2	General Certification Programme	ISMA/University of Reading
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning – Paper 2	Institute of Bankers in Ireland
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	International Capital Markets Qualification (including the Fixed Interest and Bond Markets Module)	Securities Institute/South African Institute of Financial Markets
2	Membership Examination	Johannesburg Stock Exchange
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	Promotore Finanziario Examination	Italian Exchange
2	Registered Representatives Examination	Irish Stock Exchange/Dublin City University
2	* Registered Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association

Examination that must be passed within two years of starting the activity		
2	* Representative of Public Securities Examination (pre-April 1990)/ Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
2	Series 7 – General Securities Representative Examination	National Association of Securities Dealers
2	Trainee Dealers Representative Examination	Kuala Lumpur Stock Exchange
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Management and Research

Table 7 TC 2.1.4 R (1) (I) Employees engaging in advising on investments which are (but not dealing in) derivatives only

Examination that must be passed within two years of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
Y	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associate or Fellow (life and pensions route only)	Chartered Insurance Institute
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Derivatives	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate	Chartered Insurance Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Investment paper (post - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange

Examination that must be passed within two years of starting the activity		
1	* TSA Registered Representative Examinations	The Securities Association
2	ACI Diploma	ACI
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst	Association for Investment Management and Research
2	Derivatives Fundamentals course and Futures/Options Licensing course	Canadian Securities Institute
2	Diploma including passes in both the Australian Futures Trading and Options Trading papers	Securities Institute of Australia
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	Norwegian Society of Financial Analysts
2	International Capital Markets Qualification (ICMQ) including a pass in Futures, Options and other Derivative Products paper	Securities Institute/South African Institute of Financial Markets
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning – Paper 2	Institute of Bankers in Ireland
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	Registered Representatives Examination	Sydney Futures Exchange
2	* Registered Representative of Public Securities Examination (pre-April 1990) Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	* Representative of Public Securities Examination (pre-April 1990) Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
2	Series 3 – Futures Representative Examination	National Futures Association
2	Singapore Exchange Futures Trading Test	Singapore Institute of Banking and Finance
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers

Examination that must be passed within two years of starting the activity		
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Management and Research

Annex 4R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (m) *Employees* engaging in the activity of a *broker fund adviser*

Examination that must be passed before starting the activity		
KEY	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2)
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module
	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate in Investment Management	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Investment Management Asset Allocation Qualification	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers

Examination that must be passed before starting the activity		
3	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Regulation and Compliance paper of Diploma	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 2 *TC 2.1.4 R (1) (n) Employees engaging in advising on syndicate participation at Lloyd's*

Examination that must be passed before starting the activity		
Interim approved examinations which meet the requirements of TC 2.4.5 R (2)		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
Lloyd's Introductory Test		Lloyd's
Lloyd's Market Certificate		Lloyd's/Chartered Insurance Institute

Table 3 *TC 2.1.4 R (1) (o) Employees engaging in the activity of a pension transfer specialist*

Examination that must be passed before starting the activity		
Interim approved examinations which meet the requirements of TC 2.4.5 R (2)		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
Fellow or Associate		Faculty of Actuaries/Institute of Actuaries
Fellow or Associate by examination		Pensions Management Institute
Fellow or Associate including three pensions-related subjects as confirmed by the examining body		Chartered Insurance Institute
G60 paper of Advanced Financial Planning Certificate		Chartered Insurance Institute
Pensions paper of Professional Investment Certificate		Chartered Institute of Bankers

Annex 5R **The interim approved examinations referred to in TC 2**

Table 1 TC 2.1.4 R (2) (a) *Employees overseeing on a day-to-day basis operating, or acting as a trustee or depositary of, a collective investment scheme*

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1 Industry awareness Stage 2 Regulatory knowledge Stage 3 Knowledge relevant to the role		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Diploma	Securities Institute
1	Diploma - Global Operations Management paper	Securities Institute
1	Diploma – * International Operations Management paper	Securities Institute
1	Diploma – * Operations Management paper	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountants
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification – Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Management	Securities Institute
2	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
2	Diploma – Global Operations Management paper	Securities Institute
2	Diploma – * International Operations Management paper	Securities Institute
2	Diploma – * Operations Management paper	Securities Institute
2	Diploma – Regulation and Compliance paper	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Regulation and Practice paper of the Associate Examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Futures and Options Representative Examination	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
2	* SFA Securities Representative Examination	Securities Institute
2	* Stock Exchange Registered Representative Examination	London Stock Exchange
2	* TSA Registered Representative Examinations	The Securities Association
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
3	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
3	Diploma - Global Operations Management paper	Securities Institute
3	Diploma – * International Operations Management paper	Securities Institute
3	Diploma – * Operations Management paper	Securities Institute
3	Investment Administration Management Award	Association of Unit Trusts and Investment Funds
3	Investment Administration Qualification – * Basics of CREST module	Securities Institute
3	Investment Administration Qualification – * Bond Settlement module	Securities Institute
3	Investment Administration Qualification – CREST Settlement module	Securities Institute
3	Investment Administration Qualification – * Derivatives Operations/ Exchange – Traded Derivative	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

	Administration module	
3	Investment Administration Qualification – Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Global Custody module	Securities Institute
3	Investment Administration Qualification – * ISA Administration module	Securities Institute
3	Investment Administration Qualification – ISA and PEP Administration module	Securities Institute
3	Investment Administration Qualification – OEIC Administration module	Securities Institute
3	Investment Administration Qualification – * PEP Administration module	Securities Institute
3	Investment Administration Qualification – Private Client Administration module	Securities Institute
3	Investment Administration Qualification – Unit Trust Administration module	Securities Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 6R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (b) Employees overseeing on a day-to-day basis safeguarding and administering investments or holding of client money

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1 Industry awareness Stage 2 Regulatory knowledge Stage 3 Knowledge relevant to the role		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Diploma	Securities Institute
1	Diploma - Global Operations Management paper	Securities Institute
1	Diploma – * International Operations Management paper	Securities Institute
1	Diploma – * Operations Management paper	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountants
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification – Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate – Paper 1	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Management	Securities Institute
2	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
2	Diploma – Global Operations Management paper	Securities Institute
2	Diploma – * International Operations Management paper	Securities Institute
2	Diploma – * Operations Management paper	Securities Institute
2	Diploma – Regulation and Compliance paper	Securities Institute
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Regulation and Practice paper of the Associate Examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Securities Institute Regulatory Paper	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	* SFA Futures and Options Representative Examination	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
2	* SFA Securities Representative Examination	Securities Institute
2	* Stock Exchange Registered Representative Examination	London Stock Exchange
2	* TSA Registered Representative Examinations	The Securities Association
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate for Financial Advisors – Paper 1	Chartered Institute of Bankers
3	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
3	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
3	Diploma - Global Operations Management paper	Securities Institute
3	Diploma – * International Operations Management paper	Securities Institute
3	Diploma – * Operations Management paper	Securities Institute
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investments Administration Management Award	Association of Unit Trusts and Investment Funds
3	Investment Administration Qualification – * Basics of CREST module	Securities Institute
3	Investment Administration Qualification – * Bond Settlement module	Securities Institute
3	Investment Administration Qualification – CREST Settlement module	Securities Institute
3	Investment Administration Qualification – * Derivatives Operations/Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Global Custody module	Securities Institute
3	Investment Administration Qualification – * ISA Administration module	Securities Institute
3	Investment Administration Qualification – ISA and PEP Administration module	Securities Institute
3	Investment Administration Qualification – OEIC Administration module	Securities Institute
3	Investment Administration Qualification – * PEP Administration module	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

3	Investment Administration Qualification – Private Client Administration module	Securities Institute
3	Investment Administration Qualification – Unit Trust Administration module	Securities Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 7R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (c) *Employees overseeing on a day-to-day basis the following administrative functions in relation to managing investments:*

- (i) arranging settlement;
- (ii) monitoring and processing corporate actions;
- (iii) *client* account administration, liaison and reporting, including valuation and performance measurement;
- (iv) *ISA* or *PEP* administration;
- (v) *investment trust savings scheme* administration

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

Stage 1 Industry awareness
 Stage 2 Regulatory knowledge
 Stage 3 Knowledge relevant to the role

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Diploma	Securities Institute
1	Diploma - Global Operations Management paper	Securities Institute
1	Diploma – * International Operations Management paper	Securities Institute
1	Diploma – * Operations Management paper	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountants
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Management	Securities Institute
2	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
2	Diploma – Global Operations Management paper	Securities Institute
2	Diploma – * International Operations Management paper	Securities Institute
2	Diploma – * Operations Management paper	Securities Institute
2	Diploma – Regulation and Compliance paper	Securities Institute
2	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification - Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Advice Certificate - Paper 1	Securities Institute
2	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Regulation and Practice paper of the Associate Examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Futures and Options Representative Examination	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
2	* SFA Securities Representative Examination	Securities Institute
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
3	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
3	Diploma – Global Operations Management paper	Securities Institute
3	Diploma – * International Operations Management paper	Securities Institute
3	Diploma – * Operations Management paper	Securities Institute
3	Investment Administration Management Award	Association of Unit Trusts and Investment Funds
3	Investment Administration Qualification – * Basics of CREST module	Securities Institute
3	Investment Administration Qualification – * Bond Settlement module	Securities Institute
3	Investment Administration Qualification – CREST Settlement module	Securities Institute
3	Investment Administration Qualification – * Derivatives Operations/ Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Global Custody module	Securities Institute
3	Investment Administration Qualification – * ISA Administration module	Securities Institute
3	Investment Administration Qualification – ISA and PEP Administration module	Securities Institute
3	Investment Administration Qualification – OEIC Administration module	Securities Institute
3	Investment Administration Qualification – * PEP Administration module	Securities Institute
3	Investment Administration Qualification – Private Client Administration module	Securities Institute
3	Investment Administration Qualification – Unit Trust Administration module	Securities Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 8R The interim approved examinations referred to in TC 2

Table 1 **TC 2.1.4 R (2) (d) Employees overseeing on a day-to-day basis the following *administrative functions* in relation to the *effecting or carrying out of life policies*:**

- (i) new business administration;
- (ii) *policy* alterations including surrenders and *policy* loans;
- (iii) preparing *projections*;
- (iv) processing *claims*, including pension payments;
- (v) fund switching

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1	Industry awareness	
Stage 2	Regulatory knowledge	
Stage 3	Knowledge relevant to the role	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate of Insurance Practice	Chartered Insurance Institute
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities - Paper 2	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Fellow or Associate	Chartered Institute of Public Finance and Accountants
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	Investment Administration Qualification – Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate for Financial Advisers – Paper 2	Chartered Institute of Bankers
3	Certificate of Insurance Practice (life or pensions route)	Chartered Insurance Institute
3	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
3	Fellow or Associate (by examination)	Pensions Management Institute
3	Fellow or Associate (life and pensions route only)	Chartered Insurance Institute
3	Financial Administration Foundation Certificate - Life office administration paper	Chartered Insurance Institute
3	Financial Administration Foundation Certificate - Pensions administration paper	Chartered Insurance Institute
3	Financial Planning Certificate – Paper 2	Chartered Insurance Institute
3	Initial Test of Competence	Institute of Chartered Accountants in England and Wales
3	Investment Advice Certificate - Paper 2	Securities Institute
3	Life assurance paper (735) from the Associateship	Chartered Insurance Institute
3	Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales
3	Pensions law, taxation and administration paper (740) from the Associateship	Chartered Insurance Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 9R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (e) *Employees overseeing on a day-to-day basis taking private customers through decision trees in connection with a stakeholder pension scheme*

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

Stage 1 Industry awareness
 Stage 2 Regulatory knowledge
 Stage 3 Knowledge relevant to the role

*** The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.**

1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountants ^{sc}
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Member	Association of Accounting Technicians
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
3	Certificate for Financial Advisers – Paper 2	Chartered Institute of Bankers
3	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
3	Fellow or Associate (by examination)	Pensions Management Institute
3	Fellow or Associate (pensions route)	Chartered Insurance Institute
3	Financial Planning Certificate – Paper 2	Chartered Insurance Institute
3	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
3	Investment Advice Certificate - Paper 2	Securities Institute
3	Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 10R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (f) *Employees* overseeing on a day-to-day basis the following *administrative functions* in relation to the operation of a *stakeholder pension scheme*:

- (i) new business administration;
- (ii) receipt of or alteration to contributions;
- (iii) preparing *projections* and annual statements;
- (iv) administration of transfers;
- (v) handling claims, including pension payments;
- (vi) fund allocation and switching

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1 Industry awareness		
Stage 2 Regulatory knowledge		
Stage 3 Knowledge relevant to the role		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	* Certificate in Corporate Finance	* Securities Institute
1	* Certificate in Derivatives – Paper 2	* Securities Institute
1	* Certificate in Investment Management	* Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	* Certificate in Securities and Financial Derivatives – Paper 2	* Securities Institute
1	* Certificate in Securities – Paper 2	* Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Fellow or Associate	Chartered Institute of Public Finance and Accountants
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Accountants of Scotland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory Environment module	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Advice - Certificate – Paper 1	Securities Institute
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Associate or Fellow	Faculty of Actuaries/Institute of Actuaries
3	Certificate for Financial Advisers – Paper 2	Chartered Institute of Bankers
3	Certificate of Insurance Practice (pensions route)	Chartered Insurance Institute
3	Fellow or Associate (by examination)	Pensions Management Institute
3	Fellow or Associate (pensions route)	Chartered Insurance Institute
3	Financial Administration Foundation Certificate - Pensions administration paper	Chartered Insurance Institute
3	Financial Planning Certificate – Paper 2	Chartered Insurance Institute
3	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Accountants in Ireland/Institute of Accountants of Scotland
3	Investment Advice Certificate - Paper 2	Securities Institute
3	Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales
3	Pensions law, taxation and administration paper (740) from the Associateship	Chartered Insurance Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

FEES (No 3) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):

Section 156 of the Act (General supplementary powers);

Section 157(1) of the Act (Guidance);

Paragraph 17(1) of Schedule 1 to the Act (Fees).

- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument shall come into force immediately except as follows:

- (i) SUP 20.2.8R to SUP 20.2.11G inclusive (Groups of firms) (inserted under paragraph E) comes into force on 1 April 2003; and
- (ii) SUP 20.4.1G to SUP 20.4.5R inclusive (Modifications for firms with new or extended permissions) (inserted by paragraph E) comes into force on 1 April 2002.

Amendment of GEN

- D. GEN is amended by inserting after GEN 2 the provisions in Annex A to this instrument.

Amendment of AUTH

- E. AUTH 4 Annex 1R is amended by deleting paragraphs 9 and 10 under "Part 5 - Activity Groupings" and replacing them with "9. The activity group definitions are set out in SUP 20 Annex 1R".

Amendment of SUP

- F. SUP is amended as follows:

- (i) insert after SUP 19 the provisions in Annex B to this instrument; and
- (ii) in SUP 6.3.22R (1) delete "Part 5 of AUTH 4" and replace with "Part 7 of SUP 20".

Amendment of PROF

- G. PROF is amended by:

- (i) inserting at the end of PROF 1.1.1R "; and (3) PROF 6 applies to every *designated professional body* and to any *person* who requests the Treasury to make an order under section 326(1) of the *Act* (Designation of professional bodies)."; and
- (ii) inserting after PROF 5 the provisions in Annex C to this instrument.

Amendment of CIS

H. CIS is amended by:

- (i) inserting CIS 1.2.17G the following, and renumbering the remainder of CIS 1.2:
"1.2.18 G CIS 18 (Fees) sets out the application and periodic fees payable for the authorisation or recognition of *regulated schemes*."; and
- (ii) deleting CIS 18 (including CIS 18 Ann 1R) and replacing it with the provisions in Annex D to this instrument.

Amendment of REC

I. REC is amended by deleting REC 7 (including REC 7 Ann 1R) and replacing it with the provisions in Annex E to this instrument.

Citation

J. This instrument may be cited as the Fees (No 3) Instrument 2002.

By order of the Board
17 January 2002

ANNEX A

General Provisions

Chapter 3

FSA Fees: General Provisions

3

PAGE
1





3.1 Introduction

Application

- 3.1.1** **R**
17.01.02/001 This chapter applies to every *person* who is required to pay a fee to the *FSA* by a provision of the *Handbook*.
- 3.1.2** **R**
17.01.02/001 ■ GEN 3.2.1 R and ■ GEN 3.3.1 R do not apply in respect of any fee payable under ■ AUTH 4 (Authorisation fees), ■ REC 7 (Recognised bodies fees), ■ SUP 6.3.22 R (Application fee for variation of permission) or ■ CIS 18 (Collective investment schemes fees) on the making of an application or a notification.
- 3.1.3** **G**
17.01.02/001 The chapters referred to in ■ GEN 3.1.2 R treat applications as incomplete until the relevant fee is paid.

Purpose

- 3.1.4** **G**
17.01.02/001 The purpose of this chapter is to set out the general provisions applicable to those who are required to pay fees to the *FSA*. The requirements themselves are set out in the parts of the *Handbook* to which the fees concerned relate.

Background

- 3.1.5** **G**
17.01.02/001 Paragraph 17 of Schedule 1 to the *Act* enables the *FSA* to charge fees to cover its costs and expenses in carrying out its functions.
- 3.1.6** **G**
17.01.02/001 The provisions of this chapter set out the general provisions applicable to the fees regime. Most of the detail of what fees are payable, and the related requirements, will appear in the part of the *Handbook* to which they relate. If a sourcebook or manual contains requirements which impose fees or other payments, a schedule of those fees or other payments is included in that sourcebook or manual.
- 3.1.7** **G**
17.01.02/001 The fees payable will vary from one financial year to another, and will reflect the *FSA*'s funding requirement for that period and the other key components, as described in ■ GEN 3.1.8 G. Periodic fees, which will normally be payable on an annual basis, will provide the majority of the funding required to enable the *FSA* to undertake its statutory functions.
- 3.1.8** **G**
17.01.02/001 For periodic fees, the key components of the fee mechanism are:

- (1) a funding requirement derived from:
 - (a) the *FSA*'s financial management and reporting framework;
 - (b) the *FSA*'s budget;
 - (c) adjustments for audited variances between budgeted and actual expenditure in the previous accounting year, and reserves movements (in accordance with the *FSA*'s reserves policy);
- (2) mechanisms for applying penalties received during previous financial years for the benefit of fee payers;
- (3) fee-blocks, which are broad groupings of fee payers offering similar products and services and presenting broadly similar risks to the *FSA*'s regulatory objectives;
- (4) a costing system to allocate an appropriate part of the funding requirement to each fee-block; and
- (5) tariff bases, which, when combined with fee tariffs, allow the calculation of fees.

3.1.9

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17.01.02/001

The amount payable by each fee payer will depend upon the category (or categories) of regulated activity or exemption applicable to that *person* (fee-blocks). It will, in most cases, also depend on the amount of the business that *person* conducts in each category (fee tariffs).

3.1.10

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17.01.02/001

By basing fee-blocks on categories of business, the *FSA* aims to minimise cross-sector subsidies. The membership of the fee-blocks is identified in the *Handbook* provisions relating to the type of fees concerned.

3.1.11

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17.01.02/001

Paragraph 17(2) of Schedule 1 to the *Act* prohibits the *FSA* from taking account of penalties received when setting its periodic and other fees. Accordingly periodic fees are specified without reference to the penalties received. However, the *FSA* normally expects to allocate those penalties to the fee-blocks within which the penalty payers fall, by way of a deduction from the periodic fee. Any deductions of this sort are set out in the relevant fees provisions.

3.2 Late Payments and Recovery of Unpaid Fees

Late Payments

3.2.1

R

17.01.02/001

If a *person* does not pay the total amount of a fee on the date on which it is due under the relevant provision in the *Handbook*, 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.

3.2.2

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17.01.02/001

The *FSA* expects to issue invoices for periodic fees at least 30 days before the date on which they fall due. 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.

3.2.3

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17.01.02/001

■ GEN 3.2.1 R relates only to periodic fees.

Recovery of Fees

3.2.4

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17.01.02/001

Paragraph 17(4) of Schedule 1 to the *Act* permits the *FSA* to recover fees as a debt owed to the *FSA* and the *FSA* will consider taking action for recovery through the civil courts.

3.2.5

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17.01.02/001

In addition, the *FSA* may be entitled to take regulatory action. What action (if any) that is taken by the *FSA* will be decided upon in the light of the particular circumstances of the case.



3.3 Relieving Provisions

Extension of Time

3.3.1 **R**
17.01.02/001

A *person* need not pay a fee on the date on which it is due under the relevant provision in the *Handbook*, if:

- (1) that date falls during a period during which circumstances of the sort set out in **GEN 1.3.2 R**(Emergencies) exist, and that *person* has reasonable grounds to believe that those circumstances impair its ability to pay the fee, in which case he must pay on or before the fifth *business day* after the end of that period; or
- (2) that date would otherwise fall on or before the 30th *day* after the date on which the *FSA* has sent written notification to that *person* of the fee payable on that date, in which case he must pay on or before the 30th *day* after the date on which the *FSA* sends the notification.

3.3.2 **G**
17.01.02/001

■ GEN 3.3.1 R relates only to periodic fees.

Remission of Fees

3.3.3 **R**
17.01.02/001

If it appears to the *FSA* that, in the exceptional circumstances of a particular case, the payment of any fee would be inequitable, the *FSA* may reduce or remit all or part of the fee in question which would otherwise be payable.

3.3.4 **R**
17.01.02/001

If it appears to the *FSA* that, in the exceptional circumstances of a particular case to which **GEN 3.3.3 R** does not apply, the retention by the *FSA* of a fee which has been paid would be inequitable, the *FSA* may refund all or part of the fee.

ANNEX B

Supervision

Chapter 20

Fees Rules

20

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1



20.1 Introduction

Application

- 20.1.1** **R** 01.02.02/001 This chapter (other than **■ SUP 20.6 (Periodic fees for certificates granted under article 54 of the *Regulated Activities Order*)**) applies to every *firm* except:
- (1) an *ICVC*;
 - (2) a *UCITS qualifier*.

- 20.1.2** **R** 01.02.02/001 **■ SUP 20.6 (Periodic fees for certificates granted under article 54 of the Regulated Activities Order)** applies to every *person* who holds a certificate issued by the *FSA* under article 54 of the *Regulated Activities Order* (Advice given in newspapers etc.).

Purpose

- 20.1.3** **G** 01.02.02/001 The purpose of this chapter is to set out the requirements on *firms* and others to pay periodic fees which provide the funding for the *FSA*'s functions. It also sets out the requirement to pay transaction reporting fees in certain circumstances.

Background

- 20.1.4** **G** 01.02.02/001 **■ GEN 3(FSA Fees: General Provisions)** applies to the fees required under this chapter, and gives further detail about how the *FSA* sets periodic fees.
- 20.1.5** **G** 01.02.02/001 Most of the detail of what periodic fees are payable by *firms* is set out in *SUP 20 Ann 1R*. The provisions of the annex will vary from one financial year to another. Accordingly a fresh *SUP 20 Ann 1R* will come into force, following consultation, for each financial year.
- 20.1.6** **G** 01.02.02/001 These fees, which will normally be payable on an annual basis, will provide the majority of the funding required to enable the *FSA* to undertake its statutory functions. The amount payable by each *firm* will depend upon the category (or categories) of *regulated activities* it is engaged in (fee-blocks), and on the amount of business it conducts in each category (tariff base).

- 20.1.7**  By basing fee blocks on categories of *regulated activities*, the *FSA* aims to minimise cross-sectoral subsidies. The fee-blocks and tariffs are identified in *SUP 20 Ann 1R*, which also sets out the fees calculation for the relevant financial year.
01.02.02/001
- 20.1.8**  The *Society of Lloyd's*, which has *permission* under section 315(2) of the *Act* (The Society: authorisation and permission), has its own fee block.
01.02.02/001
- 20.1.9**  *Incoming EEA firms* and *incoming Treaty firms* receive a discount to reflect the reduced scope of the *FSA's* responsibilities in respect of them. The level of the discount varies from fee-block to fee-block, according to the division of responsibilities between the *FSA* and *Home state regulators* for *firms* in each fee-block – see ■ *SUP 20.4*(Modifications).
01.02.02/001
- 20.1.10**  Paragraph 17(2) of Schedule 1 to the *Act* prohibits the *FSA* from taking account of penalties received when setting its periodic and other fees. Accordingly each *SUP 20 Ann 1R* will set the periodic fee without reference to the penalties received. The *FSA* will allocate the penalties by way of a permitted deduction specified in *SUP 20 Ann 1R* for the relevant year. The *FSA* normally expects to allocate those deductions so that they apply to the fee blocks within which the *firms* paying penalties fall.
01.02.02/001
- 20.1.11**  Fees are calculated individually for each *firm*, but they may be paid on a *group* basis, if the *group* so wishes.
01.02.02/001

20.2 Obligation to Pay Periodic Fees

Amount payable

- 20.2.1** **R** **A firm must pay to the FSA an amount equal to:**
01.02.02/001
- (1) each periodic fee applicable to it; less
 - (2) any deductions from the periodic fee specified in part 3 of SUP 20 Ann 1R.
- 20.2.2** **R** **A firm must not make any other deduction from the amount required under ■ SUP 20.2.1R.**
01.02.02/001
- 20.2.3** **G** **A firm will be required to pay a periodic fee for every year during which it has a permission subject to any reductions or exemptions applicable under this chapter. The FSA will issue invoices to firms and expects to do so at least 30 days before the dates on which payments will fall due under SUP 20 Ann 1R.**
01.02.02/001

Calculation of periodic fee

- 20.2.4** **R** **The periodic fee referred to in ■ SUP 20.2.1R is (except in relation to the Society) calculated as follows:**
01.02.02/001
- (1) identify each of the tariffs set out in part 2 of SUP 20 Ann 1R which apply to the business of the *firm* for the period specified in that annex;
 - (2) for each of those tariffs, calculate the sum payable in relation to the business of the *firm* for that period;
 - (3) add together the amounts calculated under (2);
 - (4) apply any applicable payment charge or discount specified in part 1 of SUP 20 Ann 1R.
- 20.2.5** **G** **For a firm which becomes authorised or extends its permission during the course of a financial year this periodic fee is modified (see ■ SUP 20.4 (Modifications)). The periodic fee is also modified for incoming EEA firms and for incoming Treaty firms (see ■ SUP 20.4.7R).**
01.02.02/001

Amount payable by the Society of Lloyd's

- 20.2.6** R
01.02.02/001 The periodic fee referred to in ■ SUP 20.2.1R in relation to the *Society* is specified against its name in SUP 20 Ann 1R.

Time and method for payment

- 20.2.7** R
01.02.02/001 The *firm* must pay the total amount due under ■ SUP 20.2.1R:
- (1) on or before the due date or dates specified in Part 1 of SUP 20 Ann 1R; and
 - (2) using one of the payment methods specified in Part 1 of SUP 20 Ann 1R.

Groups of firms

- 20.2.8** R
01.04.03/001 A *firm* which is a member of a *group* may pay all of the amounts due from other *firms* in the same *group* under ■ SUP 20.2.1R, if:

- (1) it notifies the *FSA* in writing the name of each other *firm* within the *group* for which it will pay; and
- (2) it pays the fees, in accordance with this chapter, as a single amount as if that were the amount required under ■ SUP 20.2.1R from the *firm*.

- 20.2.9** G
01.04.03/001 A notification under ■ SUP 20.2.8R(1) should be made in accordance with ■ SUP 15.7 (Form and method of notification).

- 20.2.10** G
01.04.03/001 If the payment made does not satisfy in full the periodic fees payable by all of the members of the *group* notified to the *FSA* under ■ SUP 20.2.8R, the *FSA* will apply the sum received among the *firms* which have been identified in the notification given under ■ SUP 20.2.8R(1) in proportion to the amounts due from them. Each *firm* will remain responsible for the payment of the outstanding balance attributable to it.

- 20.2.11** G
01.04.03/001 If a *firm* pays its fees through an agent outside the scope of ■ SUP 20.2.8R, it should ensure that the *FSA* is informed that the sum being paid is for that *firm's* periodic fees.

20.3 Information on which Fees are calculated

- 20.3.1** **R** 01.02.02/001 A *firm* (other than the *Society*) must notify to the *FSA* the value (as at the valuation date specified in Part 2 of *SUP 20 Ann 1R*) of each element of business on which the periodic fee payable by the *firm* is to be calculated.
- 20.3.2** **R** 01.02.02/001 A *firm* (other than the *Society*) must send to the *FSA* in writing the information required under **■ SUP 20.3.1R** as soon as reasonably practicable, and in any event within two months, after the date specified as the valuation date in Part 2 of *SUP 20 Ann 1R*.
- 20.3.3** **R** 01.02.02/001 To the extent that a *firm* has provided the information required by this section to the *FSA* as part of its compliance with another provision of the *Handbook*, it is deemed to have complied with the provisions of this section.
- 20.3.4** **G** 01.02.02/001 In most cases a *firm* will provide the information required by this section as part of its compliance with other provisions of *SUP*. To the extent that *the FSA* does not obtain sufficient, or sufficiently detailed, information it may seek this by using its general information gathering powers (see **■ SUP 2** (Information gathering by the *FSA* on its own initiative)).
- 20.3.5** **G** 01.02.02/001 These information requirements are modified for *incoming EEA firms* and for *incoming Treaty firms* (see **■ SUP 20.4.8R**).



20.4 Modifications

Modification for firms with new or extended permissions

20.4.1 G
01.04.02/001

A *firm* which becomes authorised during the course of a financial year will be required to pay a proportion of the periodic fee which reflects the proportion of the year for which it will have a *permission*.

20.4.2 G
01.04.02/001

Similarly a *firm* which extends its *permission* so that its business then falls within additional fee blocks will be required to pay a further periodic fee under this section for those additional fee blocks, but discounted to reflect the proportion of the year for which the *firm* has the extended *permission*.

20.4.3 G
01.04.02/001

These provisions apply (with some changes) to *incoming EEA firms* and *incoming Treaty firms* - see ■ SUP 20.4.10R.

20.4.4 R
01.04.02/001

A *firm* which becomes authorised, or whose *permission* is extended, during the course of the financial year must pay a fee equal to:

- (1) the total of the sums calculated in accordance with each of the tariffs set out in Part 4 of SUP 20 Ann 1R for the relevant year which are only applicable to the *firm* after the *permission* is received or extended;
- (2) modified as indicated by ■ SUP 20.4.6R.

20.4.5 R
01.04.02/001

A *firm* must pay any sum required under ■ SUP 20.4.4R within 30 days of the receipt or extension of the *permission*, or if later the due date specified under ■ SUP 20.2.7R.

20.4.6 R
01.02.02/001

Table Table: Modification for additional fee
This table belongs to ■ SUP 20.4.4R

Quarter in which the permission is received or extended	Proportion payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

Modifications for incoming EEA firms and incoming Treaty firms

20.4.7

G

01.02.02/001

The FSA recognises that its responsibilities in respect of an *incoming EEA firm* or of an *incoming Treaty firm* are reduced compared with a *firm* which is incorporated in the *United Kingdom*. Accordingly the periodic fees which would otherwise be applicable to *incoming EEA firms* and *incoming Treaty firms* are reduced.

20.4.8

R

01.02.02/001

For an *incoming EEA firm* or an *incoming Treaty firm*, the calculation required by ■ SUP 20.2.4R is modified as follows:

- (1) the tariffs set out in Part 2 of SUP 20 Ann 1R are applied only to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*; and
- (2) those tariffs are modified in accordance with Part 5 of SUP 20 Ann 1R.

20.4.9

R

01.02.02/001

For an *incoming EEA firm* or an *incoming Treaty firm*, the information required under ■ SUP 20.3 (Information on which fees calculated) is limited to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*.

20.4.10

R

01.02.02/001

In relation to an *incoming EEA firm* or an *incoming Treaty firm* the modification provisions of ■ SUP 20.4.1G to ■ SUP 20.4.6R inclusive 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 *United Kingdom*.

Firms cancelling or reducing the scope of their permission

20.4.11

G

01.02.02/001

The FSA will not refund periodic fees if a *firm* cancels its *permission*, or reduces its *permission* so that it then falls outside a fee-block previously applied to it (but see ■ GEN 3 (Relieving Provisions)).

20.5 Transaction reporting fees

- 20.5.1**  *Firms* which are required to report transactions under **■ SUP 17** (Transaction reporting) may, in certain circumstances, use the *FSA's* Direct Reporting System (see **■ SUP 17**).
- 01.02.02/001
- 20.5.2**  The provision of this facility by the *FSA* incurs costs to it. Those costs depend upon the amount which the facility is used. Accordingly the income which the *FSA* receives from these transaction reporting fees will be set and accounted for separately from the fee block tariffs set out in *SUP 20 Ann 1R*.
- 01.02.02/001
- 20.5.3**  *A firm* which reports its *reportable transactions* to the *FSA* using the *FSA's* Direct Reporting System (see **■ SUP 17**) must pay the fees specified in Part 6 of *SUP 20 Ann 1 R*.
- 01.02.02/001



20.6 Periodic fees for certificates under article 54 of the Regulated Activities Order

20.6.1 **R** A person who holds a certificate under article 54 of the *Regulated Activities Order* must pay to the *FSA* each periodic fee specified in Part 8 of *SUP 20 Annex 1R* applicable to him.
01.02.02/001

20.6.2 **R** A person must not make any deductions from the amount required under *SUP 20.6.1R*.
01.02.02/001

20.6.3 **R** The periodic fee is payable in respect of each period of one year (or any part of such period) during which the person holds the certificate.
01.02.02/001

Modifications for new holders

20.6.4 **R** If a certificate is issued to a person under article 54 of the *Regulated Activities Order* during the course of a year, the periodic fee payable under 20.6.3R for that year is the amount specified in Part 8 of *SUP 20 Annex 1R* modified in accordance with Table *SUP 20.6.5R*.
01.02.02/001

20.6.5 **R** Table Table: Modification of periodic fees for certificates This table belongs to
01.02.02/001 ■ *SUP 20.6.4R*.

Quarter in which the certificate is granted or extended	Proportion payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

Time and method for payment

20.6.6 **R** Each periodic fee must be paid to the *FSA* on or before:
01.02.02/001

- (1) 30 April in that year; or
- (2) If the certificate is issued during that year, the earlier of 30 days after the certificate is granted and the following 30 April.

20.6.7 **R**
01.02.02/001

1. The amount due must be paid using one of the payment methods specified in Part 1 of SUP 20 Annex 1R.

20.6.8 **G**
01.02.02/001

The FSA will issue invoices to the holders of certificates and expects to do so at least 30 days before the dates on which payments fall due.

Periodic fees payable in relation to the period from 1 December 2001 to 31 March 2002

The activity groups and tariff bases applicable to Parts 1 to 5 are defined in Part 7.

Part 1 – Date on which payment is required (see also GEN 3.3.1R) and payment methods

- (1) Every *firm* must pay its periodic fees for this period on or before the earliest of:
- (a) when its periodic fees for the next financial year fall due; or
 - (b) in relation to an *authorised professional firm, commencement*; or
 - (c) (in relation to any new or extended *permission* granted or extended during this period) 30 days after the receipt or extension of the *permission*; or
 - (d) the date on which its *permission* is cancelled.
- (2) Every *firm* must pay using one of the following methods:

Payment Method	Additional Amount or Discount Applicable
Direct debit	Discount of £20
Credit transfer (BACS, CHAPS)	Discount of £10
Cheque	None
Switch	None
Credit card (Visa or Mastercard only)	Additional 2% of sum paid

Part 2 – Fee tariffs

- (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 *firm's* business, calculated as follows
- (a) the relevant minimum fee; plus
 - (b) an additional fee calculated by multiplying the *firm's* tariff base by the appropriate rates applying to each tranche of the tariff base, as indicated.
- (2) A *firm* 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 *firm's* UK business separately from its non-UK business in the way described in Part 7 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 SUP 20.3 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.

Activity group (defined in Part 7)	Valuation date for tariff bases (defined in Part 7)	Fee payable (tariff bases defined in Part 7)	
A.1 Deposit acceptors	For banks: Modified eligible liabilities, valued at: <ul style="list-style-type: none"> for a bank which reports monthly, the average of the modified eligible liabilities for October, November and December 2000 for a bank which reports quarterly, the modified eligible liabilities for December 2000. 	<u>Minimum fee (£m of MELs)</u> if 0 – 0.5 fee is if >0.5 – 10 fee is	<u>Fee</u> £50 £334 Fee (£/£m or part £m of MELs)
		<u>£ million of MELs</u> 0 – 10 >10 – 200 >200 – 2,000 >2,000 – 10,000 >10,000 – 20,000 > 20,000	0.00 16.23 16.16 16.09 15.99 15.82
	For building societies: Modified eligible liabilities, valued at the average of the modified eligible liabilities for October, November and December 2000 [Note: not applicable to credit unions for this period]	The lower of: a) the fee calculated for banks above; and b) 40% of the General Charge paid by the building society to the Building Societies Commission in 2001/2 under SI 2001 No.815.	
A.2 Mortgage lenders and administrators	This block does not apply for this period		
A.3 Firms conducting insurance activities subject only to prudential regulation	Annual gross premium income, valued at the period to which the most recent annual return relates [Note: for most <i>firms</i> this will be the 12 months ended 31 December 2000]	<u>£ million of GPI</u> Minimum fee 0 – 0.5 >0.5 – 2 >2 – 5 >5 – 20 >20 – 75 >75 – 150 > 150	<u>Fee</u> £125 Fee (£/£m or part £m of GPI) 0.00 516.00 476.24 436.55 138.90 119.06 16.87

A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation	Adjusted annual gross premium income valued at the financial year ended in the calendar year ending 31 December 2000	<u>£ million of AGPI</u>	<u>Fee</u>
		Minimum fee	£135
		<u>Fee (£/£m or part £m of AGPI)</u>	
		0 – 1	0.00
		>1 – 50	215.60
		>50 – 1,000	194.04
A.5 Managing Agents at Lloyd's	Active capacity, in respect of the 2001 Underwriting Year (as reported to the Society of <i>Lloyd's</i>)	<u>£ million of active capacity</u>	<u>Fee</u>
		Minimum fee	£167
		<u>Fee (£/£m or part £m of active capacity)</u>	
		0 – 50	0
		>50 – 150	17.34
		>150 – 250	14.67
A.6 The Society of Lloyd's	Not applicable		4.17
			£356,000
A.7 Fund managers (holding or controlling client money and/or assets)	Funds under management, valued at 31 December 2000	<u>Minimum fee (£m FuM)</u>	<u>Fee</u>
		Exactly 0 the fee is	£0
		>0 the fee is	£334
		<u>£ million of FuM</u>	<u>Fee (£/£m or part £m of FuM)</u>
		>0 – 10	0.00
		>10 – 100	17.10
A.8 Fund managers (not holding or controlling client money and/or assets)	Funds under management, valued at 31 December 2000	<u>Minimum fee (£m FuM)</u>	<u>Fee</u>
		Exactly 0 the fee is	£0
		>0 the fee is	£334
		<u>£ million of FuM</u>	<u>Fee (£/£m or part £m of FuM)</u>
		>0 – 10	0.00
		>10 – 100	16.74
	5.30		
	3.83		
	2.08		

A.9 Operators, Trustees and Depositaries of collective investment schemes	Annual gross income, valued at the most recent financial year ended before commencement	Minimum fee (£m GI)	Fee
		Exactly 0 the fee is	£0
		>0 the fee is	£834
		£ million of GI	Fee (£/£m or part £m of GI)
		>0 – 1	0.00
		>1 – 20	252.00
A.10 Firms dealing as principal in investments	Number of traders as at commencement	No. of traders	Fee
		Minimum fee	£1,500
		Fee (£/trader)	
		0 – 3	0
		4 – 10	301
		11 – 50	273
A.11 Execution-only arrangers, dealers or brokers	Annual commission or fee income, valued at the most recent financial year ended before commencement	£ million of income	Fee
		Minimum fee	£5,000
		Fee (£/£m or part £m of income)	
		0 – 1	0.00
		>1 – 25	1,154.13
		>25 – 50	961.78
A.12 Advisory arrangers, dealers, or brokers (holding or controlling client money and/or assets)	Relevant <i>approved persons</i> as at commencement	Minimum fee (No. of persons)	Fee
		Exactly 0 the fee is	£0
		>0 the fee is	£450
		No. of persons	Fee (£/person)
		>0 – 1	0
		2 – 4	279
		5 – 10	139
		11 – 25	97
		26 – 100	52
		101 – 1,000	39
> 1,000	26		

A.13 Advisory arrangers, dealers, or brokers (not holding or controlling client money and/or assets)	Relevant <i>approved persons</i> as at commencement	<p><u>Minimum fee (No. of persons)</u></p> <p>Exactly 0 the fee is £0 BUT if the firm is A.13 Category (1)(a) – the fee is £434 OR if no. of persons >0 the fee is £434</p> <p><u>No. of persons</u></p> <p>>0 – 1 0 2 – 4 208 5 – 10 199 11 – 25 190 26 – 100 174 101 – 2,000 156 > 2,000 142</p>	<p><u>Fee</u></p> <p>£0</p> <p>£434</p> <p>£434</p> <p><u>Fee (£/person)</u></p> <p>0</p> <p>208</p> <p>199</p> <p>190</p> <p>174</p> <p>156</p> <p>142</p>
A.14 Corporate finance advisers	Relevant <i>approved persons</i> as at commencement	<p><u>Minimum fee (No. of persons)</u></p> <p>Exactly 0 the fee is £0 >0 the fee is £434</p> <p><u>No. of persons</u></p> <p>>0 – 1 0 2 400 3 – 4 360 5 – 10 324 11 – 100 292 101 – 200 205 > 200 123</p>	<p><u>Fee</u></p> <p>£0</p> <p>£434</p> <p><u>Fee (£/person)</u></p> <p>0</p> <p>400</p> <p>360</p> <p>324</p> <p>292</p> <p>205</p> <p>123</p>
A.15 Advisory only firms	Relevant <i>approved persons</i> as at commencement	<p><u>Minimum fee (No. of persons)</u></p> <p>Exactly 0 the fee is £0 >0 the fee is £684</p> <p><u>No. of persons</u></p> <p>>0 – 1 0 2 – 3 675 4 – 10 608 11 – 50 547 51 – 100 493 101 – 150 394 > 150 276</p>	<p><u>Fee</u></p> <p>£0</p> <p>£684</p> <p><u>Fee (£/person)</u></p> <p>0</p> <p>675</p> <p>608</p> <p>547</p> <p>493</p> <p>394</p> <p>276</p>
A.16 Pensions review levy firms	Percentage share of the amount paid towards the PIA's 2001/2 pensions review levy, valued at the date the levy is raised		The firm's percentage share of the amount paid towards the PIA's 2001/2 pensions review Levy by fee-payers in fee-block A.16.

- (b) the fee calculated in accordance with Part 2 for that activity grouping using the relevant information supplied by the *firm* to the *FSA* in the course of its application for the projected valuation of the first year of the business to which the tariff applies.
- (2) The table of reductions at SUP 20.4.5R does not apply to this period because it does not come into force until 1 April 2002.

Part 5 – Modification of fee tariffs for incoming EEA firms and incoming Treaty firms

Activity group (see Part 2 for descriptions)	Percentage of tariff payable under Part 2 applicable to the firm subject to a minimum amount payable of £100 (unless specified below)
A.1	20% (for a firm operating on cross-border services basis only, 0% and the minimum sum is not applicable)
A.3	0% and the minimum sum is not applicable
A.4	75%
A.7, A.8 and A.9	95%
A.10, A.11, A.12 and A.13	90%

Part 6 – Transaction reporting fees

Fee per transaction	Date payable	Method of payment
2 pence (including VAT)	First working day of each month	As specified in Part 1

Part 7 – Activity groups and tariff bases

Activity group	Fee-payer falls in the activity group if	Tariff-base
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Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.1 Deposit acceptors</p>	<p>its <i>permission</i> includes <i>accepting deposits</i>;</p> <p>BUT DOES NOT include any of the following:</p> <ul style="list-style-type: none"> • effecting contracts of insurance; • carrying out contracts of insurance. 	<p>MODIFIED ELIGIBLE LIABILITIES</p> <p>For Banks:</p> <p>Part 1:</p> <p>Liabilities</p> <p>In sterling: $\pounds 2 + \pounds 3 + \pounds 4 + \pounds 5A + \pounds 5B + \pounds 6B + \pounds 6C + \pounds 6D + \pounds 6E + \pounds 6F + \pounds 6G + \pounds 6H + \pounds 6J + \pounds 7B + \pounds 7C + \pounds 7D + \pounds 7E + \pounds 7F + \pounds 7G + \pounds 7H + \pounds 7J + \pounds 8 + \pounds 10 + 60\% \text{ of } \pounds 11A + \pounds 44$ plus In foreign currency, one-third of: $E2 + E3 + E4 + E5A + E5B + E6B + E6C + E6D + E6E + E6F + E6G + E6H + E6J + E7B + E7C + E7D + E7E + E7F + E7G + E7H + E7J + E8 + E10 + 60\% \text{ of } E11A + E44 + C2 + C3 + C4 + C5A + C5B + C6B + C6C + C6D + C6E + C6F + C6G + C6H + C6J + C7B + C7C + C7D + C7E + C7F + C7G + C7H + C7J + C8 + C10 + 60\% \text{ of } C11A: \text{ less}$</p> <p>Assets</p> <p>In sterling: $\pounds 21B + 60\% \text{ of } \pounds 22A + \pounds 23D + \pounds 23E + \pounds 23F + \pounds 30A + \pounds 30B + \pounds 31A + \pounds 31B + \pounds 32AA$ plus In foreign currency, one-third of: $E21B + 60\% \text{ of } E22A + E23D + E23E + E23F + E30A + E30B + E31A + E31B + E32AA + C21B + 60\% \text{ of } C22A + C23D + C23E + C23F + C30A + C30B + C31A + C31B + C32AA$</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.1 Deposit acceptors</p> <p>Continued...</p>		<p><u>Part 2: Non-resident office offset</u></p> <p>Provided that the conditions and criteria (including those relating to the time by which a Non-Resident Office Offset Form must have been received by the <i>FSA</i>) set out by the <i>FSA</i> in the Non-Resident Office Offset Form (and accompanying letter) were duly satisfied, the fee base of a bank that has submitted a Non-Resident Office Offset Form to the <i>FSA</i> in January 2001 is adjusted by deducting from the amount calculated in accordance with part 1 above, the amount obtained by deducting from item 'c' in the Non-Resident Office Offset Form the sum of £1,000 million. Non-Resident Office Forms must have been completed in accordance with the instructions therein and the accompanying letter and, so far as applicable, in accordance with the requirements for completing Forms BT. Each item in line 45D of a Non-Resident Office Offset Form shall, if it would otherwise have been a negative number, be zero.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.1 Deposit acceptors</p> <p>Continued...</p>		<p>Notes:</p> <p>1 All references in the above formula are to entries on Form BT (i.e. the Balance Sheet Form completed to provide information required following the Banking Statistics Review 1997 and returned by banks to the Bank of England as required by the Banking of England Act 1998).</p> <p>2 'E' refers to assets and liabilities denominated in euro (as referred to in column 2 of Form BT) and 'C' refers to assets and liabilities denominated in currencies other than sterling and euro (as referred to in column 3 of Form BT). In accordance with Form BT, assets and liabilities in currencies other than sterling are to be recorded in sterling.</p> <p>3 The figures reported on the Form BT relate to business conducted out of offices in the <i>United Kingdom</i>.</p> <p>For Credit Unions:</p> <p>Deposits with the <i>credit union</i> (share capital) LESS The <i>credit union's</i> bank deposits (investments + cash at bank)</p> <p>Note: By definition all business done by <i>credit unions</i> is from offices in the <i>United Kingdom</i>.</p>
<p>A.1 Deposit acceptors</p> <p>Continued...</p>		<p>For Building Societies:</p> <ul style="list-style-type: none"> • Deposit liabilities (including debt securities up to five years original maturity) (i.e. the amounts in sterling (in column 1) and

Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p>$\frac{1}{3}$ of foreign currency referenced amounts (in columns 2 and 3) for items B1.1+B1.2+B2.0a+B2.0b+B2.10+B2.13+ B2.14+B2.15+B2.16)</p> <p>LESS amounts in respect of:</p> <ul style="list-style-type: none"> • sterling repo liabilities with the Bank of England (i.e. ONLY the amounts in sterling (in column 5) for item B2.5a) • balances held with the Bank of England (excluding cash ratio deposits) • (i.e. the amounts in sterling (in column 1) and <p>$\frac{1}{3}$ of foreign currency referenced amounts (in columns 2 and 3) for item B6.2a, less the amounts in sterling (in column 1) and</p> <p>$\frac{1}{3}$ of foreign currency referenced amounts (in columns 2 and 3) for item OW1.1</p> <ul style="list-style-type: none"> • market loans to banks, building societies (balances with and loans to, plus CDs, Commercial paper) (i.e. the amounts in sterling (in column 1) and <p>$\frac{1}{3}$ of foreign currency referenced amounts (in columns 2 and 3) for items B6.3.a+B6.4.a+B6.4b+B6.5a+B6.5b+ B6.12a)</p> <ul style="list-style-type: none"> • investments with banks and building societies (bonds, notes and other debt instruments up to five years original maturity) (i.e. the amounts in sterling (in column 1) and

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.2	This activity group does not apply for this period.	$\frac{1}{3}$ of foreign currency referenced amounts (in columns 2 and 3) for items B6.6a1+B6.6a2+B6.10a1+B6.10a2) Notes: All references in the above definitions are to entries in the MFS1 which is submitted monthly by all building societies to the FSA.

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.3 Firms conducting insurance activities subject only to prudential regulation</p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>; <p>BUT ONLY in respect of <i>specified investments</i> that are:</p> <ul style="list-style-type: none"> – <i>general insurance contracts</i>; or – <i>long-term insurance contracts</i> other than <i>life-policies</i>. 	<p>GROSS PREMIUM INCOME</p> <p>For Insurers:</p> <p>The amount of <i>premiums</i> receivable required to be included in the documents required to be deposited under section 22(1) of the Insurance Companies Act 1982 in relation to the financial year to which the documents relate (or, where by reason of an order made under section 68 of the Insurance Companies Act 1982 such amounts are not required to be included, the amount which would otherwise have been included).</p> <p>Less,</p> <p><i>Premiums</i> relating to <i>pension fund management</i> business where the firm owns the investments and there is no transfer of risk.</p> <p>However, in the case of either:</p> <ul style="list-style-type: none"> a) a pure reinsurer carrying on <i>general insurance business</i> through a branch in the <i>United Kingdom</i>; or b) an <i>insurer</i> whose head office is not in an <i>EEA State</i> carrying on <i>general insurance business</i> through a branch in the <i>United Kingdom</i>; or c) a Community deposit company (i.e. an insurance company (other than a pure reinsurer) whose head office is not in a Member State and which has made a deposit in a Member State other than the <i>United Kingdom</i> in accordance with section 9(1)(c) of the Insurance Companies Act 1982 as it has effect in pursuance to section 9(2)(b) of that Act), the amount only includes <i>premiums</i> receivable in respect of its <i>United Kingdom branch</i> business; and

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.3 Firms conducting insurance activities subject only to prudential regulation</p> <p>Continued...</p>		<p>d) for <i>Swiss general insurance companies</i>, premiums include those relevant to the operations of the company's <i>United Kingdom branch</i>.</p> <p>For Friendly Societies: Either:</p> <p>a) the value of "contributions" as income under Schedule 7: Part I item 1(a) of the regulations for a <i>non-directive friendly society</i>, included within the income and expenditure account, or</p> <p>b) the value of "gross premiums written" under Schedule 1: Part I items I.1(a) and II.1.(a) of the regulations for a <i>directive friendly society</i> included within the income and expenditure account.</p> <p>Notes:</p> <p>1 The references above are to the Friendly Societies (Accounts and Related Provisions) Regulations 1994 (SI 1994/1983).</p> <p>2 In both a) and b) above only <i>premiums</i> receivable in respect of <i>United Kingdom branch</i> business are relevant.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation</p>	<p>its <i>permission</i> includes one or more of:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>; <p>both in respect of <i>specified investments</i> including <i>life policies</i>;</p> <ul style="list-style-type: none"> • <i>entering as provider into a funeral plan contract</i>. 	<p>ADJUSTED GROSS PREMIUM INCOME</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 <i>pension fund management</i> business where the firm owns the investments and there is no transfer of risk.</p> <p>For each of the above, business transacted through independent practitioners will be divided by two in calculating the adjusted gross premium income.</p> <p>Notes:</p> <p>1 Business conducted through a <i>marketing associate</i> should be excluded in reporting the <i>product provider's premium</i> income.</p> <p>2 Only <i>premiums</i> receivable in respect of <i>United Kingdom branch</i> business are relevant.</p>
<p>A.5 Managing agents at Lloyd's</p>	<p>its <i>permission</i> includes <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i>.</p>	<p>ACTIVE CAPACITY</p> <p>The capacity of the <i>syndicate(s)</i> under management in the year in question. This includes the capacity for <i>syndicate(s)</i> that are not writing new business, but have not been closed off in the year in question.</p>
<p>A.6 The Society of Lloyd's</p>	<p>it is the <i>Society of Lloyd's</i>.</p>	<p>Not applicable</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>GENERALLY, FOR FEE-BLOCKS A.7 TO A.15 BELOW, ONLY THOSE REGULATED ACTIVITIES THAT ARE NOT LIMITED TO NON-MAINSTREAM ACTIVITIES SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHICH FEE-BLOCK(S) FEE-PAYERS BELONG TO.</p>		
<p>HOWEVER, IN THE CASE THAT ALL THE REGULATED ACTIVITIES WITHIN A FIRM'S PERMISSION ARE LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES, THEN THAT FIRM SHALL BE ALLOCATED TO FEE-BLOCK A.13 ALONE.</p>		
<p>A.7 Fund Managers (holding or controlling client money and/or assets)</p>	<p>its permission includes <i>managing investments</i>;</p> <p>AND one or more of the following:</p> <ul style="list-style-type: none"> • <i>safeguarding and administering of investments (without arranging)</i>; • <i>arranging safeguarding and administration of assets</i>; • the ability to hold and/or control <i>client money</i>: <ul style="list-style-type: none"> – that is, there is no <i>requirement</i> which prohibits the <i>firm</i> from doing this; – and provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>. 	<p>FUNDS UNDER MANAGEMENT</p> <p>The total value, in £ pounds, of all assets (see note (a) below) in portfolios which the <i>firm</i> manages, on a discretionary basis (see note (b) below), in accordance with its terms of business, less:</p> <ol style="list-style-type: none"> a) funds covered by the exclusion contained in article 38 (Attorneys) of the <i>Regulated Activities Order</i>; b) funds covered by the exclusion contained in article 66(3) (Trustees, nominees and personal representatives) of the <i>Regulated Activities Order</i>; c) funds covered by the exclusion contained in article 68(6) (Sale of goods or supply of services) of the <i>Regulated Activities Order</i>; d) funds covered by the exclusion contained in article 69(5) (Groups and joint enterprises) of the <i>Regulated Activities Order</i>; and <p>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 <i>firm</i> (and which <i>firm</i> will include the value of the assets in question in its own FuM total); any such deduction should identify the <i>firm</i> to which management responsibility has been delegated.</p>

A.7 Fund Managers (holding or controlling client money and/or assets)

Continued...

Notes on FuM

- a) For the purposes of calculating the value of funds under management, “assets” means all assets that consist of or include any investment which is a *designated investment* **or** those assets in respect of which the arrangements for their management are such that the assets may consist of or include such investments and either the assets have at any time since 29 April 1988 done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.
- b) 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, are NOT included as this activity is covered in those charged to fees in activity groups A.12 and A.13.
- c) In respect of **collective investment schemes**, “assets” means the total value of the assets of the scheme.
- d) For an *OPS firm*, the FuM should also be reduced by the value of the assets held as a result of a decision taken in accordance with article 4(6) of The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (investments in collective investment schemes or bodies corporate which have as their primary purpose the acquisition, directly, or indirectly, of “relevant investments”, as defined in that article).
- e) Only assets that are managed from an establishment maintained by the firm in the *United Kingdom* are relevant.

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.8 Fund Managers (not holding or controlling client money and/or assets)</p>	<p>its <i>permission</i> includes <i>managing investments</i>;</p> <p>BUT NEITHER of the following:</p> <ul style="list-style-type: none"> • <i>safeguarding and administration of assets (without arranging)</i>; • <i>arranging safeguarding and administration of assets</i>; <p>AND if it EITHER:</p> <ul style="list-style-type: none"> • has a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; OR • if it does not have such a <i>requirement</i>, only holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>. 	<p>FUNDS UNDER MANAGEMENT</p> <p>As per activity group A.7 above.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.9 Operators, Trustees and Depositories of collective investment schemes</p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none"> • <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 depository or sole director of an open-ended investment company;</i> <p>AND PROVIDED the <i>firm</i> is NOT one of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm in which the above activities are limited to carrying out corporate finance business;</i> • <i>a venture capital firm;</i> <p>OR</p> <p>if the fee-payer has none of the <i>regulated activities</i> above within its <i>permission</i>, but ALL the remaining <i>regulated activities</i> in its <i>permission</i> are limited to carrying out trustee activities.</p>	<p>GROSS INCOME</p> <p><u>For operators (including ACDs and managers of unit trusts):</u></p> <p>Gross income from the activity relating to fee-block A.9 is defined as: the amount of the annual charge on funds invested in regulated or unregulated <i>collective investment schemes</i> received or receivable in the latest accounting period ending on or before 31 December 2000 (this is calculated as a % of funds invested, typically 1% p.a.); PLUS the front-end or exit charge levied on sales or redemptions of <i>collective investment schemes</i> (typically 4–5% of sales/redemptions) in that same accounting period; PLUS any additional initial or management charges levied through a product wrapper such as a <i>PEP</i> or an <i>ISA</i>; BUT EXCLUDING box management profits.</p> <p><u>For depositaries (including trustees of collective investment schemes and ICVC depositaries):</u></p> <p>The amount of the annual charge levied on funds in regulated <i>collective investment schemes</i> for which they act as <i>depository</i> (typically a % of the total funds for which they act as <i>depository</i>).</p> <p>Note: Only the gross income corresponding to <i>United Kingdom</i> business is relevant.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.10 Firms dealing as principal</p>	<p>its <i>permission</i> includes <i>dealing in investments as principal</i>;</p> <p>BUT NOT if one or more of the following apply:</p> <ul style="list-style-type: none"> • the above activity is carried on exclusively in respect of <i>life policies</i>; • the <i>firm</i> is acting exclusively as a matched principal broker; • the above activity is limited either to acting as an operator of a <i>collective investment scheme</i>, or to carrying out trustee activities; • the <i>firm</i> is a <i>corporate finance advisory firm</i>; • the above activity is otherwise limited to carrying out <i>corporate finance business</i>. • the following limitation is applied to <i>dealing in investments as principal</i>; "The <i>firm</i> in carrying on this investment activity is limited to entering into a transaction relating to a <i>contractually based investment</i> – (a) with or through an <i>authorised person</i>, or an <i>exempt person</i> acting in the course of a business comprising a <i>regulated activity</i> in relation to which he is exempt; or (b) through an office outside the <i>United Kingdom</i> maintained by a party to the transaction, and with or through a person whose head office is situated outside the <i>United Kingdom</i> and whose ordinary business involves him in carrying on any <i>regulated activities</i> of the kind specified by any of Articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 of the <i>Regulated Activities Order</i> or, so far as relevant to any of those activities, Article 64 (or would do so apart from any exclusion from any of those Articles made by that Order)." 	<p>NUMBER OF TRADERS</p> <p>Any <i>employee</i> or agent, who:</p> <ul style="list-style-type: none"> • ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FSA</i> in its fee-block A.10 (firms dealing as principal); and who, • as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.11 Execution-only arrangers, dealers or brokers</p>	<p>its <i>permission</i> includes one or more 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>dealing as principal in investments where the activity is carried on exclusively in respect of <i>life policies</i> or where the <i>firm</i> acts as a matched principal broker;</i> <p>BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance;</i> • <i>advising on investments (except pensions transfers and pension opt-outs); or</i> • <i>advising on pension transfers and pension opt-outs; or</i> • <i>accepting deposits;</i> <p>AND PROVIDED the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i> • <i>a firm whose activities are limited to carrying out venture capital business;</i> • <i>a firm whose activities are limited to acting as an operator, depositary or trustee of a collective investment scheme, or trustee activities.</i> 	<p>COMMISSION OR FEE INCOME</p> <ul style="list-style-type: none"> • The commission or fee income derived from the activity (earned over the 12 months ending on the 31 December prior to the period to which the <i>FSA's</i> periodic fees relate). <p>Income received would include:</p> <ul style="list-style-type: none"> • Gross commission and brokerage fees: the total commission and brokerage earned by a firm in the conduct of agency broking before the deduction of commissions share or paid to third parties. <p>But for <i>firms dealing in investments as principal</i> that are exclusively <i>life policies</i>, commission or fee income will be deemed to be half the gross margin reported in the period referred to above.</p> <p>Note: Only the commission or fee income derived from <i>United Kingdom</i> business is relevant.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)</p>	<p>(1) its <i>permission</i> is entirely limited to non-mainstream <i>regulated activities</i>.</p> <p>OR</p> <p>its <i>permission</i> includes one or more 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>dealing as principal in investments where the activity is carried on as a matched principal broker;</i> <p>(2) AND AT LEAST one of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs);</i> • <i>advising on pension transfers and pension opt-outs;</i> • <i>advising on syndicate participation at Lloyd's;</i> <p>BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance; or</i> • <i>carrying out contracts of insurance.</i> 	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake one, or more, of the following <i>customer functions</i>:</p> <p>CF21 <i>Investment adviser function;</i> CF22 <i>Investment adviser (trainee) function;</i> CF24 <i>Pension transfer specialist function;</i> CF25 <i>Adviser on syndicate participation at Lloyd's function; or</i> CF26 <i>Customer trading function</i></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)</p> <p>Continued ...</p>	<p>(3) AND CAN HAVE one or more of the following:</p> <ul style="list-style-type: none"> • <i>safeguarding and administering of assets;</i> • <i>arranging safeguarding and administration of assets;</i> • the ability to hold and/or control <i>client money</i>: <ul style="list-style-type: none"> – that is, there is no <i>requirement</i> which prohibits the <i>firm</i> from doing this; – and provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>; <p>(4) AND PROVIDED the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm</i>; • a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>; • a <i>firm</i> whose activities are limited to carrying out <i>venture capital business</i>; • a <i>firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>; • a <i>firm</i> whose activities are limited to carrying out <i>trustee</i> activities. 	<p><i>Note: Territorial application of the Approved Persons tariff-base</i></p> <p>The requirements of SUP 10 (<i>Approved Persons</i>) do not apply to:</p> <ul style="list-style-type: none"> • an <i>overseas firm</i> in relation to regulated activities carried out in the <i>United Kingdom</i> other than from an establishment maintained by it or its <i>appointed representative</i> in the <i>United Kingdom</i>; or • an <i>incoming EEA firm</i> (except if it is conducting <i>passport</i>ed activities through a <i>United Kingdom Branch</i>); or • an <i>incoming Treaty firm</i>. <p>For these three classes of <i>firms</i>, there will be no <i>Approved Persons</i> to count.</p> <p>SUP 10.10 (the <i>customer functions</i>) applies only in relation to a <i>regulated activity</i> to which <i>COB</i> applies under <i>COB</i> 1.4. So, for <i>UK firms</i>, individuals working overseas will only fall to be approved under the <i>customer functions</i> if they undertake <i>regulated activities</i> to which <i>COB</i> 1.4 applies.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)</p>	<p>(1)(a) ALL the <i>regulated activities</i> in its <i>permission</i> are limited to non-mainstream activities;</p> <p>OR</p> <p>(1)(b) its <i>permission</i> contains both:</p> <ul style="list-style-type: none"> • <i>making arrangements with a view to transactions in investments</i>; and • <i>accepting deposits</i>. <p>OR</p> <p>(1)(c) its <i>permission</i> includes one or more 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>dealing as principal in investments</i> where the activity is carried on as a matched principal broker; <p>(2) AND AT LEAST one of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs)</i>; • <i>advising on pension transfers and pension opt-outs</i>; <p><i>advising on syndicate participation at Lloyd's</i>;</p>	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake one, or more, of the following <i>customer functions</i>:</p> <p>CF21 <i>Investment adviser function</i>;</p> <p>CF22 <i>Investment adviser (trainee) function</i>;</p> <p>CF24 <i>Pension transfer specialist function</i>;</p> <p>CF25 <i>Adviser on syndicate participation at Lloyd's function</i>; or</p> <p>CF26 <i>Customer trading function</i></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)</p> <p>Continued...</p>	<p>BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance;</i> • <i>safeguarding and administration of assets;</i> • <i>arranging safeguarding and administration of assets;</i> <p>(3) AND MUST EITHER:</p> <ul style="list-style-type: none"> • <i>have a requirement that prohibits the firm from holding and/or controlling client money; OR</i> • <i>if it does not have such a requirement, only holds/controls client money arising from an agreement under which commission is rebated to a client;</i> <p>(4) AND PROVIDED the fee-payer is NOT one of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i> • <i>a firm whose activities are limited to acting as an operator a collective investment scheme;</i> • <i>a firm whose activities are limited to carrying out trustee activities.</i> 	<p><i>Note: Territorial application of the Approved Persons tariff-base</i></p> <p>The requirements of SUP 10 (Approved Persons) do not apply to:</p> <ul style="list-style-type: none"> • <i>an overseas firm in relation to regulated activities carried out in the United Kingdom other than from an establishment maintained by it or its appointed representative in the United Kingdom; or</i> • <i>an incoming EEA firm (except if it is conducting passported activities through a United Kingdom Branch); or</i> • <i>an incoming Treaty firm.</i> <p>For these three classes of firms, there will be no Approved Persons to count.</p> <p><i>SUP 10.10 (the customer functions) applies only in relation to a regulated activity to which COB applies under COB 1.4. So, for UK firms, individuals working overseas will only fall to be approved under the customer functions if they undertake regulated activities to which COB 1.4 applies.</i></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.14 Corporate finance advisers</p>	<p>the <i>firm</i> is carrying on <i>corporate finance business</i>.</p>	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake the following <i>controlled function</i>:</p> <p>CF23 Corporate finance adviser function</p> <p><i>Note: Territorial application of the Approved Persons tariff-base</i></p> <p>The requirements of <i>SUP 10 (Approved Persons)</i> do not apply to:</p> <ul style="list-style-type: none"> • an <i>overseas firm</i> in relation to regulated activities carried out in the <i>United Kingdom</i> other than from an establishment maintained by it or its <i>appointed representative</i> in the <i>United Kingdom</i>; or • an <i>incoming EEA firm</i> (except if it is conducting <i>passported activities</i> through a <i>United Kingdom Branch</i>); or • an <i>incoming Treaty firm</i>. <p>For these three classes of <i>firms</i>, there will be no <i>Approved Persons</i> to count.</p> <p><i>SUP 10.10 (the customer functions)</i> applies only in relation to a <i>regulated activity</i> to which <i>COB</i> applies under <i>COB 1.4</i>. So, for <i>UK firms</i>, individuals working overseas will only fall to be approved under the <i>customer functions</i> if they undertake <i>regulated activities</i> to which <i>COB 1.4</i> applies.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.15 Advisory only firms</p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs);</i> • <i>advising on pension transfers and pension opt-outs;</i> • <i>advising on syndicate participation at Lloyd's;</i> <p>BUT MUST NOT include:</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>dealing as principal in investments where the activity is carried on as a matched principal broker;</i> <p>AND PROVIDED the fee-payer is NOT one of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i> • <i>a firm whose activities are limited to carrying out venture capital business;</i> • <i>a firm whose activities are limited to acting as an operator of a collective investment scheme;</i> • <i>a firm whose activities are limited to acting carrying out trustee activities.</i> 	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake one, or more, of the following <i>customer functions</i>:</p> <p>CF21 <i>Investment adviser function;</i> CF22 <i>Investment adviser (trainee) function;</i> CF24 <i>Pension transfer specialist function;</i> CF25 <i>Adviser on syndicate participation at Lloyd's function;</i> or CF26 <i>Customer trading function</i></p> <p><i>Note: Territorial application of the Approved Persons tariff-base</i></p> <p>The requirements of SUP 10 (<i>Approved Persons</i>) do not apply to:</p> <ul style="list-style-type: none"> • <i>an overseas firm in relation to regulated activities carried out in the United Kingdom other than from an establishment maintained by it or its appointed representative in the United Kingdom;</i> or • <i>an incoming EEA firm (except if it is conducting passported activities through a United Kingdom Branch);</i> or • <i>an incoming Treaty firm.</i> <p>For these three classes of <i>firms</i>, there will be no <i>Approved Persons</i> to count.</p> <p><i>SUP 10.10 (the customer functions)</i> applies only in relation to a <i>regulated activity</i> to which <i>COB</i> applies under <i>COB 1.4</i>. So, for <i>UK firms</i>, individuals working overseas will only fall to be approved under the <i>customer functions</i> if they undertake <i>regulated activities</i> to which <i>COB 1.4</i> applies.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.16 Pensions review levy firms	it was liable to pay the Pensions Levy to the <i>PIA</i> in 2001/2002.	Percentage share of the amount paid towards the <i>PIA</i> 's 2001/2002 pensions review Levy by fee-payers in fee-block A.16.
B	Firms that have been designated as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996.	Not applicable.

Part 8 – Periodic fees for certificates under article 54 of the Regulated Activities Order

(1) The amount of the periodic fee payable under SUP 20.6.1R is £1,000.

ANNEX C

Professional firms

Chapter 6

Fees

6

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1



6.1 Introduction

Application

6.1.1

R

17.01.02/001

This chapter applies as follows:

- (1) ■ PROF 6.1 and ■ PROF 6.2 apply to every *designated professional body*; and
- (2) ■ PROF 6.3 applies to every *person seeking to become a designated professional body*.

Purpose

6.1.2

G

17.01.02/001

The purpose of this chapter is to set out the requirements on *designated professional bodies* to pay fees which (with other fee requirements in the *Handbook*) provide the funding for the *FSA's* functions.

Background

6.1.3

G

17.01.02/001

Most of the detail of the fees payable by *designated professional bodies* is set out in the tables in *PROF 6 Ann 1R*. The provisions of the Annex will vary from one financial year to another. Accordingly a new annex will come into force, following consultation, for each financial year.

6.1.4

G

17.01.02/001

Fees are set for *designated professional bodies* on an individual basis. The fee applicable to a *designated professional body* reflects an estimate of its proportion of the population of *exempt professional firms* conducting financial services business.

6.1.5

G

17.01.02/001

■ GEN 3 (FSA Fees: General Provisions) applies to fees required by this chapter and explains how the *FSA* sets its fees.

6.2 Obligation to pay periodic fees

General

- 6.2.1** **R** *A designated professional body must pay to the FSA, in full and without deduction, each periodic fee (or instalment) applicable to it under PROF 6 Ann 1R for a period during which or part of which the designated professional body is designated.*

17.01.02/001

Amount

- 6.2.2** **R** *The amount of the periodic fee (or an instalment) referred to in PROF 6.2.1R for a designated professional body is specified in PROF 6 Ann 1R for the relevant year against the name or description of that body.*

17.01.02/001

Due date

- 6.2.3** **R** *The designated professional body must pay a periodic fee (or any instalment) on or before the due date for payment specified in PROF 6 Ann 1R for the relevant year against the name or description of that body.*

17.01.02/001

Payment methods

- 6.2.4** **G** *The FSA does not specify a method of payment for designated professional bodies. However the FSA expects that a designated professional body will generally pay its fee by electronic credit transfer.*

17.01.02/001



6.3 Persons seeking to become designated professional bodies

6.3.1

R

17.01.02/001

Any *person* who requests the Treasury to make an order under section 326(1) of the *Act* (Designation of professional bodies) must pay to the *FSA* the sum specified in *PROF 6 Ann 1 R* within 30 days after the order is granted.

Fees payable in relation to the period from 1 December 2001 to 31 March 2002

1 Table Fees payable by designated professional bodies

Name of designated professional body	Amount Payable	Due Date
The Law Society	£74,000	1 February 2002
The Law Society of Scotland	£7,500	1 February 2002
The Law Society of Northern Ireland	£9,500	1 February 2002
The Institute of Actuaries	£3,500	1 February 2002
The Institute of Chartered Accountants in England and Wales	£46,500	1 February 2002
The Institute of Chartered Accountants of Scotland	£7,300	1 February 2002
The Institute of Chartered Accountants in Ireland	£5,800	1 February 2002
The Association of Chartered Certified Accountants	£10,900	1 February 2002
Any person seeking an order under section 326(1) of the Act (Designation of professional bodies)	£5,000	30 days after the order is granted

ANNEX D

Chapter 18

Fees

18.1 Introduction

Application

18.1.1 **R**
03.09.01/001

This chapter applies to:

- (1) every *person* seeking an *authorisation order* for, or recognition of, a *collective investment scheme*;
- (2) every *manager* of an *authorised unit trust*;
- (3) every *ACD* of an *ICVC*; and
- (4) every *person* who, under the constitution or founding arrangements of a *recognised scheme*, is responsible for the management of the property held for or within the *scheme*.

Purpose

18.1.2 **G**
03.09.01/001

The purpose of this chapter is to set out the requirements for the payment of fees relating to *collective investment schemes*.

Background

18.1.3 **G**
03.09.01/001

GEN 3 (FSA Fees – General Provisions) applies to fees required by this chapter and explains how the *FSA* sets fees.

18.1.4 **G**
03.09.01/001

Most of the detail of the fees payable in relation to a *collective investment scheme* is set out in ■ CIS 18 Annex 1R. The provisions of the Annex may vary from one financial year to another. Accordingly a fresh ■ CIS 18 Annex 1R will come into force, following consultation, for each financial year.

18.1.5 **G**
03.09.01/001

The fees for *collective investment schemes* reflect the estimated costs to the *FSA* of assessing applications and notifications, considering proposals to change *regulated collective investment schemes* and maintain up to date records about them.

18.1.6 **G**
03.09.01/001

The level of fees payable in respect of an application or a notification will vary depending upon the provision of the *Act* under which it is made. This fee is adjusted when the *scheme* concerned is an *umbrella scheme*.

18.2 Obligation to pay periodic fees

General

18.2.1 **R** *A person identified in part B of CIS 18 Annex 1R as the "relevant fee payer" for a regulated collective investment scheme must pay each "periodic fee" applicable to it in full and without deduction.*

17.01.02/001

18.2.2 **G** *A relevant fee payer will be required to pay a periodic fee for every year during which a regulated collective investment scheme has that status. If that person is the relevant fee payer for more than one regulated collective investment scheme, he will be required to pay a fee in relation to each.*

17.01.02/001

Due date

18.2.3 **R** *The relevant fee payer must pay the amount due on or before 30 April.*

17.01.02/001

Method of payment

18.2.4 **R** *A periodic fee must be paid using one of the payment methods specified in part 1 of SUP 20 Annex 1R.*

17.01.02/001

Modifications for newly authorised or recognised schemes

18.2.5 **R** *If an authorisation order is made in relation to a scheme, or a scheme becomes a recognised collective investment scheme during the course of a financial year to which a CIS 18 Annex 1R applies:*

17.01.02/001

- (1) *the periodic fee required under CIS 18.4 is modified in accordance with Table CIS 18.2.6R; and*
- (2) *the due date for payment is 30 days after:*
 - (a) *the making of the authorisation order for the scheme; or*
 - (b) *the scheme becomes recognised.*

18.2.6

R

17.01.02/001

Table Modified fees for newly authorised or recognised schemes
This table belongs to CIS 18.2.5R

Period in which authorisation or recognition is granted	<i>a. Proportion of periodic fee payable</i>
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

18.3 Obligation to pay notification and application fees

General

- 18.3.1** **R** 03.09.01/001 The *person* identified in Part A of ■ CIS 18 Annex 1R as the "relevant fee payer" must pay each fee applicable to any application or notification as specified in part A of ■ CIS 18 Annex 1R.

Due date

- 18.3.2** **R** 03.09.01/001 The relevant fee payer must pay a fee identified in Part A of ■ CIS 18 Annex 1R on or before the date on which the relevant application or notification is made.

- 18.3.3** **G** 03.09.01/001 Any application or notification, for which a fee is payable under this section, will be treated as incomplete until that *fee* is paid.

Method of payment

- 18.3.4** **R** 03.09.01/001 A fee identified in Part A of ■ CIS 18 Annex 1R must be paid by bankers draft, cheque or other payable order.

R Fees payable in relation to the period up to 31 March 2002

1 Table Part A – Application and notification fees payable in relation to the period from 3 September 2001 to 31 March 2002.

Section of the Act etc	Nature and purpose of <i>fee</i>	Payable by	Amount of <i>fee</i>	<i>Umbrella scheme</i> factor (Note 5)
Regulation 85 of the <i>OEIC Regulations</i>	On application for an order declaring a <i>scheme</i> to be an <i>ICVC</i>	An applicant (Note 3)	£1,200	2
Section 242	On application for an order declaring a <i>scheme</i> to be an <i>AUT</i>	An applicant (Note 3)	£1,200	2
Section 264	On giving notice under section 264 of the <i>Act</i>	The <i>operator</i> (Note 4)	£600	2
Section 270	On giving a notice under section 270 of the <i>Act</i>	The <i>operator</i> (Note 4)	£600	2
Section 272	On application for an order declaring a <i>scheme</i> to be an individually recognised overseas <i>scheme</i>	An applicant (Note 3)	£14,000	2

2 Table Part B – Periodic fees payable in relation to the period from 1 December 2001 to 31 March 2002

Nature and purpose of <i>fee</i>	Payable by	Amount of <i>fee</i>	<i>Umbrella scheme</i> factor (Note 5)
Periodic <i>fee</i> for an <i>ICVC</i>	The <i>authorised corporate director</i>	£200	2
Periodic <i>fee</i> for an <i>AUT</i>	The <i>manager</i>	£200	2
Periodic <i>fee</i> for a <i>scheme</i> recognised under section 264 of the <i>Act</i>	The <i>operator</i>	£200	2

Periodic <i>fee</i> for a <i>scheme</i> recognised under section 270 of the <i>Act</i>	The <i>operator</i>	£200	2
Periodic <i>fee</i> for a <i>scheme</i> recognised under section 272 of the <i>Act</i>	The <i>operator</i>	£1,167	2

Notes

- 3 The *fee* must accompany the application
- 4 The *fee* must accompany the notice
- 5 For an *umbrella scheme* the fee is multiplied by the factor shown in the final column of the above tables.
- 6 The table of reductions at CIS 18.2.6R does not apply to this period because it does not come into force until 1 April 2002

ANNEX E

Chapter 7

Fees

7

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1



7.1 Introduction

Application

- 7.1.1** **R** This chapter applies to every *recognised body* and to every applicant for recognition as a *recognised body* under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses).
01.12.01/001

Purpose

- 7.1.2** **G** The purpose of this chapter is to set out the requirements on *recognised bodies* and applicants for recognition as *recognised bodies* to pay fees which (with other fee requirements in the *Handbook*) provide the funding for the *FSA*'s functions.
01.12.01/001

Background

- 7.1.3** **G** *GEN 3* (FSA Fees – General Provisions) applies to fees required by this chapter, and explains how the *FSA* sets its fees.
01.12.01/001
- 7.1.4** **G** Most of the detail of the fees payable by *recognised bodies* and applicants is set out in *REC 7 Annex 1R*. The provisions of the annex will vary from one financial year to another. Accordingly a new annex will come into force, following consultation, for each financial year.
01.12.01/001
- 7.1.5** **G** The fee applicable to a *recognised body* reflects the estimated cost to the *FSA* of discharging its functions in relation to that *recognised body*. Fees are set for *UK recognised bodies* on an individual basis.
01.12.01/001
- 7.1.6** **G** Application fees are calculated from a tariff structure intended to reflect the estimated cost of processing an application of that type and complexity.
01.12.01/001
- 7.1.7** **G** A *recognised body* may also have obligations to pay fees to the *FSA* under other *rules* or arising from legislation other than the *Act*. For example, a *recognised body* may have an obligation to pay a fee as an approved operator of a relevant system under the Uncertificated Securities Regulations 1995.
01.12.01/001
- 7.1.8** **G** The *FSA* does not specify a method of payment for *recognised bodies* or applicants. However the *FSA* expects that a *recognised body* or an applicant will generally pay its fee by electronic credit transfer.
01.12.01/001



7.2 Periodic fees

General

7.2.1

R

17.01.02/001

A *recognised body* must pay to the FSA, in full and without deduction, each periodic fee (or instalment) applicable to it under a REC 7 Annex 1R for a period during which or part of which the *recognised body* is recognised.

Amount

7.2.2

R

17.01.02/001

The amount of the periodic fee (or each instalment) referred to in REC 7.2.1R for a *recognised body* is specified in Parts 1 and 2 of REC 7 Annex 1R for the relevant year against the name or description of that body.

Due dates

7.2.3

R

17.01.02/001

The *recognised body* must pay a periodic fee (or any instalment) on or before each due date for payment specified in Parts 1 and 2 of REC 7 Annex 1R for the relevant year against the name or description of that body.

7.3 Application fees

Amount

- 7.3.1** **R**
01.12.01/001 An applicant for recognition as a *UK recognised body* under section 287 or section 288 of the *Act* must pay to the *FSA* in full and without any deduction the application fee specified for that type of application in part 3 of *REC 7 Annex 1R* for the year in which the application is made.
- 7.3.2** **R**
01.12.01/001 An applicant for recognition as an *overseas recognised body* under section 287 or section 288 and section 292 of the *Act* must pay to the *FSA* in full and without any deduction the application fee specified in part 4 of *REC 7 Annex 1R* for the year in which the application is made.

Due dates

- 7.3.3** **R**
01.12.01/001 An applicant must pay the application fee on or before the date on which the application is made.
- 7.3.4** **G**
01.12.01/001 The *FSA* will not consider an application for recognition until the application fee has been paid.

Fees payable in relation to the period from 1 December 2001 to 31 March 2002

R

1 Table Fees payable in relation to the period from 1 December 2001 to 31 March 2002

In this table:

the term *recognised body* includes a recognised investment exchange or a recognised clearing house recognised under the Financial Services Act 1986 and which is a *recognised body* under Regulation 9 of the *Recognition Requirements Regulations*; and

the term *recognition order* includes a recognition order made by the FSA 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* in relation to the period from 1 December 2001 to 31 March 2002

Name of UK <i>recognised body</i>	Amount payable	Due date
COREDEAL Limited	£61,000	1 February 2002
CRESTCo Limited	£163,000	1 February 2002
ECCP	£35,000	1 February 2002
The International Petroleum Exchange of London Limited	£132,000	1 February 2002
Jiway Limited	£67,000	1 February 2002
LIFFE Administration and Management	£153,000	1 February 2002
The London Clearing House Limited	£164,000	1 February 2002
The London Metal Exchange Limited	£160,000	1 February 2002
The London Stock Exchange Limited	£280,000	1 February 2002
OM London Exchange Limited	£123,000	1 February 2002
virt-x Exchange Limited	£87,000	1 February 2002
Any other UK recognised investment exchange recognised as such by a recognition order made between 1 December 2001 and 31 March 2002	£50,000	Later of: 1 February 2002 and 30 days after the date on which the recognition order is made.

Any other UK recognised clearing house recognised as such by a recognition order made between 1 December 2001 and 31 March 2002	£84,000	Later of: 1 February 2002 and 30 days after the date on which the recognition order is made.
---	---------	---

Part 2 – Periodic fees for recognised overseas bodies in relation to the period from 1 December 2001 to 31 March 2002

Name of recognised overseas body	Amount payable	Due date
Cantor Financial Futures Exchange	£3,000	1 February 2002
Chicago Mercantile Exchange	£3,000	1 February 2002
Chicago Board of Trade	£3,000	1 February 2002
Eurex Zurich	£3,000	1 February 2002
NASDAQ	£3,000	1 February 2002
NASDAQ LIFFE, LLC Futures Exchange	£3,000	1 February 2002
New York Mercantile Exchange	£3,000	1 February 2002
New Zealand Futures and Options Exchange	£3,000	1 February 2002
Swiss Exchange	£3,000	1 February 2002
Sydney Futures Exchange	£3,000	1 February 2002
Warenerminbörse Hannover	£3,000	1 February 2002
Any other overseas recognised body recognised as such by a recognition order made between 1 December 2001 and 31 March 2002	£3,000	Later of: 1 February 2002 and 30 days after the date on which the recognition order is made

Part 3 – Application fees for applicants for recognition as a *UK recognised body* for the period from 3 September 2001 up to 31 March 2002

Description of applicant	Amount payable	Due date
Applicant for recognition as a <i>UK RIE</i>	£ 75,000	Date application is made
Applicant for recognition as a <i>UK RCH</i>	£ 75,000	
Additional fees for applicant who proposes to:		
– act as a central counterparty	£ 25,000	
– offer safeguarding and administration services	£ 25,000	
– use substantially new and untested information technology systems in the performance of its relevant functions	£ 25,000	

Part 4 – Application fees for applicants for recognition as an overseas recognised body for the period from 3 September 2001 up to 31 March 2002

Description of applicant	Amount payable	Due date
Applicant for recognition as an recognised overseas body	£ 35,000	Date application is made

**LISTING RULES (FINANCIAL SERVICES AND MARKETS ACT 2000
AMENDMENT No. 2) INSTRUMENT 2002**

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Annex 1 to this instrument (Powers exercised).

Commencement

B. This instrument comes into force when the Listing Rules (Regulatory Information Services) Instrument February 2002 comes into force.

Guidance

C. The Financial Services Authority gives the guidance in Annex 2 to this instrument (Listing Rules Guidance Note No. 06).

Amendments to the Listing Rules

D. The Listing Rules are amended in accordance with Annex 3 to this instrument (Amendments to the Listing Rules).

Amendments to the Guidance Manual

E. The UKLA Guidance Manual is amended in accordance with Annex 4 to this instrument (Amendment to the UKLA Guidance Manual).

Citation

F. This instrument may be cited as the Listing Rules (Financial Services and Markets Act 2000 Amendment No. 2) Instrument 2002.

By order of the Board
21 February 2002

ANNEX 1

Powers exercised

1. The following powers and related provisions in the Financial Services and Markets Act 2000 are exercised by the FSA to amend the Listing Rules:
 - (a) sections 74 and 75;
 - (b) section 77;
 - (c) sections 79 to 89 (inc);
 - (d) section 91;
 - (e) section 96;
 - (f) section 98 to 101 (inc).

2. The FSA exercises its power under section 157(1) to give guidance.

ANNEX 2

LISTING RULES - GUIDANCE NOTE No. 06

Status of Guidance Notes

This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.

This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.

Conditions for listing: the nature and duration of business activities

Introduction

- 1.1 This note provides guidance on the factors that the UK Listing Authority will take into account when determining whether an applicant meets the requirement in paragraph 3.6(a) which requires its business to be supported by its historic revenue earning record.
- 1.2 Under paragraph 3.6A of the listing rules, the UK Listing Authority may list the securities of a company which cannot comply with paragraph 3.6 (a). This Guidance Note is also concerned with those applicants that cannot comply with the requirement for the business of an applicant to be supported by its historic revenue earning record and sets out the additional disclosure requirements and additional continuing obligations that may be applied where that requirement cannot be met.
- 1.3 The UK Listing Authority may admit such securities if it is satisfied that the admission of such companies is desirable in the interests of the applicant and investors. The UK Listing Authority may impose additional disclosure requirements and additional continuing obligations to ensure that it is satisfied that investors have the necessary information available to arrive at an informed judgement concerning the applicant and the securities for which listing is sought.
- 1.4 Companies seeking admission through paragraph 3.6A should contact the UK Listing Authority at an early stage to discuss their proposed application for listing.
- 1.5 By publishing this Guidance Note, the UK Listing Authority is seeking to standardise the additional information to be included in listing documents for securities admitted under paragraph 3.6A, improve consistency and promote comparability.

Background

- 2.1 Paragraph 3.6(a) of the listing rules requires an applicant to satisfy a number of criteria before its application for admission to the Official List will be approved. An applicant must:
 - be carrying on as its main activity an independent business either by itself or through one or more of its subsidiary undertakings;

- have control over the majority of its assets;
 - have been in existence for at least three years and earned revenue throughout that period; and
 - have a business which is supported by its historic revenue earning record.
- 2.2 For some applicants, typically those operating in established markets, prospective investors can make a reasonable assessment of what its future prospects might be by considering the company's historic revenue earning record in the light of its own particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate.
- 2.3 The fact that some applicants may not meet this conventional business profile has challenged the principle in paragraph 3.6(a) that the business of an applicant must be supported by its historic revenue earning record. In particular this is true of applicants which are early stage businesses in new and volatile industry sectors. For such companies it may not be possible to make any reasonable assessment of what the future prospects of the applicant might be through any traditional assessment or analysis. Future prospects are much more likely to be determined by projections of demand for the applicant's products and services for which there may be no established pattern or precedent. The listing of such companies may however be desirable in the interests of both the applicant and investors.
- 2.4 Given the forward looking nature of these companies and the volatility of the industry sectors in which they typically operate, it is appropriate to require the inclusion of information in listing documents that more properly reflects these characteristics.
- 2.5 The introduction of chapter 25 of the listing rules has brought the operation of paragraph 3.6A into focus. Under chapter 25, young companies are able to list without having to comply with paragraph 3.6(a). On the other hand, businesses more than three years old, with similar characteristics but which are unable to meet the criteria in chapter 25 as they have been in existence for three years or more, must comply with the requirement in paragraph 3.6(a) and have a business which is supported by its historic revenue earning record. The end result is that such applicants may have been penalised for having a three-year revenue earning record and may have been considered to be ineligible under a strict interpretation of the listing rules.
- 2.6 Pursuant to paragraph 3.6A, we have adopted an approach whereby applicants which are unable to meet the particular requirements of paragraph 3.6(a) may nonetheless be eligible for listing provided they include in their listing documents certain additional information and comply with certain continuing obligations. As many of these prospective applicants have similar characteristics to some companies admitted under chapter 25, these additional disclosures and continuing obligations are based on those contained in that chapter.
- 2.7 Section 3 of this Guidance Note sets out the list of factors that the UK Listing Authority will take into account when determining whether an applicant complies with paragraph 3.6(a). Section 4 of this Guidance Note describes the additional requirements and disclosures that the UK Listing Authority may require when admitting securities to listing under paragraph 3.6A.

Factors that the UK Listing Authority will take into consideration

- 3.1 The business of an applicant that has been in existence for three years or more but which demonstrates one or more of the following characteristics may not satisfy the

criteria in paragraph 3.6(a) requiring the business of an applicant to be supported by its historic revenue earning record:

- a listing document that places significant emphasis on the development or marketing of products or services for which there is little evidence in the issuer's historic revenue earning record;
- evidence that the value of the business on admission will be determined, to a significant degree, by reference to future developments for which there has been little evidence to date in the historic revenue earning record presented in the listing document;
- an absence of evidence supporting a record of consistent revenue or profit growth throughout the historic revenue earning record presented in its listing document;
- evidence that the business of the applicant has undergone a significant change in its scale of operations during the revenue earning record which resulted in significant increases in revenue and/or profits or whether the listing document indicates that the applicant is expected to undergo such a change;
- evidence that the applicant is or has been loss-making or generating negative operating cash flows during the whole or part of the track record period;
- evidence that the relationship between the value of the business and its revenue or profit earning record is significantly different from those of similar companies in the same sector; or
- evidence of unusual levels of research and development expenditure or unusual levels of capital expenditure.

3.2 The criteria set out above are often evident in early stage businesses or in businesses that have spent a significant part of the track record period developing products which they are yet to exploit or to profit from. In such cases it is likely that the marketing undertaken by the applicant's advisers before admission will be geared very much towards the prospects for the development of the applicant's products and markets for which there may have been little actual evidence during the track record period. For such an applicant it may be in the interests of the applicants and investors that it be admitted to listing if the information that investors may reasonably require to make an informed decision on the securities will be available.

3.3 These characteristics may therefore be indicative that paragraph 3.6(a) is not satisfied and that the applicant may therefore have to rely on the exercise of discretion under paragraph 3.6A leading to a requirement for an applicant to include the information set out in the appendix in its listing document. They are not however exhaustive and applicants displaying some of these or similar characteristics should contact the UK Listing Authority at an early stage.

Additional information that may be required to be included in listing documents and continuing obligations

4.1 The UK Listing Authority will consider all relevant circumstances when determining whether to exercise the discretion to admit securities to listing under paragraph 3.6A and whether additional information should be disclosed or additional continuing obligations should be imposed.

4.2 Having taken into account the factors set out in paragraph 3.1 of this Guidance Note and any other relevant considerations drawn to the attention of the UK Listing

Authority by the sponsor or the issuer in relation to the issuer's application to the Official List, the UK Listing Authority may impose additional requirements and may require the disclosure as described in the appendix to be included in the issuer's listing document.

- 4.3 Where additional information is required to be included in the issuer's listing document, the applicant may also be required to comply with the continuing obligations set out in paragraphs 10 to 13 of the appendix to this Guidance Note.
- 4.4 In assessing whether the additional disclosures and continuing obligations set out in the Guidance Note will apply, the UK Listing Authority reserves the right to require the presentation to it of information such as market research, financial projections and roadshow presentation material to assist it in assessing the eligibility of an applicant.

Other matters

- 5.1 These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.
- 5.2 Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7943 0333.

Related rules

- 6.1 3.6(a), 3.6A.

Appendix

The UKLA will be minded to impose the conditions in this Appendix as a condition of exercising its power referred to in rule 3.6A.

Conditions for listing

1. The financial record for the period of existence of a business activity must be presented for up to three years and the latest accounts, if any, must be in respect of a period ended not more than six months prior to the date of the listing particulars. The company must comply with paragraph 3.3(b) to (e) in respect of this financial information. Where a company chooses to include quarterly report information since the latest accounts, this must also be prepared in accordance with paragraphs 3.3(b) to (e).
2. The UK Listing Authority reserves the right to require the presentation to it of material such as market research, financial projections and road show presentations to assist it assess the eligibility of an applicant. This information may be shared with the UK Listing Authority's independent expert advisers.

Non-financial operating data

3. When an issuer listed under the provisions of this Guidance Note publishes non-financial operating data in listing particulars, that data must have been derived from sources covered by the confirmation required under paragraph 25.5.
4. Non-financial operating data includes any information, statistics, ratios or other data which purports to represent the performance of the issuer's business activities and which cannot be sourced or derived from the issuer's financial data included in the listing particulars pursuant to the requirements of chapter 12.
5. Any non-financial operating data must be clearly identified as such in the listing particulars and must be presented in a summarised form together with details of the definitions and basis of preparation adopted. The listing particulars must clearly state the purpose for which the information has been prepared. The listing particulars should also include a clear statement that the non-financial operating data is that used by the directors in managing the issuer's business and that such data will be reported in subsequent interim and annual reports.
6. Where non-financial operating data is published in the listing particulars, the sponsor must:
 - (a) obtain written confirmation from the issuer that the non-financial operating data published in the listing particulars has been properly extracted from the issuer's records; and
 - (b) be satisfied that this confirmation has been given after due and careful enquiry by the issuer.
7. In the case of a new applicant to which this Guidance Note applies or, in exceptional circumstances where the UK Listing Authority so requires of a listed issuer to which this Guidance Note applies, the sponsor must:

- (a) obtain written confirmation from the issuer that the directors have established procedures which provide a reasonable basis for them to make proper judgements as to the reporting of non-financial operating data of the issuer and its group; and
- (b) be satisfied that this confirmation has been given after due and careful enquiry by the issuer.

Listing Particulars

8. The listing particulars of a new applicant applying the provisions of this Guidance Note must comply with the requirements of chapter 5 and must contain:
 - (a) in a separate prominent section, entitled “Business development and prospects”, a detailed explanation of the issuer’s business plan and strategic objectives, including, in particular, the development in the foreseeable future of new sales markets, new products and/or services, the introduction of new methods of business, processes or technology, and the assumptions upon which the plan is based. This section should include the issuer’s commentary on key milestones in the development of the business;
 - (b) in another separate prominent section, entitled “Risk factors”, full details and an explanation of the risks associated with the business and in particular, any factors which could have a substantial adverse effect on the issuer’s financial condition or which could endanger the issuer’s business success.
9. The listing particulars must also give, in relation to each of the new applicant’s products and services the development of which may have a material effect on the future prospects of the company, a full description of:
 - (a) the type of product and/or services being developed;
 - (b) the expected advantages of the product and/or services including any appropriate technical information;
 - (c) the nature and effectiveness of the research and development undertaken, if relevant;
 - (d) the development status of the product and/or service including the results of validations, if relevant;
 - (e) in relation to any product or technologies undergoing validation, any material information relating to the prospects of the successful completion of such validation;
 - (f) all material information relating to any relevant intellectual property rights of the company, including:
 - (i) the extent to which such rights are registered or unregistered;
 - (ii) the extent to which such rights comprise confidential or proprietary information;
 - (iii) the exact status of any patent position, which must include

details of the nature of the applications filed, the expected timetable in relation to any patents pending and the potential impact of any significant prior applications by third parties;

- (iv) the copyright position in relation to any software which is a part of or connected with the product;
 - (v) any third party rights which could affect the development or operation of the company's business; and
 - (vi) the extent to which the company relies on any intellectual property rights of third parties;
- (g) the extent to which the development of the company's business is dependent on any key individuals, identifying the individuals concerned;
- (h) the current or expected market competitors;
- (i) the basis of any claimed market potential; and
- (j) the future strategy of the company regarding the generation of significant revenues from the product and/or services, including:
- (i) whether the company intends to implement the strategy itself or in collaboration with others;
 - (ii) the extent to which the company will need to rely on third parties to exploit the company's products or services;
 - (iii) where the company intends to collaborate with others in relation to the implementation of the strategy, details (including the consideration and parties) and the financial effect of any agreement or intended agreement; and
 - (iv) if the strategy varies according to the expected major markets for the product, an explanation of any geographical or segmental variants.

Continuing obligations

Quarterly reporting

10. The issuer must prepare and publish (by notifying it to a Regulatory Information Service) a report, on a group basis where relevant, on its activities for each quarter of each financial year. The quarterly report shall contain financial data and non-financial operating data relating to the business operations and the results of the issuer for the reporting period, including explanatory notes thereto.
11. The first quarterly report shall cover the first three months, the half-yearly report shall cover the first six months and the third quarterly report shall cover the first nine months of the financial year. A fourth quarterly report will not be required if the fourth quarter ends with the financial year end.
12. First and third quarterly reports shall be prepared in accordance with the provisions of paragraphs 12.46 to 12.60. Where the figures in the quarterly report have been audited or reviewed by auditors pursuant to guidance

published by the Auditing Practices Board on Review of Interim Financial Information, the report of the auditors must be reproduced in full.

Non-financial operating data

13. Where the issuer's listing particulars contain non-financial operating data as key measures of the development of the company's business, the issuer must include comparative data for all such figures in its subsequent quarterly and half-yearly reports and in the annual financial statements, unless otherwise agreed by the UK Listing Authority.

ANNEX 3

Amendments to the Listing Rules

The following parts of the listing rules are amended as shown (a sideline indicates where the change occurs, underlining indicates new text, striking through indicates deleted text).

DEFINITIONS

Document Viewing Facility	a place in or near the City of London nominated by the UK Listing Authority and identified on the Website at which the documents referred to in the listing rules as being documents to be made available at the Document Viewing Facility can be inspected by the public
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APPENDIX TO CHAPTER 1

PROVISIONS OF LISTING RULES FOR WHICH SAFE HARBOURS ARE PROVIDED

Disclosure of information which is not generally available	8.3 9.4, 9.5, 9.15 17.25, 17.26, 17.67 paragraphs 11 and 12 of the Model Code
Standards of care	9.3A 17.24A 23.22(a) and 23.58A
Timing of announcements, documentation and dealings	9.4, 9.10(j), 9.11, 9.12, 9.14, 9.35 12.40, 12.48 15.9, 15.15 16.14 17.25, 17.33, 17.54 23.22(g), 23.61
Content of announcements	9.1, 9.2 14.1(a) and (b) 17.22, 17.23 23.22(a), 23.58
Purchase of own securities	15.1(b)

Applications for listing

- 2.12 In the case of any application for listing which requires the production of listing particulars, the sponsor must complete the declaration by a sponsor in the form issued by the UK Listing Authority (see schedule 4A) confirming that, to the best of its knowledge and belief, it has performed all the relevant services set out in chapter 2 with due care and skill and has satisfied itself having made due and careful enquiry of the issuer and its advisers:
- (a) about the matters described in paragraph 2.13 and, if relevant, paragraphs 2.15, 2.17, 2.20, 25.5 and 25.12 and, in the case of a new applicant, paragraph 2.16;

General Obligation of disclosure for companies

- 9.5 The categories of recipient referred to in paragraph 9.4 are:
- (a) the company's advisers and advisers of any other persons involved or who may be involved in the development or matter in question;
- (b) persons with whom the company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or placees of securities of the company);

Copies of circulars and resolutions

- 9.31 A company must forward to the UK Listing Authority two copies of:
- (a) all circulars, notices, reports, announcements or other documents to which the listing rules apply at the same time as they are issued; and
- (b) all resolutions passed by the company other than resolutions concerning ordinary business at an annual general meeting without delay after the relevant annual general meeting;
- for publication by making them available to the public for inspection at the Document Viewing Facility.
- 9.32 ~~Paragraph deleted—August 1995.~~ A company must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 9.31, unless the full text of the document is provided to a Regulatory Information Service.

Copies of circulars

- 17.44 An overseas company must send by airmail, or an equivalent service that is no slower, to the UK Listing Authority at the same time as they are issued, two copies of any circular, notice, report, announcement or other document issued by the company in compliance with the listing rules or the requirements of any other stock exchange on which it has its securities listed, or any competent authority or equivalent regulatory authority which regulates it, for publication by making them available to the public for inspection at the Document Viewing Facility.
- 17.44A A company must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 17.44, unless the full text of the document is provided to a Regulatory Information Service.

Continuing obligations

23.23 Issuers other than states and their regional and local authorities must lodge with the UK Listing Authority two copies of any document required pursuant to paragraph 23.22 (at the same time as they are issued) for publication by making them available to the public for inspection at the Document Viewing Facility.

23.23A An issuer must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 23.23, unless the full text of the document is provided to a Regulatory Information Service.

Copies of circulars

23.65 The issuer must send by airmail or an equivalent service that is no slower to the UK Listing Authority at the same time as they are issued, two copies of any circular, notice, report or other document issued by the issuer in compliance with the requirements of the listing rules or any stock exchange on which it has its securities listed, or any competent authority or equivalent regulatory authority which regulates it, for publication by making them available at the Document Viewing Facility.

23.65A An issuer must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 23.65, unless the full text of the document is provided to a Regulatory Information Service.

Continuing obligations

24.38 Issuers of warrants (other than states) are subject to the same continuing obligations as issuers of specialist debt securities, as set out in paragraphs 23.22, ~~and 23.23~~ and 23.23A, with the exception of those relating to interest (paragraph 23.22(d)) and new issues (paragraph 23.22(e)). States are subject to the requirements referred to in paragraph 22.30 subject to paragraph 22.31 with the exception of that relating to interest (paragraph 22.30(d)).

Continuing obligations

24.66 Issuers of certificates representing debt securities are subject to the same continuing obligations as issuers of specialist debt securities, as set out in paragraphs 23.22, ~~and 23.23~~ and 23.23A, with the exception of those relating to new issues (paragraph 23.22(e)) and publication of annual accounts (paragraph 23.22(g)). The obligation relating to repurchases (paragraph 15.13) referred to in paragraph 23.22(p) only applies in circumstances where the proposed repurchase will affect the holders of the certificates.

SCHEDULE 3B

**APPLICATION FOR ADMISSION OF SECURITIES TO THE OFFICIAL LIST
(SPECIALIST AND MISCELLANEOUS SECURITIES)**

To: UK Listing Authority _____ 20__

Details of securities to be listed

<p>_____ [insert name of issuer(s)] (“the issuer(s)”) hereby apply for the securities detailed below to be admitted to the Official List of the UK Listing Authority subject to the listing rules of the UK Listing Authority.</p>
<p>Amounts and descriptions of securities for which application is now being made (where the securities are to be issued under a programme, give a description of the programme and the maximum amount of securities which may be listed at any one time):</p>

Please specify where the issuer is listed and the nature of the listing
Primary
Secondary

Please specify on which RIEs the issuer has applied to have its securities traded

Confirmation

We acknowledge our obligations arising under the listing rules and the legal implications of listing under the Financial Services and Markets Act 2000. Accordingly, we confirm that:

- (a) all the conditions for listing in the listing rules which are required to be fulfilled prior to application have been fulfilled in relation to the issuer(s) and the securities for the admission of which application is now made;
- (b) all information required to be included in the listing particulars/prospectus* has been included therein, or, if the final version has not yet been submitted (or approved), will be included therein before it is so submitted; and
- (c) all the documents and information required to be included in the application have been or will be supplied in accordance with the listing rules and all other requirements of the UK Listing Authority in respect of the application have been or will be complied with.

We undertake to comply with the listing rules of the UK Listing Authority from time to time so far as applicable to the issuer(s). We acknowledge the obligation to comply with the continuing obligations and the requirements in paragraphs 5.14 to 5.16 to publish supplementary listing particulars or a supplementary prospectus if, at any time after listing particulars or a prospectus have been approved and before dealings in any securities covered by this application commence, the issuer(s) becomes aware that:

- (a) there has been a significant change affecting any matter contained in the listing particulars or prospectus; or
- (b) a significant new matter has arisen the inclusion of information in respect of which would have been required to be mentioned in the listing particulars or prospectus if it had arisen at the time of their preparation.

Signed

Director, secretary or other duly authorised officer, agent or attorney for and on behalf of

Name of Issuer(s)

To be completed in all cases

Application to be heard on:

Admission expected to be effective on:

Name(s) of contact(s) at issuer regarding the Application

Telephone number:

ANNEX 4

Amendments to the Guidance Manual

The following parts of the Guidance Manual are amended as shown (a sideline indicates where the change occurs and underlining indicates new text, striking through indicates deleted text).

Appendix 2 of the Guidance Manual

The Price Sensitive Information Guide

Annex 1

Extracts from the Listing Rules

Publication of information

- 1.5 The UK Listing Authority may, at any time, require an issuer to publish such information in such form and within such time limits as it considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.
- 1.6 If an issuer fails to comply with a requirement under paragraph 1.5 the UK Listing Authority may itself publish the information after having given the issuer an opportunity to make representations to the UK Listing Authority as to why the information should not be published.

APPENDIX TO CHAPTER 1 OF THE LISTING RULES

PROVISIONS OF LISTING RULES FOR WHICH SAFE HARBOURS ARE PROVIDED

Disclosure of information which is not generally available	8.3 9.4, 9.5, 9.15 17.25, 17.26, 17.67 paragraphs 11 and 12 of the Model Code
Standards of care	9.3A 17.24A 23.22(a) and 23.58A
Timing of announcements, documentation and dealings	9.4, 9.10(j), 9.11, 9.12, 9.14, 9.35 12.40, 12.48 15.9, 15.15 16.14

	17.25, 17.33, 17.54 23.22(g), 23.61
Content of announcements	9.1, 9.2 14.1(a) and (b) 17.22, 17.23 23.22(a), 23.58
Purchase of own securities	15.1(b)

Appendix 3 of the Guidance Manual

The Continuing Obligations Guide

Circulars

7.23 **Listed companies** must:

- a) seek prior approval from the UKLA before any circular, save those defined as of a routine nature, may be circulated or made publicly available;
- b) support their application for prior approval by providing the UKLA with three copies of (as applicable) the:
 - (i) circular;
 - (ii) working capital letter and confirmation of independence in the form set out in Schedule 1A from the sponsor; and
 - (iii) statement of adjustments.
- c) ensure the circular provides a clear and adequate explanation of the subject matter;
- d) ensure two copies of any circular in its final form (whether or not required to be submitted to the UKLA for prior approval) are lodged with the UKLA for publication by making them available to the public at the Document Viewing Facility at the same time as it is despatched to shareholders; and
- e) notify, without delay, a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility, unless the full text of the document is provided to a Regulatory Information Service.

**FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- Section 156 of the Act (General supplementary powers);
 - Section 157(1) of the Act (Guidance);
 - Paragraph 17(1) of Schedule 1 to the Act (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument shall come into force immediately.

Citation

- D. This instrument may be cited as the Fees (Unauthorised Mutual Societies Registration) Instrument 2002.
- E. The provisions in the Annex may be cited as the Unauthorised mutuals registration fees rules.

By order of the Board
17 January 2002

ANNEX

UNAUTHORISED MUTUALS REGISTRATION FEES RULES

1. INTRODUCTION

Application

- 1.1 R** These rules apply to every:
- (1) *registered society*;
 - (2) *sponsoring body*;
 - (3) *person* who submits a proposal for the registration of a *registered society*.
- 1.2 G** The purpose of these rules is to set out the requirements for *registered societies* and *sponsoring bodies* to pay periodic and application fees which, together, will provide the funding for the *FSA*'s functions in respect of the registrant-only fee block (Category F). This set of rules is in respect of the registration functions relating to registered societies transferred to the *FSA* by Part XXI (Mutual Societies) of the Financial Services and Markets Act 2000 ('the *Act*'), other than friendly societies authorised under section 31 of the *Act*.
- ##### **Background**
- 1.3 G** Most of the detail of the fees which will be payable by *registered societies* and *sponsoring bodies* is set out in Annex 1R to these rules, the provisions of which will vary from one financial year to another. Accordingly, a revised Annex 1R will come into force, following consultation, for each financial year.
- 1.4 G** Annex 2G to these rules contains further information on the fees applicable to *registered societies* under these rules.
- 1.5 G** The periodic fee set for *registered societies* is a flat fee, which is payable annually. The periodic fee payable by *sponsoring bodies* for their *model rules* is also a flat fee, payable annually.
- 1.6 G** The application fee payable to register a new society is a tiered fee: the amount payable for registration of a new society is dependent on whether the rules are based on a free draft or on *model rules*. Further, where *model rules* are used in the case of the registration of a new society other than a credit union, then the number of amendments made to the *model rules* will affect the fee. The application fee payable by a *sponsoring body* for a new set of *model rules* is a flat fee.
- 1.7 G** In these rules:
- (1) an "R" in the margin or heading indicates that the provision is a rule, which creates binding obligations;

(2) a "G" in the margin or heading indicates that the provision is guidance, which is designed to throw light on a particular aspect of these rules, but which is not binding nor an exhaustive description of a *person's* obligations.

Glossary of definitions

1.8 R In these rules, an expression in italics has the meaning given in Annex 4R.

2. PERIODIC FEES

General

2.1 R A *registered society* must pay to the *FSA*, in full and without deduction, the periodic fee applicable to it under Annex 1R for a financial year during which, or part of which, the society is registered, except as provided for in 2.5R and 2.6R.

2.2 R If a *sponsoring body* wishes a set of *model rules* to retain that status for a particular financial year, it must pay to the *FSA*, in full and without deduction, the periodic fee applicable to those rules under Annex 1R for the year, except as provided for in 2.7R.

Methods of payment

2.3 R A *registered society* or *sponsoring body* must pay its periodic fee by one of the methods specified in Annex 1R.

Due dates

2.4 R A *registered society* or *sponsoring body* must pay a periodic fee on or before the relevant due date for payment specified in Annex 1R for the relevant year.

Exceptions

2.5 R A *registered society* is not required to pay the periodic fee for the financial year in which it is first registered.

2.6 R If a *registered society* ceases to be a *registered society* on or after 1 April in a particular financial year, but before an invoice for the periodic fee payable under 2.1R for the financial year in which the society ceases to be a *registered society* has been issued by the *FSA*, the periodic fee payable by that *registered society* under 2.1R is the amount of the periodic fee under Annex 1R for the immediately preceding financial year.

2.7 R A *sponsoring body* is not required to pay the periodic fee for a set of *model rules* for the financial year in which the rules become *model rules* for the first time.

Extension of time

2.8 R A *registered society* need not pay a periodic fee on the date which it is

due under the relevant provision in these rules, if:

- a) that date falls during a period during which circumstances of the sort set out in Annex 3R (Emergencies) exist, and that *registered society* has reasonable grounds to believe that those circumstances impair its ability to pay the fee, in which case it must pay on or before the fifth *business day* after the end of that period; or
- b) that date would otherwise fall on or before the 30th *day* after the date on which the *FSA* has sent written notification to that *registered society* of the fee payable on that date, in which case it must pay on or before the 30th *day* after the date on which the *FSA* sends the notification.

Late payment

2.9 R If a *registered society* does not pay the total amount of a periodic fee or a fee payable under 4.2R on the date on which it is due under the relevant provisions of these rules, that *registered society* must pay an additional amount as follows:

- (1) if the fee is not paid in full before the due date, an administrative fee of £250; plus
- (2) if the fee is 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.

2.10 G The *FSA* expects to issue invoices for periodic fees at least 30 days before the date on which they fall due. Accordingly, it will generally be the case that a *registered society* 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.

2.11 G If a *sponsoring body* does not pay the required periodic fee for a set of *model rules* by the due date, the rules will cease to be *model rules* and applications for the registration of societies that use the rules will be charged by the *FSA* as if the rules were a free draft.

Amending model rules

2.12 G If a *sponsoring body* wishes to change a set of *model rules*, it should supply a copy to the *FSA* indicating the proposed changes. No application fee is payable for such changes.

Refunds

2.13 G The *FSA* will not refund periodic fees in any circumstances.

3. APPLICATION FEES

General

- 3.1 R A *person* who submits to the *FSA* a proposal for the registration of a society must pay to the *FSA*, in full and without deduction, the fee specified for the type of application under Annex 1R for the year in which the fee is paid.
- 3.2 R A sponsoring *body* wishing a set of rules to become *model rules* for the first time must pay to the *FSA*, in full and without deduction, the application fee specified in Annex 1R for the year in which the fee is paid.

Method of payment

- 3.3 R Application fees must be paid by the method specified in Annex 1R.

Due dates

- 3.4 R A *person* making an application or submitting a proposal for the registration of a society must pay the application fee on, or before, making the application.
- 3.5 R A *sponsoring body* must pay the application fee for a new set of *model rules* on or before making the application.
- 3.6 G The *FSA* may require the fee to be paid by the *person* making the application before the *FSA* undertakes any preliminary consideration of the proposed application or rules.

Refunds

- 3.7 G The *FSA* will not refund application fees under any circumstances.
- 3.8 G Paragraph 3.7G applies also in the case of applications that are not proceeded with where a fee has been paid in advance.

4. TRANSITIONAL ARRANGEMENTS

- 4.1 R If a *registered society* ceases to be a *registered society* between 1 December 2001 and 30 June 2002, the *registered society* is not liable to pay the periodic fee or fees for the period or periods 1 December 2001 to 31 March 2002, and 1 April 2002 to 31 March 2003 (as appropriate).
- 4.2 R A *person* which becomes a *registered society* after 1 December 2001 but before these rules are made, and which remains a *registered society* on the date these rules are made, must pay to the *FSA* a special fee. This special fee will be of a sum equal to the application fee which would have been payable for the application under Annex 1R, had that annex been in force on the date of registration. This fee must be paid within 30 days after these rules come into force, or if later, 30 days after the *FSA* sends an invoice for the fee.

ANNEX 1R

FEES PAYABLE IN RELATION TO THE PERIOD FROM 1 DECEMBER 2001 TO 31 MARCH 2002

Periodic Fee Payable by Registered Societies (on 1 July 2002).

(This fee is not payable by a credit union.)

Transaction	Amount Payable (£)
Periodic Fee	80

Application fees payable to register a new society other than a credit union

Transaction	Amount Payable (£)
Application using <i>model rules</i> without any amendment to the model	100
Application using <i>model rules</i> with between 1 and 6 amendments to the model	120
Application using <i>model rules</i> with between 7 and 10 amendments to the model	350
Application using <i>model rules</i> with 11 or more amendments to the model, or using free draft rules	950

Application fees payable to register a new credit union

Transaction	Amount Payable (£)
Application to register a new credit union using <i>model rules</i> (endorsed by a <i>sponsoring body</i>)	420
Application to register a new credit union using <i>model rules</i> (endorsed by a <i>sponsoring body</i> and with the common bond supported by a statutory declaration)	360
Application to register a new credit union using free draft rules	975
Application to register a new credit union using free draft rules (with the common bond supported by a statutory declaration)	900

Periodic fee payable by sponsoring bodies (on 1 July 2002).

(This fee is not payable by sponsoring bodies in respect of the model rules of credit unions.)

Transaction	Amount Payable (£)
Periodic Fee payable for each set of <i>model rules</i>	80

Application fees payable by sponsoring bodies

(This fee is not payable by sponsoring bodies in respect of the model rules of credit unions.)

Transaction	Amount Payable (£)
Application for a new set of <i>model rules</i>	950

Methods of payment of periodic fees

Payment Method	Additional amount or discount applicable
Direct Debit	Discount of £20
Credit Transfer (BACS, CHAPS)	Discount of £10
Cheque	None
Switch	None
Credit card (Visa or Mastercard only)	Addition of 2% of sum paid

Method of payment of application fees

Payment Method	Additional amount or discount applicable
Cheque	None

ANNEX 2G

FURTHER INFORMATION ON FEES

- 1 Purpose**
The purpose of this annex is to set out further information on fees applicable to *registered societies* which form the registrant-only fee block (Category F).
- 2 Background**
Paragraph 17 of Schedule 1 to the *Act* enables the *FSA* to charge fees to cover its expenses in carrying out its functions.
- 3** The fees payable by *registered societies* will vary from one financial year to another and will reflect the *FSA*'s funding requirement for the registrant-only fee block.
- 4** For periodic fees, the key components of the fee mechanism are:

 1. A funding requirement derived from:
 - a) The *FSA*'s financial management and reporting framework;
 - b) The *FSA*'s budget;
 - c) Adjustments, as appropriate, for audited variances between budgeted and actual expenditure in the previous accounting year and reserves movements (in accordance with *FSA*'s reserves policy);
 2. Fee blocks, which are broad groupings of fee payers offering similar products and services and presenting broadly similar risks to the *FSA*'s regulatory objectives;
 3. A costing system to allocate an appropriate part of the funding requirement to each fee block; and
 4. Tariff bases, which, when combined with fee tariffs, allow the calculation of fees.
- 5** The *FSA* defines fee blocks so that they will depend, for the most part, upon the regulated activities included in the permission held by firms, with a separate fee block for mutual societies which do not conduct regulated activities (registrants). By basing fee blocks on categories of business, the *FSA* aims to minimise cross-sector subsidies. The funding requirement for the registrant-only fee block will accordingly reflect only the cost of the registration function plus a share of corporate overheads. It will not include any indirect regulatory overheads.
- 6 Recovery of fees**
Paragraph 17(4) of Schedule 1 to the *Act* permits the *FSA* to recover fees as a debt owed to the *FSA* and the *FSA* will consider court action for recovery through the civil courts.

ANNEX 3R

EMERGENCIES

1 R The *FSA* recognises that there may be occasions when, because of a particular emergency, a *registered society* may be unable to comply with a particular rule. The purpose of this annex is to provide appropriate relief from the consequences of contravention of a rule in those circumstances.

(1) If any emergency arises which:

- (a) could not have been avoided by the *registered society* taking all reasonable steps;
- (b) makes it impracticable for a *registered society* to comply with a particular rule; and
- (c) is outside the control of the *registered society*, its members and its employees;

the *registered society* will not be in contravention of that rule to the extent that, in consequence of the emergency, compliance with that rule is impracticable.

(2) Paragraph (1) applies only for so long as:

- (a) the consequences of the emergency continue; and
- (b) the *registered society* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the rule.

(3) A *registered society* must notify the *FSA* as soon as practicable of the emergency and of the steps it is taking or proposes to take to deal with the consequences of the emergency.

A *registered society* should continue to keep the *FSA* informed of the steps it is taking under 2.8(a)R.

In the context of 2.8(a)R, an action is not practicable if it involves a *registered society* going to unreasonable lengths.

ANNEX 4R

GLOSSARY OF DEFINITIONS

In these rules, an expression in italics has the meaning given below:

Expression	Definition
<i>Act</i>	The Financial Services and Markets Act 2000.
<i>amendment to model rules</i>	(In Annex 1R) any number of changes to a single numbered rule and its sub-clauses (however described) represents a single amendment to model rules; the provision of information in respect of a name, an address, or a number, or any text which is added to a <i>model rule</i> in a space specifically provided in the <i>model rule</i> for the addition of such text, will not be regarded as an amendment to model rules.
<i>business day</i>	In rule 2.8R, any day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in that part of the United Kingdom in which the <i>registered society</i> has its registered office.
<i>day</i>	A period of 24 hours beginning at midnight.
<i>FSA</i>	The Financial Services Authority.
<i>model rules</i>	A set of rules: <ul style="list-style-type: none">(a) which a <i>sponsoring body</i> has provided to the <i>FSA</i>;(b) in relation to which the <i>sponsoring body</i> has paid all relevant fees due under these rules; and(c) which complies with the provisions of the Industrial and Provident Societies Acts 1965 and 1967, the Friendly and Industrial and Provident Societies Act 1968 and the Friendly Societies Acts 1974 and 1992, as appropriate; or(d) the Credit Unions Act 1979 (a list of <i>model rules</i> which satisfy (a) and (b) and, in the <i>FSA's</i> view, satisfy (c), is available from Mutual Societies Registration department at the <i>FSA</i>).
<i>person</i>	(In accordance with the Interpretation Act 1978) any person, natural or legal, including a body of persons corporate or unincorporated.

- registered society* A society registered under the Industrial & Provident Societies Acts, the Credit Unions Act 1979, the Superannuation and Other Trust Funds (Validation) Act 1927, or the Friendly Societies Act 1974; which is not authorised for the purposes of section 31 of the *Act*.
- sponsoring body* A body which publishes, or which proposes to publish, *model rules* for *registered societies*.

**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES
(AMENDMENT No 2) INSTRUMENT 2002**

Power exercised

- A. The Financial Services Authority amends the Interim Prudential Sourcebook for Building Societies (IPRU(BSOC)) 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)
 - (2) section 157(1)(b) (Guidance).
- B. The provisions of the Act relevant to making rules and 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 May 2002.

Amendment of the Interim Prudential sourcebook for building societies

- D. IPRU(BSOC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 2) Instrument 2002.

By order of the Board
21 February 2002

ANNEX

The Interim Prudential sourcebook for building societies is amended in accordance with the following table.

IPRU (BSOC) Volume 1 – Introduction - X.8.2 R	Substitute for “9.27” the figures “9.2.7”
IPRU (BSOC) Volume 2 – Chapter 1 - Access to Register of Members– Annex A (Extract from the 1986 Act)	In the text of Schedule 2, paragraph 15 – (i) in sub-paragraph (1)(b), substitute for “granted” the word “given”, (ii) after sub-paragraph (2)(b), omit the words “and (c) on payment by the applicant of a reasonable fee;” and (iii) after sub-paragraph (2) insert the following – “(2A) The Authority may charge a reasonable fee for considering an application under sub-paragraph (2) above.”
IPRU (BSOC) Volume 2 – Chapter 2 - Merger Procedures - 6.3 G	At the end of that paragraph add “The statement must include particulars of any compensation payable to directors or other officers of the transferor society to which the Authority has given its consent under paragraph 2(1) of Schedule 8A to the 1986 Act.”
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures - 1.1 G	In the second sentence, substitute for “authorised for the purposes of the Act to accept deposits” the words “having permission under the Act to carry on those regulated activities which it will undertake as a result of the transfer.”
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures - 1.10 G	After the words “(Mutual Societies) Order 2001” insert “and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001”.
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 2.2 G	In the penultimate sentence, substitute for “authorisation to accept deposits” the words “permission to carry on the regulated activities which it will undertake as a result of the transfer”.

IPRU (BSOC) Volume 2 – Chapter 3 – Transfer Procedures - 2.8 G	In the third sentence, substitute for “authorisation of” the words “permission to be given to”.
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 2.10 G	In (d) of the final sentence, substitute for “authorisation to accept deposits” the words “permission to carry on the regulated activities which it will undertake as a result of the transfer”.
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 2.12 G	In the final sentence, substitute for “important factors in its authorisation process” and insert “relevant to the terms of its successor company’s permission”.
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 2.14 G	In the final sentence, substitute for “for the purposes of authorising the successor company to accept deposits” the words “in connection with the successor company’s permission to carry on the regulated activities which it will undertake as result of the transfer”.
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 2.16 G	In the first sentence, substitute for “be authorised, or, as the case may be, to continue to be authorised, to accept deposits.” the words “have permission to carry on such regulated activities as will enable it to undertake the business it will have as result of the transfer.”
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 3.19 G	In the second sentence, substitute for “become a credit institution which is authorised to accept deposits for the purposes of the Act” the words “have such permission under the Act as will enable it to carry on the business which it will have as a result of the transfer”.
IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 3.22 G	In the second sentence, substitute for “become or, as the case may be, remain a credit institution which is authorised to accept deposits for the purposes of the Act” the words “have such permission under the Act as will enable it to carry on the business which it will have as a result of the transfer”.

<p>IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 3.23 G</p>	<p>In the first sentence, substitute for “be authorised to accept deposits” the words “have the required permission under the Act”.</p> <p>In the second sentence, substitute for “subsequent authorisation” the words “the subsequent obtaining of the necessary permission”.</p> <p>In the third sentence, after “successor company, upon transfer” insert “ on terms which will enable it to carry on the business it will have following the transfer”.</p>
<p>IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 4.15 G</p>	<p>In sub-paragraph (k), substitute for “to accept deposits” the words “on terms which will enable it to carry on the business it will have as a result of the transfer”.</p>
<p>IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 4.17 G</p>	<p>Substitute for “pass copies of them, and the Transfer Document, to the Central Office for filing. If a public announcement of the transfer proposal was not to be made until after the Authority had approved the Transfer Statement, the Authority would not pass copies of the Statement, Summary or Document to the Central Office until after the announcement. None of the other documents referred to in paragraph 4.15 will be passed to the Central Office” the following “arrange for copies of the Transfer Document and Transfer Statement, if printed separately, to be placed on the public file. If a public announcement of the transfer proposal is not to be made until after the Authority has approved the Transfer Statement, or until the Transfer Document is sent to the society’s members, the Document and Statement will not be placed on the public file until after the announcement. None of the other documents referred to in paragraph 4.15 above will be placed on the public file.”</p>

<p>IPRU (BSOC) Volume 2 – Chapter 3 - Transfer Procedures – 6.4 G</p>	<p>In the first sentence, substitute for the Confirmation Criterion in 6.4(c) the following –</p> <p>“(c) there is a substantial risk that the successor will not have –</p> <p>(i) such permission under Part IV of the Act, or</p> <p>(ii) such permission under paragraph 15 of Schedule 3 to the Act (as a result of qualifying for authorisation under paragraph 12 of that Schedule),</p> <p>as will enable it to carry on the business which it will have as a result of the transfer without being taken (by virtue of section 20 of the Act) to have contravened a requirement imposed on it by the Authority under the Act; or”.</p>
<p>IPRU (BSOC) Volume 2 – Chapter 5 - Transfer Confirmation Procedures – 5.2.2 G</p>	<p>For sub-paragraph (3) substitute the following –</p> <p>“(3) there is a substantial risk that the successor will not have –</p> <p>(i) such permission under Part IV of the Financial Services and Markets Act 2000, or</p> <p>(ii) such permission under paragraph 15 of Schedule 3 to that Act (as a result of qualifying for authorisation under paragraph 12 of that Schedule),</p> <p>as will enable it to carry on the business which it will have as a result of the transfer without being taken (by virtue of section 20 of that Act) to have contravened a requirement imposed on it by the Authority under that Act; or”.</p>

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(AMENDMENT No 2) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for insurers 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 (Guidance).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force immediately.

Amendment of the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Amendment No 2) Instrument 2002.

By order of the Board
21 February 2002

Annex

1. Rule 4.2(2)(b)(i) is substituted by the following:

“the *group undertaking*’s own capital (as defined in the *relevant regulatory requirements* for that undertaking), or”.

2. The definition of *future profits* in rule 11.1 is deleted.

3. The first line of the definition of *relevant regulatory requirements* in rule 11.1 is substituted by the following:

“for the purposes of rule 4.2(2)(b) and (3)(a):”.

4. That part of paragraph 11 (2) of Appendix 9.1 which precedes subparagraph (a) is substituted by the following:

“In each case where the *exposure* of the *insurer* to a *counterparty* at the end of the *financial year in question* exceeds 5% of its *long-term insurance business amount* or *general insurance business amount*, as appropriate – ”.

5. The heading “Implicit items admitted under Rule 2.10 [Regulation 23(5) of the Insurance Companies Regulations 1994]” between line 25 and line 31 of Form 9 in Appendix 9.1 is substituted by the following:

“Implicit items admitted under rule 2.10(5) as modified”.

6. The phrase with line 87 of Form 13 (Sheet 3) in Appendix 9.1 “Deductions (under rules 4.14(2)(b) and 4.14(3)) [regulations 57(2)(b) and 57(3) of the Insurance Companies Regulation 1994] from the aggregate value of assets” is substituted by the following:

“Deductions (under rules 4.14(2)(b) and 4.14(3)) from the aggregate value of assets”.

7. The heading “Reconciliation to asset values determined in accordance with the shareholder accounts rules” between line 89 and line 91 of Form 13 (Sheet 3) in Appendix 9.1 is substituted by the following:

“Reconciliation to asset values determined in accordance with the *insurance accounts rules*”.

8. The phrase with line 92 of Form 13 (Sheet 3) in Appendix 9.1 “Total assets in excess of the admissibility limits of Appendix 4.2 [Schedule 12 of the Insurance Regulations 1994] (as valued in accordance with those Rules before applying admissibility)” is substituted by the following:

“Total assets in excess of the admissibility limits of Appendix 4.2 (as valued in accordance with those rules before applying admissibility limits)”.

9. The phrase with line 93 of Form 13 (Sheet 3) in Appendix 9.1 “Solvency margin deduction for insurance dependants” is substituted by the following:

“Solvency margin deduction for *subsidiary undertakings* which are *insurance undertakings*”.

10. The phrase with line 95 of Form 13 (Sheet 3) in Appendix 9.1 “Assets of a type not valued above, (as valued in accordance with the shareholder accounts rules)” is substituted by the following:

“Assets of a type not valued above (as valued in accordance with the *insurance accounts rules*)”.

11. The phrase with line 99 of Form 13 (Sheet 3) in Appendix 9.1 “Total assets determined in accordance with the shareholder accounts rules (91 to 95)” is substituted by the following:

“Total assets determined in accordance with the *insurance accounts rules* (91 to 95)”.

12. Paragraph 3 of “Instructions for completion of Form 39” in Appendix 9.2 is substituted by the following:

“The entries at line 12 must be derived from column 99-99 of Forms 24 and 25, that in whole or part covers the *business group*, as follows:

line 29 on Form 24 plus line 29 less line 15 plus line 24 on Form 25 less line 29 plus line 15 less line 24 on Form 25 for the *preceding financial year*.”.

13. Paragraph 5 (iii) of “Instructions for completion of Form 13” in Appendix 9.1 is substituted by the following:

“units or other beneficial interests in *collective investment schemes* falling within rule 4.9 (1)(c); or”.

14. Paragraph 9 of “Instructions for completion of Form 13” in Appendix 9.1 is substituted by the following:

“In line 93 “Solvency margin deduction for *subsidiary undertakings* which are *insurance undertakings*” refers to deductions under rule 4.2.”.

15. The phrase with line 41 of Form 14 in Appendix 9.1 “Provision for adverse changes (calculated in accordance with rule 5.3) [Regulation 61 of the Insurance Companies Regulations 1994]” is substituted by the following:

“Provision for adverse changes (calculated in accordance with rule 5.3)”.

16. Paragraph 2 of Appendix 9.6 is substituted by the following:

“Subject to 7, the certificate required by rule 9.34(a) must also, in the case of an *insurer* which is required by rule 2.1 to maintain a *margin of solvency*, *EEA margin of solvency* or *UK margin of solvency*, state that the required margin has been so maintained throughout the *financial year in question*.”.

17. Paragraph 3(b)(ii) of Appendix 9.6 is substituted by the following:

“that the *deposit* has been maintained throughout that year at a level equal to at least *the minimum*; and”.

18. Paragraph 3(c)(ii) of Appendix 9.6 is substituted by the following:

“that the *deposit* has been maintained throughout that year at a level equal to at least *the minimum*”.

TRAINING AND COMPETENCE SOURCEBOOK

(AMENDMENT No 4) INSTRUMENT 2002

Powers exercised

A. The Financial Services Authority amends the Training and Competence sourcebook 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).

B. The provisions of the Act relevant to rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force immediately.

Amendments to the Training and Competence sourcebook

D. The Training and Competence sourcebook is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Training and Competence Sourcebook (Amendment No 4) Instrument 2002.

By order of the Board
21 February 2002

ANNEX

TC INTERIM APPROVED EXAMINATION ANNEXES

The amendments are shown as follows:

Deleted text : ~~Red—strike through~~

Inserted text: **Yellow**

Annex 1R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (a) Employees engaging in advising on investments which are, and dealing with or for clients in, securities (other than stakeholder pension schemes or broker funds) and derivatives

Examination that must be passed before starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
Y	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Associateship – must include a pass in the Investment Management paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the * Investment paper	Chartered Institute of Bankers
1	Associateship – must include a pass in the Investment paper	Chartered Institute of Bankers in Scotland
1	Certificate in Derivatives plus Certificate in Securities – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Certificate in Securities plus Certificate in Derivatives – Paper 2	Securities Institute
1	Diploma (including Regulation and Compliance paper and Financial Derivatives paper)	Securities Institute
1	Diploma (including Regulation and Compliance paper and * Financial Futures and Options paper)	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Examination that must be passed before starting the activity		
1	* SFA Futures and Options Representative Examination plus Certificate in Securities – Paper 2	Securities Institute
1	* SFA Futures and Options Representative Examination plus * Securities Representative Examination – Part 2	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* SFA Securities Representative Examination plus Certificate in Derivatives – Paper 2	Securities Institute
1	* SFA Securities Representative Examination plus * Financial Derivatives Module	Securities Institute
1	* SFA Securities Representative Examination plus * Futures and Options Representative Examination – Part 2	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst	Association for Investment Management and Research
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

Table 2 TC 2.1.4 R (1) (b) *Employees engaging in advising on investments which are, and dealing with or for clients in, securities (other than stakeholder pension schemes or broker funds) only*

Examination that must be passed before starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
Y	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Associateship – must include a pass in the Investment Management paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the * Investment paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the Investment paper	Chartered Institute of Bankers in Scotland
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance paper)	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Canadian Securities course plus Conduct and Practices Handbook	Canadian Securities Institute
2	Certificate	New Zealand Stock Exchange
2	Certificate in Financial Markets	Securities Institute of Australia
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Diploma	Association of Belgian Financial

Examination that must be passed before starting the activity		
		Analysts
2	Diploma	The Swiss Stock Exchange
2	Diploma of Financial Markets	Securities Institute of Australia
2	Dealers Representative Examination	Singapore Exchange
2	Elementary, Intermediate and International Capital Markets courses	Korea Securities Training Institute
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	The French Society of Investment Analysts
2	General Certificate Programme	ISMA/University of Reading
2	* General Certification Programme	ISMA/University of Reading
2	International Capital Markets Qualification (ICMQ) (including the Fixed Interest and Bond Markets Module)	Securities Institute/South African Institute of Financial Markets
2	Irish Registered Representatives Examination	Irish Stock Exchange/Dublin City University
2	Membership Examinations	Johannesburg Stock Exchange
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	Promotore Finanziario Examination	Italian Exchange
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
2	Series 7 - General Securities Representatives Examination	National Association of Securities Dealers
2	Trainee Dealers Representatives examination	Kuala Lumpur Stock Exchange
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

Table 3 TC 2.1.4 R (1) (c) *Employees engaging in advising on investments which are, and dealing with or for clients in, derivatives only*

Examination that must be passed before starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
Y	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Associateship – must include a pass in the Investment Management paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the * Investment paper	Chartered Institute of Bankers
1	Associateship - must include a pass in the Investment paper	Chartered Institute of Bankers in Scotland
1	Certificate in Derivatives	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (including Regulation and Compliance paper and Financial Derivatives paper)	Securities Institute
1	Diploma (including Regulation and Compliance paper and * Financial Futures and Options paper)	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	ACI Diploma	ACI
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst	Association for Investment Management and Research
2	Derivatives Fundamentals course and Futures/Options Licensing course	Canadian Securities Institute
2	Diploma including passes in both the Australian Futures Trading and Options Trading papers	Securities Institute of Australia
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking

Examination that must be passed before starting the activity		
		industry
2	Examination	Norwegian Society of Financial Analysts
2	Financial Derivatives paper of Diploma	Securities Institute
2	* Financial Futures and Options paper of the Diploma	Securities Institute
2	International Capital Markets Qualification (ICMQ) including passes in Futures, Options and other Derivative Products paper	Securities Institute/South African Institute of Financial Markets
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Association
2	Representative of Public Securities Qualifications – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualifications – Type 1	Japanese Securities Dealers Association
2	Registered Representatives Examination	Sydney Futures Exchange
2	Secondary Examination	Analyst Association of Japan
2	Series 3 - National Commodity Futures Examination	National Futures Association
2	Singapore Exchange Futures Trading Test	Singapore Institute of Banking and Finance
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute

Annex 2R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (d) *Employees engaging in managing investments*

Examination that must be passed within 30 months of starting the activity

K E Y	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
	3	UK regulatory modules

*** The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.**

1	Associate – achieved by examination passed before 1 December 2001 [must include a pass in Subject 301 - Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	* Fellow or Associate achieved by examination [must include a pass in Investment paper E (syllabus in force until 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow - achieved by examination [must include a pass in Subjects 301 and 401 Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Associate – achieved by examination passed after 30 November 2001 [must include a pass in Subject 301 - Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
2	Certificate in Investment Management (at least three papers passed by examination)	Society of Investment Analysts in Ireland
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Chartered Member	Securities Analysts' Association of Japan
2	Investment Management Asset Allocation Qualification	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales

Examination that must be passed within 30 months of starting the activity		
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 2 TC 2.1.4 R (1) (e) Employees engaging in managing investments in relation to venture capital investments only

Examination that must be passed within 30 months of starting the activity		
KEY	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Associate – achieved by examination passed before 1 December 2001 [must include a pass in Subject 301 - Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	* Fellow or Associate achieved by examination [must include a pass in Investment paper E (syllabus in force until 1998)]	Faculty of Actuaries/Institute of Actuaries
1	Fellow – achieved by examination [must include a pass in Subjects 301 and 401 – Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries

Examination that must be passed within 30 months of starting the activity		
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland
2	Associate – achieved by examination passed after 30 November 2001 [must include a pass in Subject 301 – Investment and Asset Management (syllabus in force from 1998)]	Faculty of Actuaries/Institute of Actuaries
2	Certificate in Corporate Finance	Securities Institute
2	Certificate in Investment Management (at least three papers passed by examination)	Society of Investment Analysts in Ireland
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified Diploma in Accounting and Finance	Association of Chartered Certified Accountants
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Chartered Member	Securities Analysts' Association of Japan
2	Diploma – Corporate Finance paper	Securities Institute
2	Investment Management Asset Allocation Qualification	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* SFA Corporate Finance Representative Examination	Securities Institute
2	Professional qualification which provides the particular discipline relevant to their responsibilities in relation to venture capital investments	
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute

Examination that must be passed within 30 months of starting the activity		
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Annex 3R The interim approved examinations referred to in TC 2

Table 1 *TC 2.1.4 R (1) (f) Employees engaging in advising on investments which are packaged products (other than broker funds or as in (g) or (h))*

Examination that must be passed within two years of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
Y	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associateship (post-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Diploma (including Private Client Investment Advice and Management paper)	Securities Institute
1	Fellow or Associate (life and pensions route only)	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Paper (post-August - 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning Paper 2	Institute of Bankers in Ireland
2	* Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales

Examination that must be passed within two years of starting the activity		
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
3	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Advice Certificate – Paper 1	Securities Institute

Table 2 *TC 2.1.4 R (1) (g) Employees engaging in advising on investments which are friendly society tax exempt policies only*

Examination that must be passed within two years of starting the activity		
Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full		
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
1	Investment Advice Certificate – Paper 1	Securities Institute

Table 3 *TC 2.1.4 R (1) (h) Employees engaging in advising on investments which are packaged products (where the employee sells only life policies issued by a friendly society and is not reasonably expected to receive remuneration of more than £1,000 a year in respect of such sales)*

No examination requirement

Table 4 *TC 2.1.4 R (1) (i) Employees engaging in advising on investments in the course of corporate finance business only*

Examination that must be passed within two years of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
Y	3	UK regulatory modules

Examination that must be passed within two years of starting the activity

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Securities	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Diploma – Corporate Finance paper	Securities Institute
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Bankers Association

Examination that must be passed within two years of starting the activity		
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
3	Diploma (Regulation and Compliance Paper)	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 5 *TC 2.1.4 R (1) (j) Employees engaging in advising on investments which are (but not dealing in) securities (other than stakeholder pension schemes or broker funds) and derivatives. For employees engaging in advising in relation to venture capital investments only – see Annex 2R, Table 2.*

Examination that must be passed within two years of starting the activity		
KEY	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associate or Fellow (life and pensions route only)	Chartered Insurance Institute
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Derivatives plus Certificate in Securities – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute

Examination that must be passed within two years of starting the activity		
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Certificate in Securities plus Financial Derivatives Module	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper) and Financial Derivatives Paper)	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper and * Financial Futures and Options Paper)	Securities Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate	Chartered Insurance Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Investment paper (post - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	* SFA Futures and Options Representative Examination plus Certificate in Securities – Paper 2	Securities Institute
1	* SFA Futures and Options Representative Examination plus * Securities Representative Examination – Part 2	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	* SFA Securities Representative Examination plus Certificate in Derivatives – Paper 2	Securities Institute
1	* SFA Securities Representative Examination plus * Financial Derivatives Module	Securities Institute
1	* SFA Securities Representative Examination plus Futures and Options Representative Examination – Part 2	Securities Institute
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst	Association for Investment

Examination that must be passed within two years of starting the activity		
		Management and Research
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning – Paper 2	Institute of Bankers in Ireland
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 6 TC 2.1.4 R (1) (k) *Employees engaging in advising on investments which are (but not dealing in) securities (other than stakeholder pension schemes or broker funds) only. For employees engaging in advising in relation to venture capital investments only – see Annex 2R, Table 2.*

Examination that must be passed within two years of starting the activity		
K E Y	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associate or Fellow (life and pensions route only)	Chartered Insurance Institute
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities	Securities Institute
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper)	Securities Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate	Chartered Insurance Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Investment paper (post - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute

Examination that must be passed within two years of starting the activity		
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Canadian Securities course plus Conduct and Practices Handbook	Canadian Securities Institute
2	Certificate	New Zealand Stock Exchange
2	Certificate in Financial Markets	Securities Institute of Australia
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Certified European Financial Analyst	EFFAS Societies with accredited examinations
2	Chartered Financial Analyst (Level 1)	Association for Investment Management and Research
2	Dealers Representative Examinations	Singapore Exchange
2	Diploma	Association of Belgium Financial Analysts
2	Diploma of Financial Markets	Securities Institute of Australia
2	Elementary, Intermediate and International Capital Markets course	Korea Securities Training Institute
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	French Society of Investment Analysts
2	General Certificate Programme	ISMA/University of Reading
2	* General Certification Programme	ISMA/University of Reading
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning – Paper 2	Institute of Bankers in Ireland
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	International Capital Markets Qualification (including the Fixed Interest and Bond Markets Module)	Securities Institute/South African Institute of Financial Markets
2	Membership Examination	Johannesburg Stock Exchange
2	Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	Promotore Finanziario Examination	Italian Exchange
2	Registered Representatives Examination	Irish Stock Exchange/Dublin City University
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Securities-Dealers Bankers Association

Examination that must be passed within two years of starting the activity		
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Bankers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
2	Series 7 – General Securities Representative Examination	National Association of Securities Dealers
2	Trainee Dealers Representative Examination	Kuala Lumpur Stock Exchange
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
3	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Management and Research

Table 7 TC 2.1.4 R (1) (I) Employees engaging in advising on investments which are (but not dealing in) derivatives only

Examination that must be passed within two years of starting the activity		
K	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
E	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
Y	3	UK regulatory module
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Associate or Fellow (life and pensions route only)	Chartered Insurance Institute
1	Certificate for Financial Advisers	Chartered Institute of Bankers
1	Certificate in Derivatives	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper) and Financial Derivatives Paper	Securities Institute
1	Diploma (must include a pass in Regulation and Compliance Paper and * Financial Futures and Options Paper)	Securities Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate	Chartered Insurance Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
1	Investment Advice Certificate	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Investment paper (post - August 1994 syllabus)	Chartered Institute of Bankers in Scotland
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute

Examination that must be passed within two years of starting the activity		
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	ACI Diploma	ACI
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Chartered Financial Analyst	Association for Investment Management and Research
2	Derivatives Fundamentals course and Futures/Options Licensing course	Canadian Securities Institute
2	Diploma including passes in both the Australian Futures Trading and Options Trading papers	Securities Institute of Australia
2	Examination	NIBE – SVV – the Dutch Institute for the banking, insurance and stockbroking industry
2	Examination	Norwegian Society of Financial Analysts
2	International Capital Markets Qualification (ICMQ) including a pass in Futures, Options and other Derivative Products paper	Securities Institute/South African Institute of Financial Markets
2	Investment Management paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper from the Associateship	Chartered Institute of Bankers
2	* Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland
2	Investment Planning – Paper 2	Institute of Bankers in Ireland
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	* Module B(ii), Securities and Portfolio Management	Law Society of England and Wales
2	Ordinary and Senior Certificates	South African Institute of Financial Markets
2	Registered Representatives Examination	Sydney Futures Exchange
2	* Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Securities Dealers Bankers Association
2	* Representative of Public Securities Examination (pre-April 1990)	Japanese Bankers Securities Dealers Association
2	Representative of Public Securities Qualification – Class 1	Japanese Bankers Association
2	Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association
2	Secondary Examination	Analyst Association of Japan
2	Series 3 – Futures Representative Examination	National Futures Association
2	Singapore Exchange Futures Trading Test	Singapore Institute of Banking and Finance
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers

Examination that must be passed within two years of starting the activity		
3	Diploma - Regulation and Compliance Paper	Securities Institute
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – Regulatory Environment module	Securities Institute
3	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Management and Research

Annex 4R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (1) (m) *Employees engaging in the activity of a broker fund adviser*

Examination that must be passed before starting the activity		
KEY	1	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full
	2	Interim approved examinations which meet the requirements of TC 2.4.5 R (2) with an appropriate UK regulatory module from Key 3
	3	UK regulatory modules
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate in Investment Management	Securities Institute
1	G70 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Certificate in Investment Management – Paper 2	Securities Institute
2	Investment Management Asset Allocation Qualification	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Practice version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers

Examination that must be passed before starting the activity		
3	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
3	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
3	Investment Advice Certificate – Paper 1	Securities Institute
3	Diploma - (Regulation and Compliance Paper) of Diploma	Securities Institute
3	Securities Institute Regulatory Paper	Securities Institute
3	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

Table 2 *TC 2.1.4 R (1) (n) Employees engaging in advising on syndicate participation at Lloyd's*

Examination that must be passed before starting the activity	
Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.	
Lloyd's Introductory Test	Lloyd's
Lloyd's Market Certificate	Lloyd's/Chartered Insurance Institute

Table 3 *TC 2.1.4 R (1) (o) Employees engaging in the activity of a pension transfer specialist*

Examination that must be passed before starting the activity	
Interim approved examinations which meet the requirements of TC 2.4.5 R (2) in full	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.	
Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
Fellow or Associate by examination	Pensions Management Institute
Fellow or Associate including three pensions-related subjects as confirmed by the examining body	Chartered Insurance Institute
G60 paper of Advanced Financial Planning Certificate	Chartered Insurance Institute
Pensions paper of Professional Investment Certificate	Chartered Institute of Bankers

Annex 5R **The interim approved examinations referred to in TC 2**

Table 1 TC 2.1.4 R (2) (a) Employees overseeing on a day-to-day basis operating, or acting as a trustee or depositary of, a collective investment scheme

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1	Industry awareness	
Stage 2	Regulatory knowledge	
Stage 3	Knowledge relevant to the role	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Diploma	Securities Institute
1	Diploma - Global Operations Management paper	Securities Institute
1	Diploma – * International Operations Management paper	Securities Institute
1	Diploma – * Operations Management Paper	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountancy
1	Fellow or Associate	Chartered Insurance Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification – Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Management	Securities Institute
2	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
2	Diploma – Global Operations Management paper	Securities Institute
2	Diploma – * International Operations Management paper	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	Diploma – * Operations Management paper	Securities Institute
2	Diploma – Regulation and Compliance paper	Securities Institute
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Regulation and Practice paper of the Associate Examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Futures and Options Representative Examination	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
2	* SFA Securities Representative Examination	Securities Institute
2	* Stock Exchange Registered Representative Examination	London Stock Exchange
2	* TSA Registered Representative Examinations	The Securities Association
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
3	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
3	Diploma - Global Operations Management paper	Securities Institute
3	Diploma – * International Operations Management paper	Securities Institute
3	Diploma – * Operations Management paper	Securities Institute
3	Investment Administration Management Award	Association of Unit Trusts and Investment Funds
3	Investment Administration Qualification – * Basics of CREST module	Securities Institute
3	Investment Administration Qualification – * Bond Settlement module	Securities Institute
3	Investment Administration Qualification – CREST	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

	Settlement module	
3	Investment Administration Qualification – * Derivatives Operations	Securities Institute
3	Investment Administration Qualification – Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Global Custody module	Securities Institute
3	Investment Administration Qualification – * ISA Administration module	Securities Institute
3	Investment Administration Qualification – ISA and PEP Administration module	Securities Institute
3	Investment Administration Qualification – OEIC Administration module	Securities Institute
3	Investment Administration Qualification – * PEP Administration module	Securities Institute
3	Investment Administration Qualification – Private Client Administration module	Securities Institute
3	Investment Administration Qualification – Unit Trust Administration module	Securities Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 6R The interim approved examinations referred to in TC 2

Table 1 *TC 2.1.4 R (2) (b) Employees overseeing on a day-to-day basis safeguarding and administering investments or holding of client money*

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

Stage 1 Industry awareness
 Stage 2 Regulatory knowledge
 Stage 3 Knowledge relevant to the role

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Diploma	Securities Institute
1	Diploma - Global Operations Management paper	Securities Institute
1	Diploma – * International Operations Management paper	Securities Institute
1	Diploma – * Operations Management paper	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountancy
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification – Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate – Paper 1	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	Member Follow or Associate	Institute of Chartered Accountants of Scotland
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Management	Securities Institute
2	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
2	Diploma – Global Operations Management paper	Securities Institute
2	Diploma – * International Operations Management paper	Securities Institute
2	Diploma – * Operations Management paper	Securities Institute
2	Diploma – Regulation and Compliance paper	Securities Institute
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Regulation and Practice paper of the Associate Examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Futures and Options Representative Examination	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
2	* SFA Securities Representative Examination	Securities Institute
2	* Stock Exchange Registered Representative Examination	London Stock Exchange
2	* TSA Registered Representative Examinations	The Securities Association
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
3	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
3	Diploma - Global Operations Management paper	Securities Institute
3	Diploma – * International Operations Management paper	Securities Institute
3	Diploma – * Operations Management paper	Securities Institute
3	Investments Administration Management Award	Association of Unit Trusts and Investment Funds
3	Investment Administration Qualification – * Basics of CREST module	Securities Institute
3	Investment Administration Qualification – * Bond Settlement module	Securities Institute
3	Investment Administration Qualification – CREST Settlement module	Securities Institute
3	Investment Administration Qualification – * Derivatives Operations	Securities Institute
3	Investment Administration Qualification – Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Global Custody module	Securities Institute
3	Investment Administration Qualification – * ISA Administration module	Securities Institute
3	Investment Administration Qualification – ISA and PEP Administration module	Securities Institute
3	Investment Administration Qualification – OEIC Administration module	Securities Institute
3	Investment Administration Qualification – * PEP Administration module	Securities Institute
3	Investment Administration Qualification – Private Client Administration module	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

3	Investment Administration Qualification – Unit Trust Administration module	Securities Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 7R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (c) *Employees overseeing on a day-to-day basis the following administrative functions in relation to managing investments:*

- (i) arranging settlement;
- (ii) monitoring and processing corporate actions;
- (iii) *client* account administration, liaison and reporting, including valuation and performance measurement;
- (iv) *ISA* or *PEP* administration;
- (v) *investment trust savings scheme* administration

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

Stage 1 Industry awareness
 Stage 2 Regulatory knowledge
 Stage 3 Knowledge relevant to the role

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Diploma	Securities Institute
1	Diploma - Global Operations Management paper	Securities Institute
1	Diploma – * International Operations Management paper	Securities Institute
1	Diploma – * Operations Management paper	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountancy
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Management	Securities Institute
2	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
2	Diploma – Global Operations Management paper	Securities Institute
2	Diploma – * International Operations Management paper	Securities Institute
2	Diploma – * Operations Management paper	Securities Institute
2	Diploma – Regulation and Compliance paper	Securities Institute
2	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification - Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Advice Certificate - Paper 1	Securities Institute
2	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Investment Regulation and Practice paper of the Associate Examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Futures and Options Representative Examination	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
2	* SFA Securities Representative Examination	Securities Institute
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

3	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
3	Certificate in Company Secretarial Practice and Share Registration Practice (including the Regulatory module within the examination)	Institute of Chartered Secretaries and Administrators
3	Diploma – Global Operations Management paper	Securities Institute
3	Diploma – * International Operations Management paper	Securities Institute
3	Diploma – * Operations Management paper	Securities Institute
3	Investment Administration Management Award	Association of Unit Trusts and Investment Funds
3	Investment Administration Qualification – * Basics of CREST module	Securities Institute
3	Investment Administration Qualification – * Bond Settlement module	Securities Institute
3	Investment Administration Qualification – CREST Settlement module	Securities Institute
3	Investment Administration Qualification – * Derivatives Operations	Securities Institute
3	Investment Administration Qualification – Exchange – Traded Derivative Administration module	Securities Institute
3	Investment Administration Qualification – Global Custody module	Securities Institute
3	Investment Administration Qualification – * ISA Administration module	Securities Institute
3	Investment Administration Qualification – ISA and PEP Administration module	Securities Institute
3	Investment Administration Qualification – OEIC Administration module	Securities Institute
3	Investment Administration Qualification – * PEP Administration module	Securities Institute
3	Investment Administration Qualification – Private Client Administration module	Securities Institute
3	Investment Administration Qualification – Unit Trust Administration module	Securities Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 8R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (d) Employees overseeing on a day-to-day basis the following *administrative functions* in relation to the *effecting* or *carrying out of life policies*:

- (i) new business administration;**
- (ii) *policy* alterations including surrenders and *policy* loans;**
- (iii) preparing *projections*;**
- (iv) processing *claims*, including pension payments;**
- (v) fund switching**

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1	Industry awareness	
Stage 2	Regulatory knowledge	
Stage 3	Knowledge relevant to the role	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Certificate of Insurance Practice	Chartered Insurance Institute
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities - Paper 2	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountancy
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
2	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
2	Diploma - Regulation and Compliance Paper	Securities Institute
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

2	Investment Advice Certificate – Paper 1	Securities Institute
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Certificate for Financial Advisers – Paper 2	Chartered Institute of Bankers
3	Certificate of Insurance Practice (life or pensions route)	Chartered Insurance Institute
3	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
3	Fellow or Associate (by examination)	Pensions Management Institute
3	Fellow or Associate (life and pensions route only)	Chartered Insurance Institute
3	Financial Administration Foundation Certificate - Life office administration paper	Chartered Insurance Institute
3	Financial Administration Foundation Certificate - Pensions administration paper	Chartered Insurance Institute
3	Financial Planning Certificate – Paper 2	Chartered Insurance Institute
3	Initial Test of Competence	Institute of Chartered Accountants in England and Wales
3	Investment Advice Certificate - Paper 2	Securities Institute
3	Life assurance paper (735) from the Associateship	Chartered Insurance Institute
3	* Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales
3	Pensions law, taxation and administration paper (740) from the Associateship	Chartered Insurance Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 9R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (e) *Employees overseeing on a day-to-day basis taking private customers through decision trees in connection with a stakeholder pension scheme*

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

Stage 1 Industry awareness
 Stage 2 Regulatory knowledge
 Stage 3 Knowledge relevant to the role

* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.

1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants
1	Fellow or Associate	Chartered Institute of Public Finance and Accountancy
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Advice Certificate – Paper 1	Securities Institute
3	Certificate for Financial Advisers – Paper 2	Chartered Institute of Bankers
3	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
3	Fellow or Associate (by examination)	Pensions Management Institute
3	Fellow or Associate (pensions route)	Chartered Insurance Institute
3	Financial Planning Certificate – Paper 2	Chartered Insurance Institute
3	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants in Ireland/Institute of Chartered Accountants of Scotland
3	Investment Advice Certificate - Paper 2	Securities Institute
3	* Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

Annex 10R The interim approved examinations referred to in TC 2

Table 1 TC 2.1.4 R (2) (f) *Employees* overseeing on a day-to-day basis the following *administrative functions* in relation to the operation of a *stakeholder pension scheme*:

- (i) new business administration;
- (ii) receipt of or alteration to contributions;
- (iii) preparing *projections* and annual statements;
- (iv) administration of transfers;
- (v) handling claims, including pension payments;
- (vi) fund allocation and switching

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity		
Stage 1	Industry awareness	
Stage 2	Regulatory knowledge	
Stage 3	Knowledge relevant to the role	
* The table indicates by an asterisk those examinations which may be relied upon, but which are no longer available.		
1	Certificate for Financial Advisers - Paper 1	Chartered Institute of Bankers
1	Certificate in Collective Investment Scheme Administration	Institute of Chartered Secretaries and Administrators
1	Certificate in Corporate Finance	Securities Institute
1	Certificate in Derivatives – Paper 2	Securities Institute
1	Certificate in Investment Management	Securities Institute
1	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
1	Certificate in Securities and Financial Derivatives – Paper 2	Securities Institute
1	Certificate in Securities – Paper 2	Securities Institute
1	Fellow, Member or Associate	Chartered Institute of Bankers in Scotland
1	Fellow or Associate	Association of Chartered Certified Accountants
1	Fellow or Associate	Association of Corporate Treasurers
1	Fellow or Associate	Chartered Institute of Bankers
1	Fellow or Associate	Chartered Institute of Bankers in Ireland
1	Fellow or Associate	Chartered Institute of Management Accountants

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

1	Fellow or Associate	Chartered Institute of Public Finance and Accountancy
1	Fellow or Associate	Chartered Insurance Institute
1	Fellow or Associate	Faculty of Actuaries/Institute of Actuaries
1	Fellow or Associate	Institute of Chartered Accountants in England and Wales
1	Fellow or Associate	Institute of Chartered Accountants in Ireland
1	Fellow or Associate	Institute of Chartered Secretaries and Administrators
1	Fellow or Associate	Pensions Management Institute
1	Fellow or Associate by examination	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Financial Planning Certificate - Paper 1	Chartered Insurance Institute
1	Investment Administration Qualification - Introduction to Securities and Investment module	Securities Institute
1	Investment Advice Certificate - Paper 1	Securities Institute
1	Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
1	Member	Association of Accounting Technicians
1	Member Fellow or Associate	Institute of Chartered Accountants of Scotland
1	* SFA Corporate Finance Representative Examination	Securities Institute
1	* SFA Futures and Options Representative Examination	Securities Institute
1	* SFA Securities Representative Examination	Securities Institute
1	* SFA Securities and Financial Derivatives Representative Examination	Securities Institute
1	Solicitor	Law Society of England and Wales/Law Society of Scotland/Law Society of Northern Ireland
1	* Stock Exchange Registered Representative Examination	London Stock Exchange
1	* TSA Registered Representative Examinations	The Securities Association
2	Certificate for Financial Advisers – Paper 1	Chartered Institute of Bankers
2	Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland
2	Diploma - Regulation and Compliance Paper	Securities Institute
2	Financial Planning Certificate – Paper 1	Chartered Insurance Institute
2	Investment Administration Qualification – * IMRO Regulatory Environment module	Securities Institute
2	Investment Administration Qualification – Regulatory	Securities Institute

All three stages 1, 2 and 3 of the approved examinations that must be passed within two years of starting the activity

	Environment module	
2	Investment Administration Qualification – * SFA Regulatory Environment module	Securities Institute
2	Investment Advice - Certificate – Paper 1	Securities Institute
2	Securities Institute Regulatory Paper	Securities Institute
2	* SFA Registered Persons Examination – Section 1 (Regulation)	Securities Institute
2	UK Regulation and Markets version of Investment Management Certificate	United Kingdom Society of Investment Professionals/Institute of Investment Management and Research
3	Associate or Fellow	Faculty of Actuaries/Institute of Actuaries
3	Certificate for Financial Advisers – Paper 2	Chartered Institute of Bankers
3	Certificate of Insurance Practice (pensions route)	Chartered Insurance Institute
3	Fellow or Associate (by examination)	Pensions Management Institute
3	Fellow or Associate (pensions route)	Chartered Insurance Institute
3	Financial Administration Foundation Certificate - Pensions administration paper	Chartered Insurance Institute
3	Financial Planning Certificate – Paper 2	Chartered Insurance Institute
3	Initial Test of Competence	Institute of Chartered Accountants in England and Wales/Institute of Accountants in Ireland/Institute of Accountants of Scotland
3	Investment Advice Certificate - Paper 2	Securities Institute
3	* Module B(i), Retail Branded/Packaged Products	Law Society of England and Wales
3	Pensions law, taxation and administration paper (740) from the Associateship	Chartered Insurance Institute
3	A firm may use alternative methods of assessing the required level of knowledge and understanding at stage 3 only where the firm can demonstrate that none of the above examinations are appropriate.	

AUTHORISATION MANUAL (AMENDMENT NO 4) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority amends the Authorisation manual in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force immediately.

Amendments to the Authorisation manual

- C. The Authorisation manual is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Authorisation Manual (Amendment No 4) Instrument 2002.

By order of the Board
21 February 2002

Annex

- 1.2.3G Replace "AUTH 2.10" with:
"AUTH 2.10 (Persons carrying on regulated activities who do not need authorisation)"
- 1.3.9G In the first column, under "AUTH 4", "AUTH 5", and "AUTH 7" delete:
"[To be added later]"
In the row for AUTH 7, insert the following in columns (1), (2) and (3):
In column (1)
After "AUTH 7", insert "Periodical publications, news services and broadcasts: application for certification"
In column (2):
Insert: "anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities* or *contractually based investments*"
In column (3):
Insert: "1. whether the *person* will be carrying on the *regulated activity* of *advising on investments*; and
2. how the *FSA* will exercise its power to give certificates."
- 2.3 Replace the existing heading with:
"The business element"
- 2.8.4G(1) After "*Regulated Activities Order*", insert:
"(Absence of holding out etc.)"
- 2.8.6G(2) Replace "internet" with "Internet"
- 2.8.9G In the second sentence, replace "internet" with "Internet"
- 2.8.12G After "AUTH 7", remove:
"[to be added later]"
- 2.9.1G After "*Regulated Activities Order*", insert ", "
Replace "(see Chapter XVII of Part II of the Order)" with "in Chapter XVII

of Part II of the Order,"

In the final sentence, move "directly" to after "entering"

2.9.6G

In the first sentence, replace "*regulated activities*" with:

"the carrying on of *regulated activities* in the *United Kingdom*"

AUTH 2
Annex 2G

In Table 1, after the heading "Designated investment business", insert:

"[see note 7 to Table 1]"

In the notes to Table 1, insert the following:

Note 7:

In relation to *funeral plan contracts*, (a) *managing investments*, (b) *safeguarding and administering investments*, (c) *advising on investments*, (d) *arranging (bringing about) deals in investments* and (e) *making arrangements with a view to transactions in investments (and agreeing to carry on those regulated activities)* are *regulated activities* but they are not *designated investment business*."

In the notes to Table 2, insert the following:

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*."

3.7.4G(1)

In the second sentence, before "*locals*", insert:

"*oil market participants, energy market participants,*"

3.21

After AUTH 3.20, insert the following:

"3.21 Treaty firms applying for Part IV permission

3.21.1G The *Treaty* establishing the European Community provides firms with rights of establishment, under article 43, and the right to provide services under article 49. These rights can be exercised anywhere in any other State in the *EEA*.

3.21.2G *Treaty firms* which do not have, or do not wish to exercise, a *treaty right* to carry on a *regulated activity* in the *United Kingdom*, and which do not have an *EEA right* to passport in relation to that activity, must seek *Part IV permission* to do so (see *AUTH* 5.3.4G to *AUTH* 5.3.13G).

- 3.21.3G Where such a *treaty firm* has received *Home State authorisation* to carry on the *regulated activities* that it seeks to carry on under the *Part IV permission*, the *FSA* will take this into account when considering the application.
- 3.21.4G These applications will be considered on a case by case basis. Applicants should contact the Corporate Authorisation Department (see *AUTH 3.9.4G (2)* for contact details) at an early stage to discuss their plans."
- AUTH 3
Annex 2G Delete the heading "Applications for Part IV permission" before the notes accompanying the table
- 5.1.5G(2) In the second sentence, italicise "person"
- 5.6.1G After "applies", insert "to"
- 5.6.2G In the second sentence, delete "(but not limited to)"
- 5.6.4G Insert "," after "*EEA Passport Rights Regulations*"
- AUTH 5
Annex 3
G In the table, under the row for *CIS*, add the following new row:

"*CRED*"

In column (1), insert the following:
"Does not apply"

In column (2), insert the following:
"Does not apply"
- 6.1.1G(2) At the end , remove "." and replace with "; and"
- 6.1.1G(3) "Replace "A" with "a"
- 6.2.8G Replace "do so (see *AUTH 6.3.13G* and *AUTH 6.3.17G*)" with "perform the function to which the application relates (see *AUTH 6.3.11G* and *AUTH 6.3.13G*)"
- 6.3.1 D After "*Part IV permission*)" insert:

"in the manner directed by *AUTH 3.9.3D(2)* to *AUTH 3.9.3D(5)*"
- 6.3.11G Delete "and the notes appended to the application form"
- 8.2.6 G(1) Delete the second sentence:

" For example, decisions to grant applications for *Part IV permission* on the terms applied for will usually be endorsed by a senior individual or more

than one individual."

In the third sentence, replace "candidate under section 59 of the *Act*" with "*candidate*"

8.2.6 G(2) Delete and replace with:

"The *FSA* has established staff committees which may grant an application for *Part IV permission*, or approval under Part V of the *Act*, as appropriate. The Authorisation and Approvals Committee will consider an application where, for example, it is complex or sensitive and the recommendation is to refer the application to the *RDC* to give a *warning notice*. The chairman of the Authorisation and Approvals Committee is the director responsible for *authorisation* decisions and its members are senior staff at the *FSA*."

Schedule 3 to the Authorisation manual (Fees and other required payments) is amended by inserting the following as a final row (the heading is shown for convenience):

Type of fee	Trigger event	Date/Time for payment	Amount/Rate	Handbook reference
Certification fee	Application for a certificate under article 54 of the <i>Regulated Activities Order</i>	On or before the date on which application is made	See <i>AUTH 4</i> Annex 1R, Part 6	<i>AUTH 4.3</i>

SUPERVISION MANUAL (AMENDMENT NO 7) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority amends the Supervision manual in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force immediately.

Amendment of the Supervision manual

- C. The Supervision manual is amended:
- (1) by inserting Schedule 2 (Notification requirements) as set out in Annex A to this instrument;
 - (2) in accordance with Annex B to this instrument.

Citation

- D. This instrument may be cited as the Supervision Manual (Amendment No 7) Instrument 2002.

By order of the Board
21 February 2002

Annex A
SUP Schedule 2 – Notification requirements

Begin Topic
Schedule
Head1 U
Table No.

2 Notification requirements
G
1

Graphic Table Name: SCHEDULE2_T1.rtf

<p>The aim of the <i>guidance</i> in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.</p> <p>It is not a complete statement of those requirements and should not be relied on as if it were.</p>

End Table
Table No.

2

Graphic Table Name: SCHEDULE2_T2.rtf

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 3.3.2 R (2)	Vacancy in the office of auditor	The fact of the vacancy and the reason for it	Vacancy in the office of auditor will arise or has arisen	Without delay
SUP 3.3.2 R (5)	Appointment of auditor	The fact of the appointment, name and business address of the auditor and the date the appointment takes effect	Appointment of auditor	Not specified
SUP 3.3.5 R	Vacancy in the office of auditor to a Lloyd's <i>underwriting agent</i>	The fact of the vacancy and the reason for it (NB notification to be made to the <i>Society of Lloyd's</i>)	Vacancy in the office of auditor will arise or has arisen.	Without delay
	Appointment of auditor by Lloyd's <i>underwriting agent</i>	The fact of the appointment, name and business address of the auditor and the date the appointment takes effect. (NB notification to be made to the <i>Society of Lloyd's</i>)	Appointment of auditor	Not specified

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 3.5.3 R</i>	Auditor not independent of the <i>firm</i>	The fact of the lack of independence	<i>Firm</i> aware that its auditor not independent of the <i>firm</i>	A reasonable time
<i>SUP 3.7.2 G (1)</i>	Expectation that auditor will qualify his report on the audited annual financial statements or add an explanatory paragraph	Fact of expectation	<i>Firm</i> decides qualification or explanatory paragraph is probable and the matter justifies notifying the <i>FSA</i> .	Not specified
<i>SUP 3.7.2 G (2)</i>	The <i>firm</i> receives a written communication from its auditor commenting on <i>internal controls</i>	Content of written communication	<i>Firm</i> receives written communication and decides that it is appropriate that the <i>FSA</i> should be informed	Not specified
<i>SUP 3.8.10 G</i>	Matters requiring reporting under sections 342(5) and 343(5) of the <i>Act</i>	Information on or the auditor's opinion on the matters which have caused the auditor to believe the circumstances set out in Statutory Instrument 2001 No. 2587 apply	Auditor believes that the circumstances set out in Statutory Instrument 2001 No.2587 paragraph 2 apply	Not specified
<i>SUP 3.8.11 R</i>	Auditor: termination of office	The fact of the termination	Auditor removed from office by the <i>firm</i> , resigns before his term of office expires or is not re-appointed by the <i>firm</i> .	Without delay
<i>SUP 3.8.12 R</i>	Auditor: termination of office	Any matter connected with ceasing which he thinks ought to be drawn to the <i>FSA's</i> attention; or the fact that there is no such matter	Auditor ceasing to be (or being formally notified that he will cease to be) auditor of the <i>firm</i> .	Without delay

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 3.9</i>	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
<i>SUP 3.9.8 R</i>	Auditor: certain <i>investment business firms</i> – inability to prepare annual report	Inability to report on matters set out in <i>SUP 3.9</i> ; 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
<i>SUP 3.10</i>	Auditor: <i>client assets</i>	Either:	Report period must end no more than 53 weeks after previous report	Four months
		(1) Whether <i>firm</i> has: maintained systems to comply with <i>COB 9 (client assets)</i> , is in compliance with the <i>client asset rules</i> at the report date, and <i>nominee company</i> records are adequate; or		
		(2) if the <i>firm</i> claims not to hold <i>client money</i> or <i>custody assets</i> whether anything has come to the auditor's attention that causes him to believe that they were held.		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 3.10.8 R</i>	Failure by auditor to report under <i>SUP 3.10.4 R</i>	Auditor to report the failure and the reasons why it has been unable to meet the requirements of <i>SUP 3.10.7 R</i>	Failure by the auditor to deliver a report under <i>SUP 3.10.4R</i> to the <i>FSA</i> so as to be received within four months of the end of each period covered	Not specified
<i>SUP 4.3.1 R (2)</i>	Vacancy in the office of <i>appointed actuary</i>	The fact of the vacancy and the reason for it	Vacancy in the office of <i>appointed actuary</i> will arise or has arisen	Without delay
<i>SUP 4.3.1 R (3)</i> and <i>SUP 4.3.2 G</i>	Appointment of <i>appointed actuary</i>	Matters specified in <i>SUP 10</i> (because acting as an <i>appointed actuary</i> is specified as a <i>controlled function</i>)	Appointment of <i>appointed actuary</i>	Before appointment
<i>SUP 4.5.9 R</i>	<i>Actuary</i> : termination of office	The fact of the termination	<i>Actuary</i> removed from office by the <i>firm</i> , resigns before his term of office expires or is not re-appointed by the <i>firm</i> .	Without delay
<i>SUP 4.5.10 R</i>	<i>Actuary</i> : ceasing to hold office	Any matter connected with ceasing which he thinks ought to be drawn to the <i>FSA's</i> attention; or the fact that there is no such matter	<i>Actuary</i> ceasing to be (or being formally notified that he will cease to be) <i>actuary</i> of the <i>firm</i> .	Without delay
<i>SUP 4.5.11 G</i>	<i>Appointed actuary</i> : ceasing to hold office	Matters specified in <i>SUP 10.13.6 R</i> and <i>SUP 10.13.7 R</i> (because acting as an <i>appointed actuary</i> is specified as a <i>controlled function</i>)	<i>Appointed actuary</i> ceasing to hold office	Seven <i>business days</i> ; or, if <i>approved persons</i> Form C is qualified, as soon as reasonably practicable
<i>SUP 5.4.12 G</i>	Delay in producing a <i>skilled person</i> report	<i>Skilled person</i> : inform the <i>FSA</i> and the <i>person</i> in <i>SUP 5.2.1G</i> that the report may not be delivered on time.	The <i>skilled person</i> becomes aware that the report may not be delivered on time	As soon as possible

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 5.5.1 R</i>	Matters which the <i>skilled person</i> is required and permitted to report to the <i>FSA</i>	As set out in <i>SUP 5.5.1 R</i> .	<i>Skilled person</i> becomes aware of reportable matter	Not specified
<i>SUP 5.5.8 G</i>	Cost of <i>skilled person</i> report	As set out in <i>SUP 5.5.8 G</i>	On request	Not specified
<i>SUP 6.2.6 G</i>	<i>Firm</i> seeking to vary its <i>Part IV permission</i> substantially or cancel its <i>Part IV permission</i>	The fact of seeking such applications to initiate discussion.	<i>Firm</i> seeking to vary its <i>Part IV permission</i> substantially or cancel its <i>Part IV permission</i>	As early as possible before making the application
<i>SUP 6.2.7 G</i>	<i>Firm</i> intending to cease carrying on one or more <i>regulated activities</i> permanently	The fact of intending to cease carrying on one or more <i>regulated activities</i> permanently	<i>Firm</i> intending to cease carrying on one or more <i>regulated activities</i> permanently	Prompt notice
<i>SUP 6.2.10 G</i>	<i>Firm</i> winding down (running off) its activities.	The fact of winding down (running off) its activities.	<i>Firm</i> winding down (running off) its activities.	Before making an application for variation of <i>permission</i> or <i>cancellation</i> of <i>Part IV permission</i> .
<i>SUP 6.3.15 D</i>	Variation of <i>permission</i>	The desired variation and the <i>regulated activity</i> or <i>regulated activities</i> which the <i>firm</i> proposes to carry on. The <i>FSA</i> will advise the <i>firm</i> of any additional information required (see <i>SUP 6.3.15 D</i> to <i>SUP 6.3.27 G</i>)	<i>Firm</i> wishes to vary its <i>Part IV permission</i>	Before variation is required; the <i>FSA</i> has six months to consider a completed application.
<i>SUP 6.3.15 D (3)</i>	Variation of <i>permission</i> – any significant change in information provided	Any significant change in the information given in the application	Until the application has been determined, a change in information provided on the application for variation of <i>Part IV permission</i>	Immediately

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 6.4.5 D</i>	Cancellation of <i>Part IV permission</i>	Reasons for the application, the date on which the <i>firm</i> has ceased, or expects to cease, to carry on <i>regulated activities</i> and an explanation of the full circumstances of its application.	<i>Firm</i> wishes to cancel its <i>Part IV permission</i>	Before cancellation is required; the <i>FSA</i> has six months to consider a completed application. See <i>SUP 6.4.3 G</i>
		The <i>FSA</i> will advise the <i>firm</i> of any additional information required (see <i>SUP 6.4.8 G</i> to <i>SUP 6.4.17 G</i>)		
<i>SUP 6.4.5 D (4)</i>	Cancellation of <i>Part IV permission</i> – any significant change in information provided	Any significant change in the information given in the application	Until the application has been determined, a change in information provided on the application for a cancellation of <i>Part IV permission</i>	Immediately
<i>SUP 8.3.3 D</i>	<i>Waiver</i>	Name and <i>FSA</i> reference number, reference number of the <i>rule</i> to which the application relates, clear explanation of the <i>waiver</i> and the reasons why the <i>firm</i> wants it, details of any special requirements,	<i>Firm</i> seeks a <i>waiver</i>	Before the <i>waiver</i> is required; the <i>FSA</i> will aim to give a <i>waiver</i> decision within 20 <i>business days</i> of receiving the application.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>relevant facts to support the application, the <i>firm's</i> reasons for considering the <i>waiver</i> criteria are met and confirmation that the <i>firm</i> is content for the <i>waiver</i> to be published or the reasons why the <i>firm</i> believes the <i>waiver</i> should not be published</p>		
<p><i>SUP 8.5.1 R</i></p>	<p><i>Waiver</i>: altered circumstances</p>	<p>The matter that affects the continuing relevance or appropriateness of the application or <i>waiver</i></p>	<p><i>Firm</i> that has applied for or has been granted a <i>waiver</i> becoming aware of any matter which could affect the continuing relevance or appropriateness of the application or <i>waiver</i></p>	<p>Immediately</p>
<p><i>SUP 9.2.6 G</i></p>	<p><i>Guidance</i> request</p>	<p>Sufficient information to enable the <i>FSA</i> to properly evaluate the situation and respond. In particular, identification of the <i>rule</i>, general <i>guidance</i> or other matter on which the individual <i>guidance</i> is sought and a description of the circumstances relating to the request.</p>	<p>A <i>firm</i> seeks individual <i>guidance</i></p>	<p>Before individual <i>guidance</i> required (the <i>FSA</i> will aim to respond quickly and fully to reasonable request)</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 10.9.8 R	<i>Approved persons – significant management functions</i>	Name of every individual who is <i>approved</i> to perform any of its <i>significant management functions</i> ; and brief details of the job performed by that individual as at 30 June each year.	Annual requirement	By 31 July each year
SUP 10.12.2 D	<i>Approved persons – application</i>	<i>Approved persons</i> Form A Application to perform <i>controlled functions</i> under the <i>approved persons</i> regime (see SUP 10 Ann 4D)	<i>Firm</i> wishes to appoint a <i>person</i> to a <i>controlled function</i>	Before appointment takes effect (the <i>FSA</i> has three months to consider a properly completed application but will deal with cases more quickly whenever circumstances allow)
SUP 10.12.13 R	<i>Approved persons – withdrawal of an application</i>	<i>Approved persons</i> Form B Notice to withdraw an application to perform <i>controlled functions</i> under the <i>approved persons</i> regime (see SUP 10 Ann 5R)	<i>Firm</i> wishes to withdraw an application for <i>approved person</i> status	Not specified
SUP 10.13.1 G	<i>Approved persons – moving within a firm</i>	<i>Approved persons</i> Form E Internal transfer of an <i>approved person</i> (see SUP 10 Ann 8G)	An <i>approved person</i> is both ceasing to perform one or more <i>controlled functions</i> and needs to be approved in relation to one or more new <i>controlled functions</i> within the same <i>firm</i>	Before appointment takes effect (the <i>FSA</i> has three months to consider a properly completed application but will deal with cases more quickly whenever circumstances allow)

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 10.13.6 R</i>	<i>Approved persons – ceasing to perform a controlled function</i>	<i>Approved persons Form C Notice of ceasing to perform controlled functions (see SUP 10 Ann 6R)</i>	<i>An approved person ceasing to perform a controlled function</i>	<i>Seven business days after an approved person ceases to perform a controlled function</i>
<i>SUP 10.13.7 R</i>	<i>Approved persons – ceasing to perform a controlled function – qualified withdrawal</i>	The fact of the qualified withdrawal	<i>An approved person ceasing to perform a controlled function and the firm becoming aware, or has information which reasonably suggests, that it will submit a qualified Form C in respect of that approved person</i>	<i>As soon as practicable (guidance in SUP 10.13.8 G states, where possible, within one business day)</i>
			(qualified defined in <i>SUP 10.13.7 R (2)</i> : <i>approved person dismissed; approved person under investigation; approved person's fitness and propriety affected</i>)	
<i>SUP 10.13.14 R</i>	<i>Approved persons – change to personal details – title, name or national insurance number</i>	<i>Approved persons Form D Notification of changes in personal information or application details (see SUP 10 Ann 7R)</i>	<i>An approved person's title, name or national insurance number changes</i>	<i>Seven business days of the firm becoming aware</i>
<i>SUP 10.13.16 R</i>	<i>Approved persons – change to personal details – information reasonably material to fitness and propriety</i>	<i>Approved persons Form D Notification of changes in personal information or application details (see SUP 10 Ann 7R)</i>	<i>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</i>	<i>As soon as practicable</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 11.3.7 D	<i>Controllers – person proposing to acquire or increase control – notification from controller or proposed controller</i>	If the <i>controller</i> or proposed <i>controller</i> is an <i>authorised person</i> : Controllers Form A sections 1, 5 and 6 (see SUP 11 Ann 4D)	Proposing to take a step which would result in acquiring the specified <i>control</i>	Before acquiring <i>control</i> (the <i>FSA</i> has up to three months to consider whether to <i>approve control</i>)
		In other cases: all of Controllers Form A (see SUP 11 Ann 4D) and one or more of Controllers Form B (see SUP 11 Ann 5D) for relevant individuals (see SUP 11.3.8 D)		
SUP 11.3.10 D	<i>Controllers – correction to previously submitted information by controller</i>	Details of the information which may be false, misleading, incomplete or inaccurate, or has or may have changed	A <i>person</i> who submitted a notification under SUP 11.3.7 D becoming aware, or has information which reasonably suggests, that he has or may have provided the <i>FSA</i> with information which was or may have been false, misleading, incomplete or inaccurate or has or may have changed, in a material particular	Immediately
SUP 11.3.15 G	<i>Controllers – proposing to reduce control – notification from controller</i>	Extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i>	Reduction in <i>control</i>	Before reducing <i>control</i> (the <i>FSA</i> has up to three months to consider whether to approve change)

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 11.3.16 G	<i>Controllers – change in control occurs – notification from controller</i>	Date relevant change of <i>control</i> occurred. If a <i>person</i> has reduced <i>control</i> , details of the extent of <i>control</i> retained (if any)	Change in <i>control</i> has occurred	Not specified
SUP 11.4.2 R	<i>Controllers – proposed change of control – notification from a UK domestic firm</i>	When acquiring or increasing <i>control</i> : (1) the name of the <i>firm</i> ; (2) the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i> , the names of its <i>directors</i> and its <i>controllers</i> ; (3) a description of the proposed event including the shareholding and <i>voting power</i> of the <i>person</i> concerned, both before and after the proposed event; and	(1) a <i>person</i> acquiring <i>control</i> or ceasing to have <i>control</i> ; (2) an existing <i>controller</i> acquiring an additional <i>kind of control</i> or ceasing to have a <i>kind of control</i> ; (3) an existing <i>controller</i> increasing or decreasing a <i>kind of control</i> which he already has so that the percentage of shares or <i>voting power</i> concerned becomes or ceases to be equal to or greater than 20, 33 or 50	As soon as the <i>firm</i> becomes aware that a <i>person</i> is proposing to take a step that would result in the event concerned; or if the event takes place without the knowledge of the <i>firm</i> , within 14 <i>days</i> of the <i>firm</i> becoming aware of the event concerned
		(4) any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> and any relevant supporting documentation.	(4) an existing <i>controller</i> becoming or ceasing to be a <i>parent undertaking</i>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		The notification need only contain as much of the information the <i>firm</i> is able to provide, having made reasonable enquiries from <i>persons</i> and other sources as appropriate.		
		When reducing <i>control</i> : (1) the name of the <i>controller</i> ; and		
		(2) details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i>		
SUP 11.4.4 R	<i>Controllers – proposed change of control – notification from an overseas firm</i>	When acquiring or increasing <i>control</i> : (1) the name of the <i>firm</i> ; (2) the name of the <i>controller</i> or proposed <i>controller</i> and, if it is a <i>body corporate</i> and is not an <i>authorised person</i> , the names of its <i>directors</i> and its <i>controllers</i> ; (3) a description of the proposed event including the shareholding and <i>voting power</i> of the <i>person</i> concerned, both before and after the proposed event; and	(1) a <i>person</i> acquiring <i>control</i> or ceasing to have <i>control</i> ; (2) an existing <i>controller</i> becoming or ceasing to be a <i>parent undertaking</i>	As soon as the <i>firm</i> becomes aware that a <i>person</i> is proposing to take a step that would result in the event concerned; or if the event takes place without the knowledge of the <i>firm</i> , within 14 days of the <i>firm</i> becoming aware of the event concerned

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(4) any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> and any relevant supporting documentation.		
		The notification need only contain as much of the information the <i>firm</i> is able to provide, having made reasonable enquiries from <i>persons</i> and other sources as appropriate. When reducing <i>control</i> :		
		(1) the name of the <i>controller</i> ; details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i>		
SUP 11.4.8 G	<i>Controllers</i> – notification under <i>Principle 11</i> by <i>firms</i>	Proposed change of <i>control</i>	Any prospective changes of which the <i>firm</i> is aware, in <i>controllers'</i> or proposed <i>controllers'</i> shareholdings or <i>voting power</i> (if the change is material)	The earliest opportunity and before the formal notifications. As a minimum, the <i>FSA</i> considers such discussions should take place before a <i>person</i> :

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
				(1) enters into any formal agreement in respect of the purchase of <i>shares</i> or a proposed acquisition or merger which would result in a change in <i>control</i> (whether or not the agreement is conditional upon any matter, including the <i>FSA's</i> approval) or
				(2) purchases any <i>share options, warrants</i> or other financial instruments, the exercise of which would result in the <i>person</i> acquiring <i>control</i> or any other changes in <i>control</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 11.6.2 R to SUP 11.6.5 R	<i>Controllers – change in information provided by a UK domestic firm</i>	<p>(1) Details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed</p> <p>(2) An explanation why such information was or may have been provided; and</p> <p>(3) The correct information</p>	After submitting a notification under SUP 11.4.2 R and until the change in <i>control</i> occurs, the <i>firm</i> becomes aware, or has information that reasonably suggests, that information provided by the <i>controller</i> or proposed <i>controller</i> is false, misleading, incomplete or inaccurate, or has or may have changed in a material particular.	Immediately
SUP 11.6.4 R	<i>Controllers – change in notification has taken place – notification by firm</i>	The fact that the change in <i>control</i> has taken place or that there are grounds for reasonably believing that the event will not now take place.	A change in <i>control</i> previously notified under SUP 11.4.2 R or SUP 11.4.4 R taking place; or the <i>firm</i> having grounds for reasonably believing that the event will not now take place	14 <i>days</i> of the change in <i>control</i> or having grounds for reasonably believing that the event will not now take place
SUP 11.8.1 R	<i>Controllers – changes in the circumstances of existing controllers</i>	The fact of: <p>(1) a <i>controller</i>, or any entity subject to his <i>control</i>, being the subject of any legal action or investigation which might put into question the integrity of the <i>controller</i>;</p>	The <i>firm</i> becoming aware of: <p>(1) a <i>controller</i>, or any entity subject to his <i>control</i>, is or has been the subject of any legal action or investigation which might put into question the integrity of the <i>controller</i>;</p>	Immediately
		(2) a significant deterioration in the financial position of a <i>controller</i> ;	(2) a significant deterioration in the financial position of a <i>controller</i> ;	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(3) a corporate <i>controller</i> undergoing a substantial change or series of changes in its <i>governing body</i> ;	(3) a corporate <i>controller</i> undergoing a substantial change or series of changes in its <i>governing body</i> ;	
		(4) a <i>controller</i> , who is authorised in <i>another EEA State</i> as an <i>ISD investment firm</i> or <i>BCD credit institution</i> or under the <i>Insurance Directives</i> , ceasing to be so authorised	(4) a <i>controller</i> , who is authorised in <i>another EEA State</i> as an <i>ISD investment firm</i> or <i>BCD credit institution</i> or under the <i>Insurance Directives</i> , ceasing to be so authorised	
SUP 11.9.1 R	<i>Close links</i>	(a) the name of the <i>person</i>	The <i>firm</i> becoming aware that it has become or ceased to be <i>closely linked</i> with any <i>person</i> .	Immediately
		(b) the nature of the <i>close links</i>		
		(c) if the <i>close link</i> is with a <i>body corporate</i> , its country of incorporation, address and registered number; and		
		(d) if the <i>close link</i> is with an individual, his date and place of birth		
SUP 12.7.1 R	<i>Appointed representatives</i>	The notification should give details of the <i>appointed representative</i> and the <i>regulated activities</i> which the <i>firm</i> is, or intends to, carry on through the <i>appointed representative</i> , including:	A <i>firm</i> appointing an <i>appointed representative</i>	Ten <i>business days</i> after the appointment takes effect

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(1) the name of the <i>firm's new appointed representative</i> (if the <i>appointed representative</i> is a <i>body corporate</i> , this is its registered name)		
		(2) any trading name under which the <i>firm's new appointed representative</i> carries on a <i>regulated activity</i> in that capacity;		
		(3) a description of the <i>regulated activities</i> which the <i>appointed representative</i> is permitted or required to carry on and for which the <i>firm</i> has accepted responsibility		
SUP 12.7.7 R	<i>Appointed representatives</i> – change in information	The information that has changed	A change being made to the information provided under SUP 12.7.1 R or the <i>firm</i> becoming aware of the change	Ten <i>business days</i> of a change being made, or if later, as soon as it becomes aware of the change
SUP 12.7.8 R	<i>Appointed representatives</i> – belief that appointment conditions not met	The fact that the <i>firm</i> has reasonable grounds for believing that the appointment conditions are not being met; and: (a) the steps the <i>firm</i> proposes to take to rectify the matter; and	The <i>firm</i> having reasonable grounds for believing that the conditions in SUP 12.4.2 R or SUP 12.4.6 R are not being satisfied. The SUP 12.4.2 R conditions are that:	As soon as the <i>firm</i> has reasonable grounds for believing that the <i>approval</i> conditions have not been met

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(b) the date of the termination of the contract with the <i>appointed representative</i>	(1) the appointment does not prevent the <i>firm</i> from satisfying and continuing to satisfy the <i>threshold conditions</i> ;	
			(2) the <i>appointed representative</i> : (a) is solvent;	
			(b) is suitable to act for the <i>firm</i> in that capacity;	
			(c) has no <i>close links</i> which would be likely to prevent the effective supervision of the <i>appointed representative</i> by the <i>firm</i> ; and	
			(3) the <i>firm</i> has adequate:	
			(a) <i>controls</i> over the <i>appointed representative's regulated activities</i> for which the <i>firm</i> has responsibility (see SYSC 3.1); and	
			(b) resources to monitor and enforce compliance by the <i>appointed representative</i> with the relevant requirements applying to the <i>regulated activities</i> for which the <i>firm</i> is responsible and with which the <i>appointed representative</i> is required to comply under its contract with the <i>firm</i> (see SUP 12.5.3 R(2))	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			<p>The SUP 12.4.6 R conditions are that:</p> <p>On a continuing basis the <i>firm</i> must take reasonable care to ensure that the <i>appointed representative</i> is suitable to act for the <i>firm</i> in that capacity (having regard, in particular, to other <i>persons</i> connected with the <i>appointed representative</i> who will be, or who are, directly responsible for its activities).</p>	
SUP 12.8.1 R	<i>Appointed representatives – termination of appointment</i>	(1) Written notice of the notification by the <i>firm</i> or the <i>appointed representative</i>	Either the <i>firm</i> or the <i>appointed representative</i> notifying the other that it proposes to terminate a contract or to amend it so that it no longer meets the requirements in the <i>Appointed Representatives Regulations</i> .	Ten <i>business days</i> after the date of the decision to terminate or so amend the contract or, if later, as soon as the <i>firm</i> becomes aware that the contract is to be or has been terminated or amended

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>(2) The reason for the termination or amendment, if the termination or amendment is due to misconduct or the <i>appointed representative</i> is resigning while under investigation by the <i>firm</i>, the <i>FSA</i>, another regulator, a <i>clearing house</i>, an exchange, a <i>designated professional body</i>, or a government body or agency</p>	<p>Also, in the case of an <i>introducer appointed representative</i>, if the contract no longer meets the requirements of <i>SUP 12.5.7 R</i>, namely that the contract prohibits the <i>introducer</i> from:</p> <p>(1) in relation to a <i>designated investment</i> or <i>designated investment business</i>:</p>	
		<p>(3) If relevant, details of action taken by the <i>firm</i> and, if applicable, its outcome</p>	<p>(a) effecting an introduction between a <i>customer</i> and a <i>person</i> other than the <i>firm</i> or another member of the <i>firm's marketing group</i>; and</p>	
			<p>(b) distributing <i>non-real-time financial promotions</i> approved by a <i>person</i> other than the <i>firm</i> or another member of the <i>firm's marketing group</i> or the producer of an <i>adopted packaged product</i>; and</p>	
			<p>(2) carrying on any <i>regulated activity</i> on behalf of any <i>person</i> other than the <i>firm</i> or another member of the <i>firm's marketing group</i>.</p>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 12.8.1 R	<i>Appointed representatives</i> – termination of appointment	(1) Written notice of the notification by the <i>firm</i> or the <i>appointed representative</i>	Either the <i>firm</i> or the <i>appointed representative</i> notifying the other that it proposes to terminate a contract or to amend it so that it no longer meets the requirements in the <i>Appointed Representatives Regulations</i> .	Ten <i>business days</i> after the date of the decision to terminate or so amend the contract or, if later, as soon as the <i>firm</i> becomes aware that the contract is to be or has been terminated or amended
		(2) The reason for the termination or amendment, if the termination or amendment is due to misconduct or the <i>appointed representative</i> is resigning while under investigation by the <i>firm</i> , the <i>FSA</i> , another regulator, a <i>clearing house</i> , an exchange, a <i>designated professional body</i> , or a government body or agency	Also, in the case of an <i>introducer appointed representative</i> , if the contract no longer meets the requirements of SUP 12.5.7 R, namely that the contract prohibits the <i>introducer</i> from: (1) in relation to a <i>designated investment</i> or <i>designated investment business</i> :	
		(3) If relevant, details of action taken by the <i>firm</i> and, if applicable, its outcome	(a) effecting an introduction between a <i>customer</i> and a <i>person</i> other than the <i>firm</i> or another member of the <i>firm's marketing group</i> ; and	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(b) distributing <i>non-real-time financial promotions approved by a person other than the firm or another member of the firm's marketing group or the producer of an adopted packaged product</i> ; and	
			(2) carrying on any <i>regulated activity</i> on behalf of any <i>person</i> other than the <i>firm</i> or another member of the <i>firm's marketing group</i> .	
SUP 12.8.4 G	<i>Appointed representatives – termination of appointment – approved persons</i>	<i>Approved persons</i> Form C Notice of ceasing to perform <i>controlled functions</i> (see SUP 10 Ann 6R)	An <i>approved person</i> ceasing to perform a <i>controlled function</i> under an <i>arrangement</i> entered into by a <i>firm</i> or its <i>appointed representative</i>	Seven <i>business days</i> after an <i>approved person</i> ceases to perform a <i>controlled function</i>
SUP 12.8.4 G	<i>Appointed representatives – termination of appointment – approved persons (qualified withdrawal)</i>	The fact of the qualified withdrawal	An <i>approved person</i> ceasing to perform a <i>controlled function</i> under an <i>arrangement</i> entered into by a <i>firm</i> or its <i>appointed representative</i> and the <i>firm</i> becoming aware, or has information which reasonably suggest, that it will submit a qualified Form C in respect of that <i>approved person</i>	As soon as practicable (<i>guidance</i> in SUP 10.13.8 G states, where possible, within one <i>business day</i>)

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(qualified defined in SUP 10.13.7 (2); approved person dismissed, approved person under investigation, approved person's fitness and propriety affected)	
SUP 13.3.2 G (1)	Intention to establish a <i>branch</i> in another <i>EEA State</i>	(a) activities which it seeks to carry on through <i>branch</i> (b) other information as specified in SUP 13.5.1R	Decision to establish a <i>branch</i> in other <i>EEA State</i>	Before establishing a <i>branch</i>
SUP 13.4.2 G (1)	Intention to provide <i>cross border services</i> into another <i>EEA State</i>	(a) identifies activities which it seeks to carry on by way of provision of <i>cross border services</i>	Decision to provide <i>cross border services</i> into another <i>EEA State</i>	Before providing <i>cross border services</i>
		(b) other information as specified in SUP 13.5.2 R		
SUP 13.6.5 G (1)	Changes to <i>branches (Firms</i> passporting under the <i>Investment Services 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
SUP 13.6.7 G (1)	Changes to relevant <i>EEA</i> details of <i>branches (Firms</i> passporting under the <i>Insurance Directives)</i>	Details of proposed change	Change in circumstances within control of <i>UK firm</i>	Before making change
SUP 13.6.8 G	Changes to relevant <i>UK</i> details of <i>branches (Firms</i> passporting under the <i>Insurance Directives)</i>	Details of proposed change	Change arising from circumstances within control of <i>UK firm</i>	At least one month before change is effected

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 13.6.10 G	Changes to <i>branches</i>	Details of change	Changes to <i>branch</i> arising from circumstances beyond control of a <i>UK firm</i>	As soon as reasonably practicable
SUP 13.7.3 G	<i>Firms</i> passporting under <i>Investment Services Directive</i> : 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)
SUP 13.7.4 G	<i>Firms</i> passporting under <i>Insurance Directives</i> (providing <i>cross border services</i>) – change in relevant details	Details of proposed change	Change in relevant details	(a) change arises from circumstances within control of <i>firm</i> : at least one month before proposed change
				(b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as reasonably practicable

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<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 the <i>Investment Services Directive</i> and <i>Banking Consolidation Directive</i>)	Details of proposed change	Change to <i>branch</i> details	Before making the change
<i>SUP 14.2.6 G</i>	Change to <i>branch</i> details in circumstances within control of the <i>firm</i> (<i>firms</i> passporting under the <i>Insurance Directives</i>)	Details of proposed change	Change to <i>branch</i> details	Before making the change
<i>SUP 14.2.8 G</i>	Changes to <i>branch</i> details arising from circumstances beyond control of incoming <i>EEA firm</i>	Change to <i>branch</i> details	Details of the change	As soon as reasonably practicable
<i>SUP 14.3.3 G</i>	Changes to <i>cross border services</i> (<i>firms</i> passporting under the <i>Investment Services 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
<i>SUP 14.6.3 G</i>	Incoming <i>EEA firm</i> - cancelling qualification for <i>authorisation</i>		Incoming <i>firm</i> ceased, or intends to cease, to carry on <i>regulated activities</i> in the <i>United Kingdom</i>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.3.1 R	Notifications – matters having a serious regulatory impact	The fact of any of the trigger events occurring	Becoming aware or having information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:	Immediately
			(1) the <i>firm</i> failing to satisfy one or more of the <i>threshold conditions</i> ;	
			(2) any matter which could have a significant adverse impact on the <i>firm's</i> reputation;	
			(3) any matter which could affect the <i>firm's</i> ability to continue to provide adequate services to its <i>customers</i> and which could result in serious detriment to a <i>customer</i> of the <i>firm</i> ; or	
			(4) any matter in respect of the <i>firm</i> which could result in serious financial consequences to the <i>financial system</i> or to other <i>firms</i> .	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p><i>SUP 15.3.7 G</i> and <i>SUP 15.3.8 G</i></p>	<p>Notifications – anything relating to the <i>firm</i> of which the <i>FSA</i> would expect notice</p>	<p>The matters specified in 'trigger events' which must be disclosed appropriately.</p>	<p>A <i>firm</i> must deal with its regulators in an open and co-operative way, and must disclose to the <i>FSA</i> appropriately anything relating to the <i>firm</i> of which the <i>FSA</i> would reasonably expect notice. (<i>Principle 11</i> and <i>SUP 15.3.7 G</i>)</p> <p>Compliance with <i>Principle 11</i> includes, but is not limited to, giving the <i>FSA</i> notice of:</p>	<p>A <i>firm</i> should have regard to the urgency and significance of a matter. (<i>SUP 15.7.2 G</i>)</p> <p>The period of notice will depend on the event, although the <i>FSA</i> expects a <i>firm</i> to discuss relevant matters with it at an early stage, before making any internal or external commitments. (<i>SUP 15.3.9 G</i>)</p>
			<p>(1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the <i>firm's</i> risk profile or resources, including, but not limited to:</p>	
			<p>(a) setting up a new <i>undertaking</i> within a <i>firm's group</i>, or a new <i>branch</i> (whether in the <i>United Kingdom</i> or overseas); or</p>	
			<p>(b) commencing the provision of <i>cross border services</i> into a new territory;</p>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(c) commencing the provision of a new type of product or service (whether in the <i>United Kingdom</i> or overseas);	
			(d) ceasing to undertake a <i>regulated activity</i> or <i>ancillary activity</i> , or significantly reducing the scope of such activities;	
			or	
			(e) entering into, or significantly changing, a <i>material outsourcing</i> arrangement; or	
			(f) a substantial change or a series of changes in the <i>governing body</i> of an <i>overseas firm</i> (other than an <i>incoming firm</i>); or	
			(g) any change to the <i>firm's</i> prudential category or sub-category, as used in the Interim Prudential sourcebooks and the Supervision manual and on which <i>guidance</i> is given in <i>SUP App 1</i> ;	
			(2) any significant <i>failure</i> in the <i>firm's</i> systems or <i>controls</i> , including those reported to the <i>firm</i> by the <i>firm's</i> auditor;	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(3) any action which a <i>firm</i> proposes to take which would result in a material change in its capital adequacy or solvency, including, but not limited to:	
			(a) any action which would result in a material change in the <i>firm's</i> financial resources or financial resources requirement; or	
			(b) a material change resulting from the payment of a special or unusual dividend or the repayment of <i>share</i> capital or a subordinated loan; or	
			(c) for <i>firms</i> which are subject to the <i>rules</i> on consolidated financial supervision, any proposal under which another <i>group company</i> may be considering such an action; or	
			(d) significant trading or non-trading losses (whether recognised or unrecognised).	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.3.11 R	Notifications – breaches of <i>rules</i> and other requirements in or under the <i>Act</i>	<p>(1) information about any circumstances relevant to the breach or offence;</p> <p>(2) identification of the <i>rule</i> or <i>requirement</i> or offence; and</p> <p>(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 <i>future</i> potential occurrence.</p>	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> , <i>officers</i> , <i>employees</i> , <i>approved persons</i> , or <i>appointed representatives</i> :	Immediately
			(a) a significant breach of a <i>rule</i> (which includes a <i>Principle</i>) or <i>Statement of Principle</i> ; or or	
			(b) a breach of any requirement imposed by the <i>Act</i> or by regulations or an order made under the <i>Act</i> by the Treasury (except if the breach is an offence, in which case (c) applies);	
			(c) the bringing of a prosecution for, or a conviction of, any offence under the <i>Act</i> .	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 15.3.15 R	Notifications – civil, criminal or disciplinary proceedings against a <i>firm</i>	Details of the matter and an estimate of the likely financial consequences, if any.	(1) Civil proceedings being brought against the <i>firm</i> and the amount of the claim being significant in relation to the <i>firm's</i> financial resources or its reputation; or	Immediately
			(2) any action being brought against the <i>firm</i> under section 71 of the <i>Act</i> (Actions for damages) or section 150 (Actions for damages); or	
			(3) disciplinary measures or sanctions being imposed on the <i>firm</i> by any statutory or regulatory authority, professional organisation or trade body (other than the <i>FSA</i>) or the <i>firm</i> becoming aware that one of those bodies has started an investigation into its affairs; or	
			(4) the <i>firm</i> being prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties being imposed on it for tax evasion; or	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(5) if it is an <i>OPS firm</i> , which is a trustee, being removed as trustee by a court order.	
SUP 15.3.17 R	Notifications – Fraud, errors and other irregularities	All relevant and significant details of the incident or suspected incident of which the <i>firm</i> is aware.	The following events arising, if significant: (1) the <i>firm</i> becoming aware that an <i>employee</i> may have committed a fraud against one of its <i>customers</i> ; or	Immediately
			(2) the <i>firm</i> becoming aware that a <i>person</i> , whether or not <i>employed</i> by it, may have committed a fraud against it; or	
			(3) the <i>firm</i> considering that any <i>person</i> , whether or not <i>employed</i> by it, acting with intent to commit a fraud against it; or	
			(4) the <i>firm</i> identifying irregularities in its accounting or other records, whether or not there is evidence of fraud; or	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(5) the <i>firm</i> suspecting that one of its <i>employees</i> may be guilty of serious misconduct concerning his honesty or integrity and which is committed with the <i>firm's regulated activities</i> or <i>ancillary activities</i> .	
SUP 15.3.21 R	Notifications – insolvency, bankruptcy and winding up	The fact of the event	(1) the calling of a meeting to consider a resolution for winding up the <i>firm</i> ;	Immediately
			(2) an application to dissolve the <i>firm</i> or to strike it off the Register of Companies;	
			(3) the presentation of a petition for the winding up of the <i>firm</i> ;	
			(4) the making of, or any proposals for the making of, a composition or arrangement with any one or more of its creditors;	
			(5) an application for the appointment of an administrator or trustee in bankruptcy to the <i>firm</i> ;	
			(6) the appointment of a receiver to the <i>firm</i> (whether an administrative receiver or receiver appointed over particular property): or	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(7) an application for an interim order against the <i>firm</i> under section 252 of the Insolvency Act 1986 (or, in Northern Ireland, section 227 of the Insolvency (Northern Ireland) Order 1989); or	
			(8) if the <i>firm</i> is a <i>sole trader</i> :	
			(a) an application for a sequestration order; or	
			(b) the presentation of a petition for bankruptcy; or	
			(9) anything equivalent to (1) to (8) above in respect of the <i>firm</i> in a jurisdiction outside the <i>United Kingdom</i>	
SUP 15.4.1 R	Notifications – notified <i>persons</i> - <i>overseas firm</i> which is not an <i>incoming firm</i>	Form F Changes in notified <i>persons</i> (see SUP 15 Ann 2R) However, if the <i>person</i> is an <i>approved person</i> , notification giving details of his name, the <i>approved person's FSA</i> individual reference number and the position to which the notification relates, is sufficient.	Any <i>person</i> taking up or ceasing to hold the following positions: (a) the <i>firm's</i> worldwide chief executive (that is, the <i>person</i> who, alone or jointly with one or more others, is responsible under the immediate authority of the <i>directors</i> for the whole of its business) if the <i>person</i> is based outside the <i>United Kingdom</i> ;	30 <i>business days</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(b) the <i>person</i> within the <i>overseas firm</i> with a purely strategic responsibility for <i>UK</i> operations;	
			(c) for a <i>bank</i> : the two or more <i>persons</i> who effectively direct its business in accordance with <i>IPRU(BANK) GN 3.3.1R</i> ;	
			(d) for an <i>insurer</i> : the <i>authorised UK representative</i> .	
<i>SUP 15.5.1 R</i>	Notifications – change in name	Details of the proposed new name and the date on which the <i>firm</i> intends to implement the change of name	A change in: (1) the <i>firm's</i> name (which is the registered name if the <i>firm</i> is a <i>body corporate</i>);	Reasonable advance notice
			(2) any business name under which the <i>firm</i> carries on a <i>regulated activity</i> or <i>ancillary activity</i> either from an establishment in the <i>United Kingdom</i> or with or for clients in the <i>United Kingdom</i>	
<i>SUP 15.5.4 R</i>	Notifications – change in address	Details of the new address and the date of the change	A change in any of the following addresses: (1) the <i>firm's</i> <i>principal</i> place of business in the <i>United Kingdom</i> ;	Reasonable advance notice
			(2) in the case of an <i>overseas firm</i> , its registered office (or head office) address	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 15.5.5 R</i>	Notifications – change in legal status	The fact of the proposed change in liability	A proposed change in a <i>firm's</i> legal status which limits the liability of any of its members or <i>partners</i> . This includes:	Reasonable advance notice
			(1) re-registration as a limited liability <i>company</i> of a <i>company</i> incorporated with unlimited liability; and	
			(2) a general <i>partner</i> in a <i>firm</i> becoming a limited <i>partner</i>	
<i>SUP 15.5.7 R</i>	Notifications – other regulators	The fact of becoming subject to or ceasing to be subject to the supervision of any <i>overseas regulator</i> (including a <i>Home State regulator</i>)	A <i>firm</i> becoming subject to or ceasing to be subject to the supervision of any <i>overseas regulator</i> (including a <i>Home State regulator</i>)	Immediately
<i>SUP 15.6.4 R</i>	Notification – inaccurate, false or misleading information	(1) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed; (2) an explanation why such information was or may have been provided; and (3) the correct information	A <i>firm</i> becoming aware, or having information that reasonably suggests that it has or may have provided the <i>FSA</i> with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material particular	Immediately If the information required cannot be submitted with the notification (because it is not immediately available), it must instead be submitted as soon as possible afterwards

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 15.8.1 R</i>	Notification – management of <i>occupational pension scheme</i> assets	The fact of receiving the request or instruction	A <i>firm</i> which manages the assets of an <i>occupational pension scheme</i> receiving a request or instruction from a trustee which it knows or on substantial grounds suspects or has cause reasonably to suspect is at material variance with the trustee's duties.	As soon as reasonably practical
<i>SUP 15.8.2 R</i>	Administration of <i>individual pension accounts</i>	If a <i>firm</i> begins or ceases to administer <i>individual pension accounts</i> , notify the <i>FSA</i>	Event of beginning or ceasing to administer <i>individual pension accounts</i>	As soon as reasonably practicable
<i>SUP 15.8.3 R</i>	Insurers' commission clawback	As set out in <i>SUP 15.8.3 R</i>	Any amount of <i>commission</i> due from an intermediary remaining outstanding for four <i>months</i> after date when <i>insurer</i> gave notice to the intermediary that (a) relevant <i>premium</i> had not been paid or (b) that cancellation or overpayment has occurred.	As soon as reasonably practicable
<i>SUP 16.3.17 R</i>	Reporting – change of <i>accounting reference date</i>	The fact of a change in <i>accounting reference date</i>	A change in <i>accounting reference date</i>	If extending its accounting reference period, before the previous <i>accounting reference date</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
				If shortening its accounting period, it must make the notification in (1) before the new <i>accounting reference date</i> .
SUP 16.4.5 R	Reporting – annual <i>controllers</i> report – every <i>firm</i> except: (1) an <i>ICVC</i> ; (2) an <i>incoming EEA firm</i> ; (3) an <i>incoming Treaty firm</i> ;	If the <i>firm</i> is not aware: (a) that it has any <i>controllers</i> ; or (b) of any changes in the identity of its <i>controllers</i> since the submission of its previous report; or	Annually from the <i>accounting reference date</i> If a <i>firm</i> is a <i>friendly society</i> or a <i>building society</i> , then it is required to submit a report only if it is aware that it has a <i>controller</i> .	Four months
	(4) a <i>non-directive friendly Society</i> ; (5) a <i>partnership</i> ; (6) a <i>sole trader</i> ; (7) a <i>service company</i> ; (8) a <i>UCITS qualifier</i>	(c) of any changes in the percentage of shares or <i>voting power</i> in the <i>firm</i> held by any <i>controllers</i> (alone or with any associate) since the submission of its previous report; then confirmation of this.		
		If the above does not apply, the report must contain a list of all the <i>controllers</i> as at the <i>firm's accounting reference date</i> of which the <i>firm</i> is aware and, for each such <i>controller</i> , state: (a) its name;		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(b) the percentage of <i>voting power</i> in the <i>firm</i> , or in the <i>firm's parent undertaking</i> , which it is entitled to exercise or control the exercise of, whether alone or with any associate;		
		(c) the percentage of shares in the <i>firm</i> , or in the <i>firm's parent undertaking</i> , which it holds, whether alone or with any associate;		
		(d) if the <i>controller</i> is a <i>body corporate</i> , its country of incorporation, address and registered number; and		
		(e) if the <i>controller</i> is an individual, his date and place of birth.		
		This information may be provided in the form of a group organisation chart.		
SUP 16.5.4 R	Reporting – annual <i>close links</i> report – every <i>firm</i> except:	If a <i>firm</i> is not aware:	Annually from the <i>accounting reference date</i>	Four months
	(1) an <i>ICVC</i> ; (2) an <i>incoming EEA firm</i> ; (3) an <i>incoming Treaty firm</i> ;	(a) that it has <i>close links</i> ; or (b) of any material changes to the details since the last report; then confirmation of this	If a <i>firm</i> is an unincorporated <i>friendly society</i> , then it is only required to submit a report if it is aware that it has <i>close links</i>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	(4) a <i>non-directive friendly society</i> ;	If the above does not apply, the report must contain a list of all <i>persons</i> with whom the <i>firm</i> has <i>close links</i> as at the <i>firm's accounting reference date</i> of which it is aware, and for each such <i>person</i> state:		
	(5) a <i>partnership</i> ; (6) a <i>sole trader</i> ; (7) a <i>service company</i> ; (8) a <i>UCITS qualifier</i>	(a) its name; (b) the nature of the <i>close links</i> ; (c) if the <i>close link</i> is with a <i>body corporate</i> , its country of incorporation, address and registered number; and		
		(d) if the <i>close link</i> is with an individual, his date and place of birth.		
		The information may be provided in the form of a group organisation chart		
SUP 16.6.5 R	Reporting – compliance reports – <i>bank</i> – list of <i>overseas regulators</i>	List of all <i>overseas regulators</i> for each legal entity in the <i>firm's group</i>	Annually from the <i>accounting reference date</i>	Six months
SUP 16.6.5 R	Reporting – compliance reports – <i>bank</i> – <i>authorised entities</i> in the <i>firm's group</i>	Organogram showing the <i>authorised entities</i> in the <i>firm's group</i>	Annually from the <i>accounting reference date</i>	Six months

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.6.6 R	Reporting – compliance reports – trustee of an <i>AUT</i>	In relation to the <i>manager</i> of each <i>AUT</i> for which it is a <i>trustee</i> , the number of times during the quarter in which facts came to the <i>firm's</i> knowledge from which it appeared, or might have appeared, that the <i>manager</i> had failed (materially or otherwise) to:	Quarterly (the quarter ends are 31 March, 30 June, 30 September, 31 December)	One month
		(a) give correct instructions to the <i>trustee</i> to create or cancel <i>units</i> in the <i>AUT</i> when the <i>manager</i> should have done so, and the error:		
		(i) resulted in the creation of too few <i>units</i> or in the <i>cancellation</i> of too many <i>units</i> ; and		
		(ii) was not corrected in accordance with the <i>FSA's guidance</i> as set out in <i>CIS App</i> ;		
		(b) <i>price units</i> in the <i>AUT</i> in accordance with <i>CIS 4</i> for <i>single-priced AUTs</i> and <i>CIS 15</i> for <i>dual-priced AUTs</i> , where the pricing error was:		
		(i) greater than 0.5% of the <i>price</i> of a <i>unit</i> ; or		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(ii) less than 0.5% of the <i>price</i> of a <i>unit</i> , and the <i>trustee</i> did not consider the <i>manager's</i> controls to be adequate; unless the failure was an isolated incident		
SUP 16.6.6 R	Reporting – compliance reports – <i>depository</i> of an <i>ICVC</i>	In relation to the <i>authorised corporate director</i> of each <i>ICVC</i> for which it is a <i>depository</i> , the number of times during the quarter in which facts came to the <i>firm's</i> knowledge from which it appeared, that the <i>authorised corporate director</i> had failed (materially or otherwise) to:	Quarterly (the quarter ends are 31 March, 30 June, 30 September, 31 December)	One month
		(a) arrange for the issue or cancellation of <i>shares</i> in the <i>ICVC</i> when the <i>authorised corporate director</i> should have done so, and the error:		
		(i) resulted in the creation of too few <i>shares</i> or in the cancellation of too many <i>shares</i> ; and		
		(ii) was not corrected in accordance with the <i>FSA's guidance</i> as set out in <i>CIS App</i> ;		
		(b) price <i>shares</i> in the <i>ICVC</i> in accordance with <i>CIS 4</i> for <i>ICVCs</i> , where the pricing error was:		
		(i) greater than 0.5% of the price of a <i>share</i> ; or		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(ii) less than 0.5% of the price of a <i>share</i> , and the <i>depository</i> did not consider the <i>authorised corporate director's</i> controls to be adequate;		
		unless the failure was an isolated incident		
<i>SUP 16.6.6 R</i>	Reporting – compliance reports – <i>OPS firms</i>	Annual accounts of each <i>occupational pension scheme</i> in respect of which the <i>firm</i> is acting	Annually	Seven months after the end of the scheme year
<i>SUP 16.6.6 R</i>	Reporting – compliance reports – <i>OPS firms</i>	Audited annual accounts of each <i>OPS collective investment scheme</i> in respect of which the <i>firm</i> is acting	Annually	Seven months after the end of the scheme year
<i>SUP 16.6.8 R (3)</i>	Reporting – compliance reports – <i>OPS firms</i>	Any change in the date of commencement of the scheme year of an <i>OPS</i> or <i>OPS collective investment scheme</i> , in respect of which the <i>firm</i> is acting, not less than <i>15 business days</i> before the date on which such a change is to become effective.		<i>15 business days</i> before the date on which such a change is to become effective
<i>SUP 16.7.7 R</i> to <i>SUP 16.7.15 R</i>	Reporting financial reports – <i>UK bank</i>	Annual report and audited accounts	Annually	3 months after the <i>firm's</i> accounting reference date

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p><i>SUP 16.7.7 R to SUP 16.7.15 R</i></p>	<p>Reporting – financial reports – <i>UK bank</i></p>	<p>Adequate information on capital adequacy (unconsolidated solo consolidated) BSD3</p>	<p>Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a <i>bank</i>, which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.</p>	<p>10 <i>business days</i> (12 <i>business days</i> if submitted electronically)</p>
<p><i>SUP 16.7.7 R to SUP 16.7.15 R</i></p>	<p>Reporting – financial reports – <i>UK bank</i></p>	<p>Adequate information on capital adequacy (consolidated) BSD3 The requirement to submit consolidated reports applies only to a <i>bank</i> which calculates its capital requirements on a consolidated basis.</p>	<p>Half yearly. All consolidated reports required on a half yearly basis must be prepared as at the end of June and December of each year.</p>	<p>20 <i>business days</i> (22 <i>business days</i> if submitted electronically)</p>
		<p>See <i>IPRU(BANK) GN 3.3.13R(2)</i> and <i>IPRU(BANK) CS 4.</i></p>		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p><i>SUP 16.7.7 R to SUP 16.7.15 R</i></p>	<p>Reporting – financial reports – <i>UK bank</i></p>	<p>Analysis of large exposures (Unconsolidated, solo consolidated) LE2</p>	<p>Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a <i>bank</i>, which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.</p>	<p>10 <i>business days</i> after quarter end</p>
<p><i>SUP 16.7.7 R to SUP 16.7.15 R</i></p>	<p>Reporting – financial reports – <i>UK bank</i></p>	<p>Analysis of large exposures (Consolidated) LE2 The requirement to submit consolidated reports applies only to a <i>bank</i> which calculates its capital requirements on a consolidated basis. See <i>IPRU(BANK) GN 3.3.13R(2)</i> and <i>IPRU(BANK) CS 4</i>.</p>	<p>Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a <i>bank</i>, which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.</p>	<p>20 <i>business days</i> after quarter end</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p>SUP 16.7.7 R to SUP 16.7.15 R</p>	<p>Reporting – financial reports – <i>UK bank</i></p>	<p>Adequate information on holdings of credit and financial institutions' and non-financial companies' capital instruments (Unconsolidated, solo consolidated) M1</p> <p>This report is only required from a <i>bank</i> which reports either on a solo or unconsolidated basis and</p> <p>(i) has been granted a trading book concession as explained in <i>IPRU(BANK) CA 10.3</i>; or (ii) has qualifying holdings in non-financial <i>companies</i> as explained in <i>IPRU(BANK) CA 10.4</i></p>	<p>Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a <i>bank</i>, which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.</p>	<p>10 <i>business days</i> (12 <i>business days</i> if submitted electronically)</p>
<p>SUP 16.7.7 R to SUP 16.7.15 R</p>	<p>Reporting – financial reports – <i>UK bank</i></p>	<p>Adequate information on holdings of credit and financial institutions' and non-financial companies' capital instruments (Consolidated) M1</p>	<p>Half yearly. All consolidated reports required on a half yearly basis must be prepared as at the end of June and December of each year.</p>	<p>20 <i>business days</i> after period end (22 <i>business days</i> if submitted electronically)</p>
		<p>This report is only required from a <i>bank</i> which reports either on a solo or unconsolidated basis and:</p>		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(i) has been granted a trading book concession as explained in <i>IPRU(BANK) CA 10.3</i> ; or (ii) has qualifying holdings in non-financial companies as explained in <i>IPRU(BANK) CA 10.4</i>		
		The requirement to submit consolidated reports applies only to a <i>bank</i> which calculates its capital requirements on a consolidated basis. See <i>IPRU(BANK) GN 3.3.13R(2)</i> and <i>IPRU(BANK) CS 4</i> .		
<i>SUP 16.7.7 R</i> to <i>SUP 16.7.15 R</i>	Reporting – financial reports – <i>UK bank</i>	Adequate information on sterling stock liquidity (SLR1)	Monthly	6 <i>business days</i> after second Wednesday of the month
		<p>A <i>bank</i> is not required to submit both the SLR1 and LR</p> <p>A <i>bank</i> which monitors its liquidity according to the maturity mismatch approach as set out in <i>IPRU(BANK) LM</i> must submit the LR</p>		<p>This report must be prepared as at the second Wednesday of each month. See <i>IPRU(BANK) LS 5.2(2)</i> regarding submission of an SLR1 on breach of various limits</p>
		A <i>bank</i> which monitors its liquidity according to the maturity mismatch approach as set out in <i>IPRU(BANK) LS</i> must submit the SLR1		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.7 R to SUP 16.7.15 R	Reporting – financial reports – UK bank	<p>Adequate information on mismatch liquidity LR</p> <p>A bank is not required to submit both the SLR1 and LR</p> <p>A bank which monitors its liquidity according to the maturity mismatch approach as set out in IPRU(BANK) LM must submit the LR</p>	<p>Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a bank, which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.</p>	10 business days after period end (12 business days if submitted electronically)
		<p>A bank which monitors its liquidity according to the maturity mismatch approach as set out in IPRU(BANK) LS must submit the SLR1</p>		
SUP 16.7.7 R to SUP 16.7.15 R	Reporting – financial reports – UK bank	List of companies in the bank's consolidated large exposure reporting	Annually	6 months after the firm's accounting reference date
SUP 16.7.7 R to SUP 16.7.15 R	Reporting – financial reports – UK bank	Annual confirmation that all companies included in solo consolidation meet the criteria for such consolidation as set out in IPRU(BANK) CS 9.2	Annually	6 months after the firm's accounting reference date

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p><i>SUP 16.7.7 R to SUP 16.7.15 R</i></p>	<p>Reporting – financial reports – <i>EEA bank</i>, other than one with <i>permission</i> only for <i>cross border services</i></p>	<p>Adequate information on mismatch liquidity (excluding deposit concentration) LR (excluding Part 5)</p>	<p>Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a <i>bank</i>, which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.</p>	<p>10 <i>business days</i> after period end (12 <i>business days</i> if submitted electronically)</p>
<p><i>SUP 16.7.7 R to SUP 16.7.15 R</i></p>	<p>Reporting – financial reports – <i>bank</i> established outside the <i>EEA</i></p>	<p>Analysis of profits, large exposures, balance sheet, off balance sheet items and bad and doubtful debt provisions B7</p>	<p>Half yearly. Period ends are end of June and December each year.</p>	<p>10 <i>business days</i> after period end (12 <i>business days</i> if submitted electronically)</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 16.7.7 R to SUP 16.7.15 R</i>	Reporting – financial reports – <i>bank</i> established outside the <i>EEA</i>	Adequate information on mismatch liquidity LR	Quarterly. Reports required on a quarterly basis must be prepared as at the end of March, June, September and December of each year, except that a <i>bank</i> , which submits the BT report to the Bank of England monthly, must prepare the Form LR (Adequate information on mismatch liquidity) as at the end of February, May, August and November each year.	10 <i>business days</i> after period end (12 <i>business days</i> if submitted electronically)
<i>SUP 16.7.16 R to SUP 16.7.19 R</i>	Reporting – financial reports – <i>building society</i>	Adequate information on <i>group</i> balance sheet, analysed between society and subsidiary undertakings MFS1 – (Table A)	Monthly	9 <i>business days</i> after month end (largest societies) 12 <i>business days</i> after month end (other societies)
<i>SUP 16.7.16 R to SUP 16.7.19 R</i>	Reporting – financial reports – <i>building society</i>	Adequate information on society's balance sheet and primary business transactions MFS1 – (Tables B to G)	Monthly	7 <i>business days</i> after month end (largest societies) 10 <i>business days</i> after month end (other societies)
<i>SUP 16.7.16 R to SUP 16.7.19 R</i>	Reporting – financial reports – <i>building society</i>	Largest <i>building societies</i> (see <i>SUP 16.7.17 R</i> Note 2):	Monthly	7 <i>business days</i> after month end (largest societies)

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		Sectoral breakdown of the society's balance sheet MFS1 <i>SUP</i>		10 <i>business days</i> after month end (other societies)
<i>SUP</i> 16.7.16 R to <i>SUP</i> 16.7.19 R	Reporting – financial reports – <i>building society</i>	Adequate information on balance sheets and primary business transactions of society's subsidiary undertakings accepting deposits and/or lending MFS2	Monthly	7 <i>business days</i> after month end (largest societies) 10 <i>business days</i> after month end (other societies)
<i>SUP</i> 16.7.16 R to <i>SUP</i> 16.7.19 R	Reporting – financial reports – <i>building society</i>	Analysis of interest rate risk gap	Monthly	15 <i>business days</i> after month end
<i>SUP</i> 16.7.16 R to <i>SUP</i> 16.7.19 R	Reporting – financial reports – <i>building society</i>	Adequate information on balance sheet, income and expenditure, capital, lending quality, large exposures and maturities for the society and its subsidiary undertakings, together with relevant expected and likely out-turns QFS1	Quarterly	18 <i>business days</i> after society's financial quarter end
<i>SUP</i> 16.7.16 R to <i>SUP</i> 16.7.19 R	Reporting – financial reports – <i>building society</i>	Largest <i>building societies</i> (see <i>SUP</i> 16.7.17 R Note 2): Sectoral and other breakdown of assets and liabilities, gilt maturities, and derivative contracts QFS2	Quarterly	11 <i>business days</i> after calendar quarter end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.16 R to SUP 16.7.19 R	Reporting – financial reports – <i>building society</i>	Adequate information on balance sheet, income and expenditure, the range and volume of activities undertaken by the society, its subsidiary undertakings, and where relevant, its participating interests AFS1	Annually	2 months after society's accounting reference date
SUP 16.7.20 R to SUP 16.7.21 R	Reporting – financial reports – <i>service companies</i>	Annual audited financial statements	Annually	6 months after the <i>firm's</i> accounting reference date
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> (only applies to <i>oil market participants</i> if IPRU(INV) applies to the <i>firm</i>) – <i>lead regulated firm</i>	Annual audited financial statements	Annually	6 months after the <i>firm's</i> accounting reference date
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if IPRU(INV) applies to the <i>firm</i>)	Audited annual financial statements	Annually	3 months after the <i>firm's</i> accounting reference date

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p>SUP 16.7.22 R to SUP 16.7.34 G</p>	<p>Reporting – financial reports – securities and futures firm, except a lead regulated firm (only applies to oil market participants if IPRU(INV) applies to the firm)</p> <p>Category A or B firm or broad scope firm</p>	<p>Annual reporting statement</p>	<p>Annually</p>	<p>3 months after the firm's accounting reference date</p>
<p>SUP 16.7.22 R to SUP 16.7.34 G</p>	<p>Reporting – financial reports – securities and futures firm, except a lead regulated firm (only applies to oil market participants if IPRU(INV) applies to the firm)</p> <p>Category A or B firm or broad scope firm</p>	<p>Annual reconciliation</p> <p>Every year a firm must submit:</p> <p>(a) a reconciliation and explanation of any differences between amounts shown in the balance sheet in the audited annual financial statements and the annual reporting statement</p>	<p>Annually</p>	<p>3 months after the firm's accounting reference date</p>
		<p>(b) a reconciliation and explanation of any differences between the annual reporting statement and the monthly reporting statement prepared as at the same date</p>		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.22 R to SUP 16.7.34 G	<p>Reporting – financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)</p> <p>Category A or B firm or broad scope firm</p>	Audited accounts of any subsidiary, unless the <i>rules</i> in this chapter require that subsidiary to submit accounts to the <i>FSA</i>	Annually	3 months after the <i>firm's</i> accounting reference date
SUP 16.7.22 R to SUP 16.7.34 G	<p>Reporting – financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)</p> <p>Category A or B firm or broad scope firm</p>	<p>Consolidated reporting statement</p> <p>(Only required for category A and B firms which are subject to the consolidation <i>rules</i> set out in <i>IPRU(INV)</i> 10-200R to 10-203R, and are not exempt from the consolidation <i>rules</i> under <i>IPRU(INV)</i> 10-200R(2) or <i>IPRU(INV)</i> 10-204R.)</p>	Half yearly	1 month after period end
SUP 16.7.22 R to SUP 16.7.34 G	<p>Reporting – financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)</p> <p>Category A or B firm or broad scope firm</p>	<p>Large exposures quarterly reporting statement (Form LEM 1 or LEM 2) – solo</p> <p>A <i>firm</i> which was required to submit Form LEM1 in the relevant period immediately prior to <i>commencement</i> must continue to do so.</p>	Quarterly	15 <i>business days</i> after quarter end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		A <i>firm</i> which was required to submit Form LEM2 in the relevant period immediately prior to <i>commencement</i> must continue to do so.		
		A category A or B firm authorised after the <i>commencement</i> must submit Form LEM1.		
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)	Large exposures quarterly reporting statement (Form LEM 1 or LEM 2) – consolidated A <i>firm</i> which was required to submit Form LEM1 in the relevant period immediately prior to <i>commencement</i> must continue to do so.	Quarterly	1 month after quarter end
	Category A or B firm or broad scope firm	A <i>firm</i> which was required to submit Form LEM2 in the relevant period immediately prior to <i>commencement</i> must continue to do so.		
		A category A or B firm <i>authorised</i> after the <i>commencement</i> must submit Form LEM1.		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(Only required for category A and B firms which are subject to the consolidation rules set out in <i>IPRU(INV)</i> 10-200R – 10-203R, and are not exempt from the consolidation rules under <i>IPRU(INV)</i> 10-200R(2) or <i>IPRU(INV)</i> 10-204R.)		
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>) Category A or B firm or broad scope firm	Monthly reporting statement	Monthly	15 <i>business days</i> after month end
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>) Category C or D firm or arranger or venture capital firm	Annual reporting statement	Annually	3 months after the <i>firm's</i> accounting reference date

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)	Annual reconciliation Every year a <i>firm</i> must submit:	Annually	3 months after the <i>firm's</i> accounting reference date
	Category C or D firm or arranger or venture capital firm	(a) a reconciliation and explanation of any differences between amounts shown in the balance sheet in the audited annual financial statements and the annual reporting statement		
		(b) a reconciliation and explanation of any differences between the annual reporting statement and the monthly reporting statement prepared as at the same date		
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>) Category C or D firm or arranger or venture capital firm	Audited accounts of any <i>subsidiary</i> , unless the <i>rules</i> in this chapter require that <i>subsidiary</i> to submit accounts to the <i>FSA</i>	Annually	3 months after the <i>firm's</i> accounting reference date

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.22 R to SUP 16.7.34G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)	Consolidated reporting statement	Half yearly	1 month from period end
	Only for category C firm (as defined in the glossaries located in <i>IPRU(INV)</i> 10, which is subject to the consolidation <i>rules</i> set out <i>IPRU(INV)</i> 10-200R to 10-203R and are not exempt from the consolidation <i>rules</i> under <i>IPRU(INV)</i> 10-200R(2) or <i>IPRU(INV)</i> 10-204R			
SUP 16.7.22 R to SUP 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>) Category C firm	Large exposures quarterly reporting statement (Form LEM 1 or LEM 2) – solo A <i>firm</i> which was required to submit Form LEM1 in the relevant period immediately prior to <i>commencement</i> must continue to do so.	Quarterly	15 <i>business days</i> after quarter end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		<p>A <i>firm</i> which was required to submit Form LEM2 in the relevant period immediately prior to <i>commencement</i> must continue to do so. A <i>firm authorised</i> after the <i>commencement</i> must submit Form LEM1.</p>		
<p>SUP 16.7.22 R to SUP 16.7.34 G</p>	<p>Reporting financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>) Category C firm</p>	<p>Large exposures quarterly reporting statement (Form LEM 1 or LEM 2) – consolidated</p> <p>A <i>firm</i> which was required to submit Form LEM1 in the relevant period immediately prior to <i>commencement</i> must continue to do so.</p>	<p>Quarterly</p>	<p>1 month after quarter end</p>
	<p>(as defined in the glossaries located in <i>IPRU(INV)</i> 10, which is subject to the consolidation <i>rules</i> set out in <i>IPRU(INV)</i> 10-200R – 10-203R and are not exempt from the consolidation <i>rules</i> under <i>IPRU(INV)</i> 10-200R(2) or <i>IPRU(INV)</i> 10-204R</p>	<p>A <i>firm</i> which was required to submit Form LEM2 in the relevant period immediately prior to <i>commencement</i> must continue to do so. A <i>firm authorised</i> after the <i>commencement</i> must submit Form LEM1.</p>		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p>SUP 16.7.22 R to SUP 16.7.34 G</p>	<p>Reporting – financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)</p> <p>Category C or D firm or arranger or venture capital firm</p>	<p>Quarterly reporting statement</p>	<p>Quarterly</p>	<p>15 <i>business days</i> after quarter end</p>
<p>SUP 16.7.22 R to SUP 16.7.34 G</p>	<p>Reporting – financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)</p> <p>Adviser or local, or a traded options market maker (as referred to in <i>IPRU(INV)</i> 3-60R (4))</p> <p><i>Sole traders only</i></p>	<p>Solvency statement</p>	<p>Annually</p>	<p>2 months after the <i>firm's</i> accounting reference date</p>
<p>SUP 16.7.22 R to SUP 16.7.34 G</p>	<p>Reporting – financial reports – <i>securities and futures firm</i>, except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)</p>	<p>Audited annual financial statements</p>	<p>Annually</p>	<p>3 months after the <i>firm's</i> accounting reference date</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	Adviser or local, or a traded options market maker (as referred to in <i>IPRU(INV)</i> 3-60R (4))			
	<i>Partnerships and bodies corporate only</i>			
<i>SUP</i> 16.7.22 R to <i>SUP</i> 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)	Audited accounts of any <i>subsidiary</i> unless the rules in this chapter require that <i>subsidiary</i> to submit accounts to the <i>FSA</i>	Annually	3 months after the <i>firm's</i> accounting reference date
	Adviser or local, or a traded options market maker (as referred to in <i>IPRU(INV)</i> 3-60R (4))			
<i>SUP</i> 16.7.22 R to <i>SUP</i> 16.7.34 G	Reporting – financial reports – <i>securities and futures firm</i> , except a <i>lead regulated firm</i> (only applies to <i>oil market participants</i> if <i>IPRU(INV)</i> applies to the <i>firm</i>)	Solvency statement for the <i>sole trader</i> or each <i>partner</i>	Annually	3 months after the <i>firm's</i> accounting reference date
	<i>ISD investment firm</i> , which is a <i>sole trader</i> or a <i>partnership</i> formed under the laws of England and Wales			

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.35 R to SUP 16.7.41 R	Reporting – financial reports – <i>investment management firms</i> Except a <i>lead regulated firm</i> or an <i>OPS firm</i> or a local authority	Annual Financial Return	Annually	4 months after the <i>firm's accounting reference date</i>
SUP 16.7.35 R to SUP 16.7.41 R	Reporting – financial reports – <i>investment management firms</i>	Annual accounts	Annually	4 months after the <i>firm's accounting reference date</i>
SUP 16.7.35 R to SUP 16.7.41 R	Reporting – financial reports – <i>investment management firms</i> Individuals in partnership	Annual solvency statement	Annually	4 months after the <i>firm's accounting reference date</i>
	Except a <i>lead regulated firm</i> or an <i>OPS firm</i> or a local authority			
SUP 16.7.35 R to SUP 16.7.41 R	Reporting – financial reports – <i>investment management firms</i>	Quarterly Financial Return	Quarterly	1 month after the <i>firm's</i> quarter end
	Firms subject to a Liquid Capital Requirement as set out in <i>IPRU(INV)</i> 5.2.3(1)(a)			
	Except a <i>lead regulated firm</i> or an <i>OPS firm</i>			
SUP 16.7.35 R to SUP 16.7.41 R	Reporting – financial reports – <i>investment management firms</i>	Monthly Financial Return	Monthly	1 month after the month end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	ISD firms (defined in the <i>Glossary of IPRU(INV)</i> 5 subject to the Own Funds Requirement of Euro 730,000 as set out in <i>IPRU(INV)</i> 5.2.3(1)(b)	A <i>firm</i> need not prepare a Monthly Financial Return as at the same date as a Quarterly Financial Return (see Note 4 of <i>SUP</i> 16.7.36 R)		
	Except a <i>lead regulated firm</i> or an <i>OPS firm</i> or a local authority			
<i>SUP</i> 16.7.35 R to <i>SUP</i> 16.7.41 R	Reporting – financial reports – <i>investment management firms</i> Except a <i>lead regulated firm</i> or an <i>OPS firm</i> or a local authority	Why the report cannot be submitted to the <i>FSA</i> on time and the date by which it will submit the report to the <i>FSA</i>	Having reason to believe that it will be unable to submit an annual, quarterly or monthly financial return by the dates specified in the Supervision manual.	As soon as it has reason to believe it will be unable to submit by the specified date
<i>SUP</i> 16.7.42 G to <i>SUP</i> 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> , a Category A1 firm a Category B1 firm or a <i>lead regulated firm</i>	Annual questionnaire	Annually	2 months after the <i>firm's</i> accounting reference date
<i>SUP</i> 16.7.42 G to <i>SUP</i> 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Annual financial statements The annual financial statements must include all reports for which table <i>SUP</i> 16.7.45 R specifies a monthly or quarterly frequency	Annually	4 months after the <i>firm's</i> accounting reference date

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Audited consolidated statutory accounts Only required from a <i>firm</i> if it is a <i>holding company</i> or if one of its <i>controllers</i> is a <i>company</i> .	Annually	4 months after the <i>firm's accounting reference date</i>
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Annual reconciliation Every year a <i>firm</i> must submit a reconciliation of the amounts shown in the balance sheet in the annual financial statements with the amounts shown in the balance sheet in the last monthly or quarterly financial statements. The reconciliation must be submitted with the <i>firm's</i> annual financial statements.	Annually	4 months after the <i>firm's accounting reference date</i>
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13A (Balance sheet)	Category A1 or B1 firm: Monthly Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual	Category A1 or B1 firm: 3 weeks after month end
			Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual	Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			Any other <i>firm</i> : Quarterly	Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
				Any other <i>firm</i> : 3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13Bi/ii (Profit and loss)	Category A1 or B1 firm: Monthly Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual	Category A1 or B1 firm: 3 weeks after month end
			Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual	Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end
			Any other <i>firm</i> : Quarterly	Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
				Any other <i>firm</i> : 3 weeks after quarter end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13Ci (Statement of own funds)	Category A1 or B1 firm: Monthly Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual	Category A1 or B1 firm: 3 weeks after month end
			Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual	Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end
			Any other <i>firm</i> : Quarterly	Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
				Any other <i>firm</i> : 3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13Cii (Statement of own funds) (Unincorporated <i>firms</i> only)	Category A1 or B1 firm: Monthly Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual	Category A1 or B1 firm: 3 weeks after month end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual Any other <i>firm</i> : Quarterly	Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end
				Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
				Any other <i>firm</i> : 3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13D (Financial resources test – current assets)	Category A1 or B1 firm: Monthly	Category A1 or B1 firm: 3 weeks after month end
			Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual	Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			Any other <i>firm</i> : Quarterly	Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
				Any other <i>firm</i> : 3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13E (Financial resources test – expenditure requirement) Category A1 firm, Category A2 firm with <i>permission to manage investments</i> , or a Category A network: Form 13Ei in SUP 16 Ann7 (section 3)	Category A1 or B1 firm: Monthly Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual	Category A1 or B1 firm: 3 weeks after month end Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end
		Category A2 firm without <i>permission to manage investments</i> , a Category A3 firm: Form 13Eii in SUP 16 Ann 7 (section 3)	Any other <i>firm</i> : Quarterly	Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
		Category B1, B2 or B3 firm: Form 13E in SUP 16 Ann 7 (section 4)		Any other <i>firm</i> : 3 weeks after quarter end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13F (Financial resources test – assets and liabilities)	Category A1 or B1 firm: Monthly Category B2 firm, which has less than 26 <i>financial advisers</i> : Annual	Category A1 or B1 firm: 3 weeks after month end
			Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : Annual Any other <i>firm</i> : Quarterly	Category B2 firm, which has less than 26 <i>financial advisers</i> : 4 months after year end
				Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i> : 4 months after year end
				Any other <i>firm</i> : 3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13G (Financial resources test – position risk deductions)	Category A1 or B1 firm: Monthly	Category A1 or B1 firm: 3 weeks after month end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			<p>Category B2 firm, which has less than 26 <i>financial advisers</i>: Annual</p> <p>Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i>: Annual</p> <p>Any other <i>firm</i>: Quarterly</p>	<p>Category B2 firm, which has less than 26 <i>financial advisers</i>: 4 months after year end</p> <p>Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i>: 4 months after year end</p>
				<p>Any other <i>firm</i>: 3 weeks after quarter end</p>
SUP 16.7.42 G to SUP 16.7.53 G	<p>Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i></p> <p><i>Sole traders</i> only</p>	Form 13J (<i>Sole trader solvency statement</i>)	<p>Category A1 or B1 firm: Monthly</p> <p>Category B2 firm, which has less than 26 <i>financial advisers</i>: Annual</p>	<p>Category A1 or B1 firm: 3 weeks after month end</p> <p>Category B2 firm, which has less than 26 <i>financial advisers</i>: 4 months after year end</p>
			<p>Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i>: Annual</p> <p>Any other <i>firm</i>: Quarterly</p>	<p>Category B3 firm, which has less than 26 <i>financial advisers</i> and has <i>permission to manage investments</i>: 4 months after year end</p>
				<p>Any other <i>firm</i>: 3 weeks after quarter end</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Consolidated financial resources return	Quarterly	3 weeks after quarter end
	Category A1, A2 or A3 firm If the <i>firm</i> is a member of a <i>group</i> and is subject to consolidated supervision as set out in <i>IPRU(INV)</i> 13.7.1 R to 13.7.2 R			
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i> Category A1, A2 or A3 firm	Form CAD 13	Quarterly	3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i> Category A1, A2 or A3 firm	Form 13H (Restrictions of Financial Resources)	Category A1 firm: monthly Category A2 or A3 firm: Quarterly	Category A1 firm: 3 weeks after month end Category A2 or A3 firm: 3 weeks after quarter end

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i> Category A1, A2 or A3 firm	Form 13I (Statement of large exposures)	Quarterly	3 weeks after quarter end
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms</i> except a <i>small personal investment firm</i> or a <i>lead regulated firm</i>	Form 13I Consolidated statement of large exposures	Quarterly	3 weeks after quarter end
	Category A1, A2 or A3 firm If the <i>firm</i> is a member of a <i>group</i> and is subject to consolidated supervision as set out in <i>IPRU(INV)</i> 13.7.1R to 13.7.2R			
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms - small personal investment firm</i>	Annual questionnaire	Annually	4 months after the <i>firm's accounting reference date</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.42 G to SUP 16.7.53 G	Reporting – financial reports – <i>personal investment firms - small personal investment firm</i> If the <i>firm</i> is a <i>holding company</i> or one of its <i>controllers</i> is a <i>company</i>	Audited consolidated annual financial statements The <i>firm</i> must submit the statutory accounts of the <i>group</i> to which it belongs	Annually	4 months after the <i>firm's</i> <i>accounting reference date</i>
SUP 16.7.54 R	Reporting – financial reports – <i>authorised professional firm</i>	Annual questionnaire Form in SUP 16 Ann 9R	Annually	4 months after the <i>firm's</i> <i>accounting reference date</i>
SUP 16.7.55 R	Reporting – financial reports – The <i>Society of Lloyd's</i>	Annual audited accounts	Annually	6 months after the <i>Society's</i> <i>accounting reference date</i>
SUP 16.7.55 R	Reporting – financial reports – The <i>Society of Lloyd's</i>	Annual Lloyd's Return	Annually	6 months after the <i>Society's</i> <i>accounting reference date</i>
SUP 16.7.55 R to SUP 16.7.56 R	Reporting – financial reports – The <i>Society of Lloyd's</i>	Syndicate returns	Annually	6 months after the <i>Society's</i> <i>accounting reference date</i>
SUP 16.7.57 R to SUP 16.7.58 R	Reporting – financial reports – <i>Members' adviser</i>	Audited annual financial statements	Annually	3 months after the <i>firm's</i> <i>accounting reference date</i>
SUP 16.7.57 R to SUP 16.7.58 R	Reporting – financial reports – <i>Members' adviser</i>	Annual reporting statement	Annually	3 months after the <i>firm's</i> <i>accounting reference date</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 16.7.57 R to SUP 16.7.58 R	Reporting – financial reports – <i>Members' adviser</i>	Annual reconciliation	Annually	3 months after the <i>firm's accounting reference date</i>
SUP 16.7.57 R to SUP 16.7.58 R	Reporting – financial reports – <i>Members' adviser</i>	Audited accounts of any <i>subsidiary</i> , unless the <i>rules</i> in this chapter require those <i>subsidiaries</i> to submit accounts to the <i>FSA</i>	Annually	3 months after the <i>firm's accounting reference date</i>
SUP 16.7.57 R to SUP 16.7.58 R	Reporting – financial reports – <i>Members' adviser</i>	Quarterly reporting statement	Quarterly	15 <i>business days</i> after the quarter end
SUP 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 conduct of business rules made by a <i>previous regulator</i> , is not a <i>life policy</i> of a type listed in SUP 16.8.13 R or SUP 16.8.14 R, and which:	Annually	By 30 April each year
		(1) was effected by the <i>firm</i> submitting the report; or		
		(2) was effected by a member of the <i>firm's group</i> , which is not an <i>authorised person</i> , and in circumstances in which the <i>firm</i> submitting the report was responsible for promoting that <i>life policy</i> ; or		

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		(3) was effected by another <i>firm</i> , but is carried out by the <i>firm</i> submitting the report.		
		The report must be in the format of Forms 1R(1), (2) and (3) in SUP 16 Ann 6 R.		
SUP 17	<p>Transaction reporting</p> <p>This applies to</p> <p>(a) a <i>securities and futures firm</i>; or</p> <p>(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>	A <i>transaction report</i> as specified in SUP 17.6 R	Entering into a <i>reportable transaction</i> (as defined in SUP 17.5 R), whether on its own account or on behalf of another, subject to exceptions in SUP 17.4 R	As soon as practicable and in any event before the end of the next <i>business day</i> after the <i>day</i> on which the <i>firm</i> entered into the transaction, subject to SUP 17.7.10 R (Failure of reporting system)
	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> .			

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 17	<p>Transaction reporting</p> <p>This applies to</p> <p>(a) a <i>securities and futures firm</i>; or (b) a <i>personal investment firm</i>; or</p>	The fact of intending to use one of the systems specified	<p>Before using one of the reporting systems listed in SUP 17.7.8 R:</p> <p>(1) CEDCOM system operated by CEDEL SA, Luxembourg;</p>	Before using the system specified
	<p>(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>(2) CGO – Central Gils Office;</p> <p>(3) CRESTCo Limited;</p> <p>(4) EUCLID operated by Euroclear SA (input directly into EUCLID or through SWIFT);</p> <p>(5) the <i>FSA's</i> Direct Reporting System;</p>	
	<p>This does not apply to:</p> <p>(a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or</p>		<p>(6) SEQUAL 2000 system of Thomson Financial Services;</p> <p>(7) Tradepoint Financial Networks Plc;</p>	
	<p>(b) an <i>oil market participant</i> in relation to its <i>oil market activities</i>.</p>		<p>(8) Trade Registration System of The London International Financial Futures and Options Exchange (LIFFE);</p>	

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(9) TRAX system of the International Securities Market Association; and (10) Jiway Limited	
SUP 17	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.
	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> .	(1) SUP 17.7.10 R(1): make the <i>transaction report</i> through another reporting system, if the <i>firm</i> considers it reasonably practicable to do so; (2) SUP 17.7.10 R(2): 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)		
	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> .			

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 17</i>	<p>Transaction reporting</p> <p>This applies to</p> <p>(a) a <i>securities and futures firm</i>; or</p> <p>(b) a <i>personal investment firm</i>; or</p>	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 (<i>SUP 17.6.1 R</i>)	Without delay
	<p>(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:</p>			
	(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> .			
<i>SUP 18.2.12 G</i>	Possible proposal for <i>insurance business transfer scheme</i>	The broad outline of the scheme and its purpose	When an <i>insurance business transfer scheme</i> is being considered	As soon as reasonably practical
<i>SUP 18.2.26 G</i>	The <i>FSA</i> has to be informed to enable it to consult the transferee's <i>Home State regulator</i>	As set out in 18.2.26 G	If the transferee is (or will be) an <i>EEA firm</i> (authorised in its <i>Home State</i> to carry on <i>insurance business</i> under the <i>Insurance Directives</i>) or a <i>Swiss general insurance company</i>	Not specified

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>SUP 18.2.28 G</i>	The <i>FSA</i> has to be informed to enable it to consult the <i>Host State regulator</i>	As set out in 18.2.28 G	If the transferor is an <i>UK insurer</i> and the business to be transferred includes business carried on from a branch in another <i>EEA State</i> ,	Not specified
<i>SUP 18.2.29 G</i>	The <i>FSA</i> has to be informed to enable it to consult the <i>Host State regulator</i>	Should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful if a draft of the <i>scheme report</i> was also available.	If the transferor is an <i>UK insurer</i> and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the <i>state of the commitment</i> is an <i>EEA state</i> other than the <i>United Kingdom</i> ,	Not specified
			If the transferor is an <i>UK insurer</i> and the business to be transferred includes a general insurance contract (other than reinsurance) for which the <i>state of the risk</i> is an <i>EEA state</i> other than the <i>United Kingdom</i> ,	Not specified
<i>SUP 18.2.31 G</i>	<i>Scheme report</i> in a form approved by the <i>FSA</i>	As set out in <i>SUP 18.2.33 G</i>	Decision to apply to the court to approve an <i>insurance business transfer scheme</i>	
<i>SUP 18.2.32 G</i>	Fact of the <i>independent expert</i> producing a <i>scheme report</i>		<i>Independent expert</i> appointed to produce a <i>scheme report</i>	At an early stage

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP 18.2.42 G	<p>Notice of the application to be sent to all <i>policyholders</i> of the parties. It may also be appropriate to give notice to others affected, in particular to: (1) reinsurers of the transferor where it is proposed that benefits or liabilities under their contracts should pass to the transferee (2) anyone with an interest in the <i>policies</i> being transferred who has notified the transferor of their interest.</p>	<p>In addition to the notice it would normally be appropriate to include a statement setting out the terms of the scheme and containing a summary of the <i>scheme report</i>.</p>	<p>Decision to apply to the court for approval of an <i>insurance business transfer scheme</i> (unless the court directs otherwise)</p>	<p>At least six weeks before court hearing</p>
SUP App 2.3.1 R	<p><i>Insurers: scheme of operations</i> – an <i>insurer</i> which is not an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> – <i>Margin of solvency</i> below required level</p>	<p>A plan for the restoration of a sound financial position including: (1) a <i>scheme of operations</i> (see SUP App 2.9); and (2) an explanation of how, if at all, and by when it expects its <i>margin of solvency</i> to be adequately restored to the <i>required margin of solvency</i></p>	<p>The firm becoming aware that its <i>margin of solvency</i> has fallen below its <i>required margin of solvency</i></p>	<p>28 days</p>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
SUP App 2.4.1 R	<i>Insurers: scheme of operations – an insurer which is not an incoming EEA firm or an incoming Treaty firm – Margin of solvency below guarantee fund</i>	A short term financial plan including: (1) a <i>scheme of operations</i> (see SUP App 2.9); and (2) an explanation of how, if at all, and by when it expects its <i>margin of solvency</i> to be adequately restored to the <i>guarantee fund</i>	The firm becoming aware that its <i>margin of solvency</i> has fallen below its <i>guarantee fund</i>	14 days
SUP App 2.5.1 R	<i>Insurers: scheme of operations – an insurer which is not an incoming EEA firm or an incoming Treaty firm – ceasing to effect contracts of insurance</i>	A run-off plan including: (1) a <i>scheme of operations</i> (see SUP App 2.9); and (2) an explanation of how, or to what extent, all <i>liabilities to policyholders</i> (including where relevant, reasonable bonus expectations) will be met in full as they fall due	The <i>firm</i> deciding to cease to <i>effect new contracts of insurance</i>	28 days
SUP App 2.10.1 R (1)	<i>Insurers: scheme of operations – an insurer which is not an incoming EEA firm or an incoming Treaty firm – obligations on insurers which have previously submitted a scheme of operations</i>	The fact of the transactions specified	An <i>insurer</i> which has submitted a <i>scheme of operations</i> , during the period covered by the <i>scheme of operations</i> , entering into or carrying out any material transaction (see SUP App 2.11.1 R) with, or in respect of an <i>associate</i> , unless that transaction is in accordance with a <i>scheme of operations</i> which has been submitted to the <i>FSA</i>	28 days before entering into or carrying out the specified <i>transaction</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p><i>SUP</i> App 2.10.1 R (2) and 2.10.2 R</p>	<p><i>Insurers: scheme of operations – an insurer which is not an incoming EEA firm or an incoming Treaty firm – obligations on insurers which have previously submitted a scheme of operations</i></p>	<p>Quarterly financial return: (a) a summary profit and loss account prepared in accordance with <i>SUP</i> App 2.9.7 R; (b) a summary balance sheet prepared in accordance with <i>SUP</i> App 2.9.8 R; and (c) a statement of solvency prepared in accordance with <i>SUP</i> App 2.9.9 R;</p>	<p>The end of each quarter</p>	<p>Not specified</p>
		<p>and which must identify and explain differences between the actual results and the forecasts submitted in the <i>scheme of operations</i></p>		
<p><i>SUP</i> App 2.10.1 R (3)</p>	<p><i>Insurers: scheme of operations – an insurer which is not an incoming EEA firm or an incoming Treaty firm – obligations on insurers which have previously submitted a scheme of operations</i></p>	<p>(a) Explanation of the nature of the departure and the reasons for it and provide revised forecast financial information in the <i>scheme of operations</i> for its remaining term; or (b) an amended <i>scheme of operations</i> and explanation of the amendments and the reasons for them</p>	<p>Any matter which has either happened or is likely to happen and which represents a significant departure from the <i>scheme of operations</i></p>	<p>Promptly</p>

End Table
End Topic

Annex B

Amendments to text already made

SUP 13 Exercise of passport rights by UK firms

SUP 13.6.6G In the third line, change "(see SUP 13 Ann 3R)" to "(see SUP 13 Ann 1R)"

SUP 13.6.15G Delete:
(1) "to satisfy this requirement, the *FSA* will give the *UK firm* a *decision notice* following the procedures in *DEC* (but they will not get a *warning notice* first);"

SUP 13.7.9G Delete:
"; to satisfy this requirement, the *FSA* will give the *UK firm* a *decision notice* following the procedures in *DEC* (but it will not get a *warning notice* first)"

SUP 14 Incoming EEA firms changing details, and cancelling qualification for authorisation

SUP 14.2.1 G In the second sentence , replace "provisions" with "requirements"

SUP 14.2.2G After "regulation 4(5)", insert "(see SUP 14.2.8G)"
(2)

SUP 14.3.1G In the second sentence, replace "provisions" with "requirements"

SUP 14.3.2G In the last line, replace "provisions" with "requirements"

SUP 14.3.3G Replace "provisions" with "requirements"

**PERSISTENCY AND DATA REPORTING
(HANDBOOK AMENDMENT) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Supervision manual, the Authorisation manual and the Special guide for small Friendly societies 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 provisions of the Act relevant to rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:
- (1) paragraphs E and F, and Annexes B to E to this instrument, come into force on 16 May 2002;
 - (2) the remainder of this instrument comes into force immediately.

Immediate amendment of the Supervision manual and FREN

- D. The Supervision manual and the Special guide for small Friendly societies are amended in accordance with Annex A to this instrument.

Amendment of the Supervision manual on 16 May 2002

- E. The Supervision manual is amended, as from 16 May 2002, as follows:
- (1) by amending SUP 16.1 (Application) and SUP Schedule 4 (Record keeping requirements) in accordance with Annex B to this instrument;
 - (2) by deleting SUP 16.8 (Persistency reports from insurers) and inserting the provisions in Annex C to this instrument in its place;
 - (3) by deleting SUP 16 Ann 6R and inserting the provisions in Annex D to this instrument in its place.

Consequential amendment of AUTH and FREN on 16 May 2002

- F. The Authorisation manual and the Special guide for small Friendly societies are amended, as from 16 May 2002, in accordance with Annex E to this instrument.

Citation

- G. This instrument may be cited as the Persistency and Data Reporting (Handbook Amendment) Instrument 2002.

By order of the Board
21 February 2002

Annex A
Immediate amendment of SUP 16.1, SUP 16.8.1G and FREN

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

SUP 16.1.3R Amend the following rows as shown:

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
SUP 16.8	An <u>insurer</u> with <i>permission to effect or carry out life policies, unless it is a non-directive friendly society</i>	Entire section

SUP 16.8.1G Amend as shown:

The effect of SUP 16.1.1R is that this section applies to every *insurer* ~~(including a friendly society)~~ with *permission to effect or carry out life policies, unless it is a non-directive friendly society*.

FREN 1.2.2G Amend the following row of the table as shown

Regulatory processes	Supervision manual (SUP)	(n) SUP 16 (Reporting requirements) – in this part sections 16.4 to 16.7 <u>16.8</u> do not apply; section 16.8 applies to societies with permission to effect or carry out life policies
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Annex B
Amendment of SUP 16.1 and SUP Schedule 4 from 16 May 2002

SUP 16.1.2G Before paragraph (3), insert “(c) a *firm* with *permission* to *establish, operate or wind up a stakeholder pension scheme*;”

SUP 16.1.3R Amend the following rows as shown (underlining indicates new text):

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
SUP 16.1, 16.2 and 16.3	All categories of <i>firm</i> except: (a) an <i>ICVC</i> ; (b) an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> , which is not: (i) a <i>firm</i> of a type to which SUP 16.6 or SUP 16.7 applies; or (ii) an <i>insurer</i> with <i>permission</i> to <i>effect or carry out life policies</i> ; <u>or</u> <u>(iii) a <i>firm</i> with <i>permission</i> to <i>establish, operate or wind up a stakeholder pension scheme</i>;</u> (c) a <i>UCITS</i> <i>qualifier</i> .	Entire sections
SUP 16.8	<i>Insurer</i> with <i>permission</i> to <i>effect or carry out life policies</i> , unless it is a <i>non-directive friendly society</i> <u><i>Firm</i> with <i>permission</i> to <i>establish, operate or wind up a stakeholder pension scheme</i></u>	Entire section <u>Entire section</u>

SUP Schedule 4 Amend the last row in the table as shown (underlining indicates new text):

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SUP 16.8.23R	Persistency reports <u>and data reports</u>	Records to enable the <i>firm</i> to monitor regularly the persistency of <i>life policies effected</i> <u>and stakeholder pensions effected</u> through each of its <i>representatives</i> and make the required reports to the <i>FSA</i> .	Not specified	Not specified

Annex C

16.8 Persistency reports from insurers and data reports on stakeholder pensions

Application

16.8.1

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The effect of SUP 16.1.1R is that this section applies to:

- (1) every *insurer* with *permission to effect or carry out life policies* unless it is a *non-directive friendly society*; and
- (2) every *firm* with *permission* to establish, operate or wind up a *stakeholder pension scheme*.

Purpose

16.8.2

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The purpose of this section is to enable information on the persistency of life policies and data on stakeholder pensions to be prepared and provided to the FSA in a standard format. This information is used in the monitoring of *firms* both individually and collectively.

Requirement to submit persistency and data reports

16.8.3

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- (1) **An *insurer* with *permission to effect or carry out life policies* must submit to the FSA a persistency report in respect of *life policies* by 30 April each year in accordance with this section.**
- (2) **A *firm* with *permission* to establish, operate or wind up a *stakeholder pension scheme* must submit to the FSA:**
 - (a) a data report on stakeholder pensions by 30 April each year prepared in accordance with this section; and
 - (b) two extra data reports on stakeholder pensions prepared in accordance with this section as follows:
 - (i) by 31 October 2002, of the number effected in the period to 30 June 2001 and the number of those still in force 12 months after the contract was effected;

- (ii) by 31 January 2003, of the number effected in the period 1 July 2001 to 30 September 2001 and the number of those still in force 12 months after the contract was effected.

Interpretation of this section

16.8.4

R

In this section, and Forms 1R(1) to (4) in SUP 16 Annex 6R:

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- (1) '12 month report' means the part of a persistency report or data report reporting on *life policies* or stakeholder pensions effected in Y-2, '24 month report' means the part of a persistency report or data report reporting on *life policies* or stakeholder pensions effected in Y-3, and so on;
- (2) 'CC' means the number of *life policies* or stakeholder pensions which:
 - (a) were effected during the period to which the calculation relates; and
 - (b) are reported on in the persistency report or data report (see SUP 16.8.8R to SUP 16.8.15R);
- (3) 'CF' means the number of *life policies* or stakeholder pensions within 'CC' which are treated as in force at the end of Y-1 or, for a report under SUP 16.8.3 R (2) (b), the relevant 12 month period (see SUP 16.8.16R to SUP 16.8.18R);
- (4) 'contract anniversary' means the anniversary of the date on which the *life policy* or stakeholder pension was effected falling within Y-1;
- (5) 'data report' means a report in respect of stakeholder pensions complying with SUP 16.8.19R to SUP 16.8.21R;
- (6) Forms 1R(1), 1R(2), 1R(3) and 1R(4) mean the forms in SUP 16 Ann 6R;
- (7) 'group personal pension policy' means a *life policy* which is not a separate *pension scheme*, effected under a collecting arrangement made for the *employees* of a particular employer to participate in a personal pension arrangement on a group basis;
- (8) 'insurance ISA' means the insurance component of an *ISA* (mini or maxi);
- (9) 'mortgage endowment' means an *endowment assurance effected* or believed to be *effected* for the purposes of paying off a loan on land;

- (10) 'new', in relation to a stakeholder pension, has the meaning given in *SUP 16.8.11R (2)*;
- (11) 'ordinary assurance policy' means a *life policy* which is not an *industrial assurance policy*;
- (12) 'other life assurance' means a *life policy* other than a *pension policy, endowment assurance* or *whole life assurance*;
- (13) 'other pension policy' means a *pension policy* other than a *personal pension policy*;
- (14) 'persistency rate' means a rate calculated using this formula:
- $$CF \times 100 / CC$$
- (see the example in *SUP 16.8.5G*);
- (15) 'persistency report' means a report in respect of life policies complying with *SUP 16.8.19* to *SUP 16.8.21R*;
- (16) 'regular premium life policy' means a *life policy* where there is (or could be, or has been) a commitment by the policyholder to make a regular stream of contributions (for example by means of a direct debit mandate);
- (17) 'regular premium stakeholder pension' means a stakeholder pension where there is (or could be, or has been) a commitment by the policyholder to make a regular stream of contributions;
- (18) 'single premium life policy' means a *life policy* that is not a regular premium *life policy*, except that a recurrent single premium *life policy* must be treated as a regular premium *life policy*;
- (19) 'single premium stakeholder pension' means a stakeholder pension which is not a regular premium stakeholder pension, except that a recurrent single premium stakeholder pension must be treated as a regular premium stakeholder pension;
- (20) 'stakeholder pension' means an individual's rights under a *stakeholder pension scheme*;
- (21) 'substitute', in relation to stakeholder pension, has the meaning given in *SUP 16.8.11 R (2)*;
- (22) 'Y' means the year in which the report must be submitted, 'Y-1' means the preceding year, 'Y-2' means the next earlier year and so on;
- (23) 'year' means calendar year, unless *SUP 16.8.7R* applies.

16.8.5 **G** Table Example of calculation of persistency rate for life policies that commenced during 1996 (see SUP 16.8.3R)

Y (year of reporting)	Number of life policies which commenced during 1996	Number of 1996 policies that cease to be in force during Y-1	Deaths and retirements (not included in CC and CF)	CF	CC
1998	1000	143	2	1000	1000
				- 143	- 2
				- 2	
				= 855	= 998
1999	1000	25	1	1000	1000
				- 143	- 2
				- 25	- 1
				- 2	
				- 1	
	= 829	= 997			

Report submitted in 1998
Persistency rate for *life policies* that commenced during Y-2 (that is 1996)

$$\frac{CF}{CC} \times 100 = \frac{855}{998} \times 100 = 85.7\%$$

Report submitted in 1999
Persistency rate for *life policies* that commenced during Y-3 (that is 1996)

$$\frac{CF}{CC} \times 100 = \frac{829}{997} \times 100 = 83.1\%$$

16.8.6 **G** *Firms* are reminded that annuity contracts other than deferred annuity contracts are not within the definition of 'life policy'.

16.8.7 **R** In relation to a persistency report, a *firm* may treat a 12-month period ending between 1 October and 31 March as a 'year' for the purposes of this section and Forms 1R(1) to (3):

- (1) if the *firm's* financial year does not end on 31 December; or
- (2) for *industrial assurance policy* business;

provided that the use of an alternative period is disclosed in the persistency report.

Life policies and stakeholder pension to be reported on in the persistency or data reports

16.8.8 **R** A persistency report or data report must report on a *life policy* or stakeholder pension if:

- (1) it is not of a type listed in *SUP* 16.8.13R or *SUP* 16.8.14R;
- (2) it was effected by:
 - (a) the *firm* submitting the report; or
 - (b) an *unauthorised* member of the *group* of the *firm* submitting the report and in circumstances in which that *firm* was responsible for the promotion of that *life policy* or stakeholder pension; or
 - (c) another *firm*, but is being carried out by the *firm* submitting the report; and
- (3) the *person* who sold it or who was responsible for its promotion was, in so doing, subject to *rules* in *COB* or (before *commencement*) conduct of business rules made by a *previous regulator*.

16.8.9 G _{/1} *Life policies* and stakeholder pensions falling within *SUP* 16.8.8R (2) (c) are those which have been transferred from another *firm*, for example under an insurance business transfer scheme under Part VII of the *Act* (Control of Business Transfers).

16.8.10 R _{/1} *Life policies* falling within *SUP* 16.8.8R, which were sold subject to the conduct of business rules of a *previous regulator*, need to be reported only if they were required to be reported on by the rules of the *previous regulator* of the *firm* submitting the report.

16.8.11 R _{/1}

- (1) A *life policy* or stakeholder pension which was issued in substitution for a similar contract may be treated as being effected on the inception date of the previous *life policy* or stakeholder pension, provided that the *firm* is satisfied that no loss to the *policyholder* is attributable to the substitution;
- (2) A stakeholder pension which is treated as in (1) is a "substitute" stakeholder pension. A "new" stakeholder pension is any other stakeholder pension.

16.8.12 G _{/1} Examples of loss to the *policyholder* under *SUP* 16.8.11R are losses resulting from higher charges and more restrictive benefits and options.

16.8.13 R _{/1} 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);
- (2) an *appropriate personal pension scheme* to which contributions are made only by the Department of Social Security;
- (3) a *life policy* (excluding *income withdrawal*) or stakeholder pension which has terminated as a result of death, critical illness, retirement, maturity or other completion of the contract term;

- (4) *income withdrawals* that have ceased as a result of the death of the *policyholder*;
- (5) in the case of a persistency report only, a *life policy* which is a stakeholder pension;
- (6) a *life policy* purchased by the trustees of an *occupational scheme* which is a *defined benefits pension scheme*;
- (7) a *life policy* purchased by the trustees of an *executive money purchase occupational pension scheme*.

16.8.14 **R** A persistency report required by SUP 16.8.3R (1) need not report on a *life policy* if the number of *life policies* on substantially the same terms effected by the relevant *firm* (or member of the *firm's group*) in the relevant year did not exceed the higher of fifty and 1% of the total reportable *life policies* effected by the *person* in that year.

16.8.15 **R** If the term of an *endowment assurance* is less than five years, the *life policy* must only be included in a persistency report in respect of years up to and including the anniversary prior to maturity.

Life policies and stakeholder pensions to be treated as in force

16.8.16 **R** Subject to SUP 16.8.17R and SUP 16.8.18R, a *life policy* or stakeholder pension must be treated as in force at the end of Y-1 (that is, included in CF) if and only if:

- (1) in the case of a regular premium life policy:
 - (a) in the case of an *industrial assurance policy* on which the *premiums* are paid at intervals of four weeks, the *premium* has been paid in respect of the four-week period in which the policy anniversary falls; or
 - (b) in any other case, the *premium* has been paid in respect of the month in which the policy anniversary falls;
- (2) in the case of a single premium life policy, the policy has not been surrendered as at the policy anniversary;
- (3) in the case of a regular premium stakeholder pension:
 - (a) for a report required by SUP 16.8.3R (2) (a), the premium has been paid in respect of the month in which the contract anniversary falls;
 - (b) for a report required by SUP 16.8.3R (2) (b), the premium has been paid in respect of the month 12 months after the contract was effected;

- (4) in the case of a single premium stakeholder pension:
- (a) for a report required by *SUP* 16.8.3R (2) (a), the contract has not been surrendered as at the contract anniversary; or
 - (b) for a report required by *SUP* 16.8.3R (2) (b), the contract has not been surrendered as at the end of the 12 month period.

16.8.17 **R** ^{/1} A cluster *life policy* must be reported as a single *life policy* and must be treated as in force (that is included in CF) even if some of the constituent *life policies* have been terminated.

16.8.18 **R** ^{/1} An *income withdrawal* that has terminated other than by death of the *policyholder* must be treated as not in force at the end of Y-1 (that is, not included in CF).

Contents of the persistency or data report

- 16.8.19** **R** ^{/1}
- (1) A persistency report on life policies must be a report in the format of Forms 1R(1), (2) and (3).
 - (2) A data report on stakeholder pensions must be a report in the format of Form 1R(4).
 - (3) A persistency and a data report must include:
 - (a) for a report required by *SUP* 16.8.3R (1) or (2) (a), a separate copy of each Form reporting on *life policies* or stakeholder pensions effected during each of Y-2, Y-3, Y-4, Y-5;
 - (b) for a persistency report, a separate copy of Forms IR(1) and IR(2) reporting on:
 - (i) regular premium life policies and single premium *life policies*; and
 - (ii) *life policies* classified as ordinary assurance policies and *industrial* assurance policies.

16.8.20 **R** ^{/1} If, in relation to any Form, a *firm* has no *life policies* or stakeholder pensions to report on in a copy of that Form, the *firm* need not submit that copy provided that it confirms in writing to the *FSA*, as part of the persistency or data report, that it is not doing so and the reason for not doing so.

16.8.21 **R** ^{/1} The *firm* must, if a persistency report reports on;

- (1) an *endowment assurance* with a term of five years or less:
 - (a) report on such a *policy* in Form 1R(2); and

16.8.22

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- (b) not report on such a policy in Form 1R(1);
 - (2) a group personal pension policy, include the policy as a personal pension policy in Forms 1R(1) and 1R(3);
 - (3) a mortgage endowment, also include the policy as an endowment assurance in Forms 1R(1) and 1R(3);
 - (4) an *income withdrawal* or insurance ISA, not include the policy under any other relevant category in Forms 1R(1) and 1R(3).
- (1) Under SUP 16.8.16R, a *life policy* must be treated as not in force if *premiums* have not been paid at the relevant date. Form 1R(3) seeks additional information on the number of *policies* treated as not in force which are subject to genuine contribution holidays.
 - (2) A *firm* should treat a *life policy* as 'subject to a contribution holiday' if:
 - (a) the terms of the *policy* allow the *policyholder* to take a contribution holiday;
 - (b) the *policyholder* has opted to take a contribution holiday in accordance with those terms;
 - (c) the *policyholder* has clearly stated his intention to resume payments; and
 - (d) at the end of Y-1, not more than 12 months have elapsed from the date that *premiums* ceased to be paid.
 - (3) In addition to the stakeholder data reports showing all contracts, *firms* are requested, where separate data is available, to submit additional reports showing just those contracts where decision trees were used in accordance with COB 6.4.21R.

Records

16.8.23

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A *firm* must make and retain such records as will enable it to:

- (1) monitor regularly the persistency of *life policies* and stakeholder pensions effected through each of its *representatives*; and
- (2) make persistency reports or data reports to the FSA in accordance with SUP 16.8.3R.

16.8.24

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In order to comply with SUP 16.8.23R, a *firm* will as a minimum need to make and retain separate records for:

- (1) *life policies* and stakeholder pensions originally promoted:
 - (a) *by representatives*; or
 - (b) *by independent intermediaries*; or
 - (c) through the *firm's* own *direct offer financial promotions*; or

- (d) *as adopted packaged products*;
- (2) *life policies* and stakeholder pensions not within (1), including those *effected* as execution-only transactions, for inclusion in the relevant form under 'Otherwise';
- (3) *life policies* and stakeholder pensions written assuming the payment of:
 - (a) regular premiums;
 - (b) a single premium;
- (4) *life policies* written as:
 - (a) ordinary assurance policies;
 - (b) *industrial assurance policies*;
- (5) the categories of *life policies* and stakeholder pensions referred to in Forms 1R(1) to (4).

Annex D

Persistency Report

To be submitted by 30 April each year to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Name of Firm: Firm Reference Number:

Regular Premium Policies / Single Premium Policies:

Ordinary Assurance Policies / Industrial Assurance Policies:

Year in which Policies Effected:

12 Month Report / 24 Month Report / 36 Month Report / 48 Month Report:

Policies promoted:	by representative			by independent intermediary		
Policy Type	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate
Endowment Assurance						
Whole Life Assurance						
Personal Pension Policy						
Other Pension Policy						
Other Life Assurance						
Income Withdrawal						
Group Personal Pension policy						
Insurance ISA						
Mortgage endowment						

Policies promoted	through the firm's own direct offer financial promotion			otherwise		
Policy Type	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate
Endowment Assurance						
Whole Life Assurance						
Personal pension policy						
Other Pension Policy						
Other Life Assurance						
Income Withdrawal						
Group Personal Pension policy						
Insurance ISA						
Mortgage endowment						

Notes to persistency report

Firms must provide (either below or on a separate sheet of paper):

- details of any alternative approaches used to calculate figures if this is permitted by the rules in *SUP* 16.8;
- a note of any types of policy for which no figures have been submitted (including any types to be reported on in Forms 1R(2) and 1R(3));
- a brief explanation of the effects of inaccuracies on the figures for previous years which have already been supplied; and
- confirmation that regular premium life policies have only been treated as in force in accordance with *SUP* 16.8.16R (1).

Expressions which are defined in the Handbook Glossary, or in *SUP* 16.8, have the same meanings in this form.

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). *SUP* 15.6.1R and *SUP* 15.6.4R require 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. *SUP* 16.3.11R requires an *authorised person* to submit reports containing all the information required. *APER* 4.4.6E provides that, where an *approved person* is responsible for reporting matters to the *FSA*, failure to inform the *FSA* of materially significant information of which he is aware is a breach of *Statement of Principle 4*. 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 there is any doubt about the relevance of information, it should be included.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the Notes to this form.

Signature

Name (BLOCK CAPITALS):

The following person should be contacted with any queries that may arise:

Name: Title:

Address:

.....

.....

Telephone Number: e-mail:

Form 1R (2)

Persistency Report - short term endowments/ assurance

To be submitted by 30 April each year to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Name of Firm:

Firm Reference Number :

Regular Premium Policies / Single Premium Policies:

Ordinary Branch Policies / Industrial Branch Policies:

Year in which Policies Effected:

12 Month / 24 Month / 36 Month / 48 Month report:

Policies promoted:	by representative			by independent intermediary		
	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate
2 (<3) year term						
3 (<4) year term						
4 (<5) year term						
Total						

Policies promoted:	through firm's own direct offer financial promotion			otherwise		
	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate	Number effected during the year (CC)	Number in force at end of Y-1 (CF)	Persistency rate
2 (<3) year term						
3 (<4) year term						
4 (<5) year term						
Total						

Expressions which are defined in the Handbook Glossary, or in SUP 16.8, have the same meanings in this form.

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). *SUP* 15.6.1R and *SUP* 15.6.4R require 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. *SUP* 16.3.11R requires an *authorised person* to submit reports containing all the information required. *APER* 4.4.6E provides that, where an *approved person* is responsible for reporting matters to the *FSA*, failure to inform the *FSA* of materially significant information of which he is aware is a breach of *Statement of Principle 4*. 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 there is any doubt about the relevance of information, it should be included.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signature:

Name (BLOCK CAPITALS):

The following person should be contacted with any queries that may arise:

Name: Title:

Address:

.....

.....

Telephone Number: e-mail:

Form 1R (3)

Persistency Report – Contribution Holidays

To be submitted by 30 April each year to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Name of Firm:

Firm Reference Number : Year in which Policies Effected:

12 Month Report/24 Month Report/36 Month Report/48 Month Report:

Policies promoted:	by representative			by independent intermediary		
Policy Type	Number effected during the year (CC)	Number subject to contribution holiday at end of Y-1 (CH)	Holiday factor (CH/CC)	Number effected during the year (CC)	Number subject to contribution holiday at end of Y-1 (CH)	Holiday factor (CH/CC)
Endowment Assurance						
Whole Life Assurance						
Personal Pension Policy						
Other Pension Policy						
Other Life Assurance						
Income Withdrawal	N/a	N/a	N/a	N/a	N/a	N/a
Group Personal Pension policy						
Insurance ISA						

Policies promoted:	through firm's own direct offer financial promotion			otherwise		
Policy Type	Number effected during the year (CC)	Number subject to contribution holiday at end of Y-1 (CH)	Holiday factor (CH/CC)	Number effected during the year (CC)	Number subject to contribution holiday at end of Y-1 (CH)	Holiday factor (CH/CC)
Endowment Assurance						
Whole Life Assurance						
Personal pension policy						
Other Pension Policy						
Other Life Assurance						
Income Withdrawal	N/a	N/a	N/a	N/a	N/a	N/a
Group Personal Pension policy						
Insurance ISA						
Mortgage endowment						

Expressions which are defined in the Handbook Glossary, or in SUP 16.8, have the same meanings in this form.

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). SUP 15.6.1R and SUP 15.6.4R require 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. SUP 16.3.11R requires an *authorised person* to submit reports containing all the information required. APER 4.4.6E provides that, where an *approved person* is responsible for reporting matters to the FSA, failure to inform the FSA of materially significant information of which he is aware is a breach of *Statement of Principle 4*. 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 there is any doubt about the relevance of information, it should be included.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signature:
Name (BLOCK CAPITALS):
The following person should be contacted with any queries that may arise:
Name: Title:
Address:
.....
.....
Telephone Number: e-mail:

Form 1R (4)

Stakeholder Pension Data Report

To be submitted to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Name of Firm: Firm Reference Number :

Year or relevant period in which Policies Effected:

Extra Report / 12 Month Report / 24 Month Report / 36 Month Report / 48 Month Report :

Stakeholder pensions promoted:	by representatives			by independent intermediaries		
Stakeholder pension type	Number effected during the period (CC)	Number in force at end of period (CF)	Persistency rate	Number effected during the period (CC)	Number in force at end of period (CF)	Persistency rate
New regular premium stakeholder pensions						
Substitute regular premium stakeholder pensions						
New single premium stakeholder pensions						
Substitute single premium stakeholder pensions						

Stakeholder pensions promoted:	through the firm's own direct offer financial promotion			otherwise (see notes)		
Stakeholder pension type	Number effected during the period (CC)	Number in force at end of period (CF)	Persistency rate	Number effected during the period (CC)	Number in force at end of period (CF)	Persistency rate
New regular premium stakeholder pensions						
Substitute regular premium stakeholder pensions						
New single premium stakeholder pensions						
Substitute single premium stakeholder pensions						

Stakeholder pensions promoted:	as adopted package products		
Stakeholder pension type	Number effected during the period (CC)	Number in force at end of period (CF)	Persistency rate
New regular premium stakeholder pensions			
Substitute regular premium stakeholder pensions			
New single premium stakeholder pensions			
Substitute single premium stakeholder pensions			

Notes to data report

An "Extra Report" is a report under *SUP* 16.8.3R (2) (b).

In the 'otherwise' section, firms must include stakeholder pensions not included in any other section.

Firms must provide (either below or on a separate piece of paper):

- details of any alternative approaches used to calculate figures if this is permitted by the rules in *SUP* 16.8;
- a note of any types of policy for which no figures have been submitted;
- a brief explanation of the effects of inaccuracies on the figures for previous years which have already been supplied; and
- confirmation that regular premium stakeholder pensions have only been treated as in force in accordance with *SUP* 16.8.16R (3).

Expressions which are defined in the Handbook Glossary, or in *SUP* 16.8, have the same meanings in this form.

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). *SUP* 15.6.1R and *SUP* 15.6.4R require 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. *SUP* 16.3.11R requires an *authorised person* to submit reports containing all the information required. *APER* 4.4.6E provides that, where an *approved person* is responsible for reporting matters to the *FSA*, failure to inform the *FSA* of materially significant information of which he is aware is a breach of *Statement of Principle 4*. 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 there is any doubt about the relevance of information, it should be included.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the Notes to this form.

Signature:

Name (BLOCK CAPITALS):.....

The following person should be contacted with any queries that may arise:

Name: Title:

Address:

.....

.....

Telephone Number e-mail:

Annex E
Consequential amendment of AUTH and FREN from 16 May 2002

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

AUTH 5 Ann 3G Amend the following row of the table as shown:

<i>SUP</i>	<u>SUP 16 (Notifications to the FSA)</u> Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is: (a) a <i>bank</i> ; or (b) a <i>depository</i> of an <i>ICVC</i> ; or (c) an <i>OPS firm</i> ; or (d) a <i>trustee</i> of an <i>AUT</i> ; or (e) an <i>insurer</i> with <i>permission</i> to effect or <i>carry out life policies</i> ; <u>or</u> <u>(f) a firm with permission to establish, operate or wind-up a stakeholder pension scheme.</u> (<i>SUP</i> 16.1.)	<u>SUP 16 (Notifications to the FSA)</u> Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is: (a) a <i>depository</i> of an <i>ICVC</i> ; or (b) an <i>OPS firm</i> ; or (c) a <i>trustee</i> of an <i>AUT</i> ; or (d) an <i>insurer</i> with <i>permission</i> to effect or <i>carry out life policies</i> ; <u>or</u> <u>(e) a firm with permission to establish, operate or wind-up a stakeholder pension scheme.</u> (<i>SUP</i> 16.1.)
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FREN 1.2.2G Amend the following row of the table as shown:

Regulatory processes	Supervision manual (<i>SUP</i>)	(n) <i>SUP</i> 16 (Reporting requirements) – in this part sections 16.4 to 16.8 <u>16.7</u> do not apply; <u>section 16.8 applies to societies with permission to establish, operate or wind-up a stakeholder pension scheme</u>
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**COMPLAINTS SOURCEBOOK (TRANSITIONAL INFORMATION
REQUIREMENT) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Complaints sourcebook 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 234 (Funding).
- B. The provisions of the Act relevant to rules and 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 March 2002.

Amendment of DISP

- D. The Complaints sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Complaints Sourcebook (Transitional Information Requirement) Instrument 2002.

By order of the Board

21 February 2002

Annex

In the Transitional Provision Table, add the following additional row:

7	<i>DISP</i> 5.5.1R	R	<p>(1) This transitional provision applies to every <i>firm</i> which falls within any of <i>industry blocks</i> 1, 2, 4, 5, 8, 9, 10 and 12 set out in Table 2 to these transitional provisions, unless it is exempt under <i>DISP</i> 1.1.7R (Exemption).</p> <p>(2) Unless it has already done so, a <i>firm</i> must provide the <i>FSA</i> as soon as reasonably practicable, and in any event by the end of May 2002, addressed for the attention of the Finance and Business Planning Department, with a statement of the total amount of <i>relevant business</i> (measured in accordance with the appropriate tariff base) which it conducted, as at or in the year to 31 December 2001 as appropriate, for each of the <i>industry blocks</i> referred to in (1).</p> <p>(3) If a <i>firm</i> cannot provide a statement of the total amount of <i>relevant business</i> for any relevant <i>industry block</i> by the end of May 2002 under (2)(b), it must provide the best estimate of the amount of <i>relevant business</i> that it conducted.</p>	01.3.02 - 31.5.02	Not yet made
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After the Transitional Provisions table, add the following new table:

2 Table Fee tariffs for industry blocks

Industry Block	Tariff Base
1-Deposit acceptors	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R
2-Firms that undertake insurance activities, subject to prudential regulation only (excluding firms in blocks 13 & 15)	Relevant annual gross premium income
3-Society of Lloyd's	Flat fee
4-Firms that undertake insurance activities, subject to both prudential and conduct of business regulation (long term life insurers) (excluding firms in block 15)	Relevant adjusted annual gross premium income
5-Fund managers (including those holding client money/assets and not holding client money/assets)	Relevant funds under management
6-Operators, Trustees and Depositaries of collective investment schemes	Flat fee
7-Firms dealing as principal	Number of relevant traders
8-Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)
9-Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)
10-Corporate finance advisers	Number of relevant approved persons (controlled function 23)
11-Execution-only arrangers, dealers or brokers	Flat fee
12-Advisory only firms	Number of relevant approved persons (controlled functions 21, 22, 24, 25)
13-Cash plan health providers	Flat fee
15-Friendly Societies whose tax-exempt business represents 95% or more of their total relevant business	Flat fee

3 Table

The industry blocks in Table 2 are the same as the equivalent activity groups set out in part 7 of *SUP* 20 Ann 1R.

Where the tariff base in the table is defined in similar terms as the tariff base for the equivalent activity group set out in part 7 of *SUP 20 Ann 1R*, it must be calculated in the same way as that tariff base except that it takes into account only the *firm's relevant business*.

**CREDIT UNIONS SOURCEBOOK AND CONSEQUENTIAL AMENDMENTS
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Credit unions sourcebook and related parts of the Handbook in the exercise of the following powers in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The provisions of the Act relevant to making rules and referred to above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 July 2002.

Amendments to the Credit unions sourcebook and related parts of the Handbook

- D. (1) The Credit Unions sourcebook is amended in accordance with Annex A to this instrument.
- (2) The Energy Markets Participants, Small Friendly societies, Oil Market Participants, and Service companies special guides are amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Credit Unions Sourcebook and Consequential Amendments Instrument 2002.

By order of the Board
21 February 2002

ANNEX A

Amendments to CRED

- 2.7.1 Delete "*glossary* of definitions contained in *CRED*. This is an extract from the"
- 2.8.5 Delete existing text and replace with "Schedule 3 provides a list of any fees and other payments for which a *credit union* may be liable under *CRED*. As details of fees and other payments appear elsewhere in the *Handbook* we have also included a table of where these can be found. (Note that these will also be summarised in Schedule 3 to the relevant *Handbook* module in which they appear)."
- 4.1.3 Delete the "R" in the margin of this provision and replace it with a "G"
- 13.2.3 Delete the "D" in the margin of this provision and replace it with a "G"
- Delete "An applicant for a *Part IV permission* must apply" and replace it with "*AUTH* 3.9.3D requires an applicant for *Part IV permission* to apply"
- 13.7.3 Delete the "D" in the margin of this provision and replace it with a "G"
- Delete "An applicant for *Part IV permission* must complete" and replace it with "*AUTH* 6.3.1D requires an applicant for *Part IV permission* to complete"
- 13.7.7 Delete the "D" in the margin of this provision and replace it with a "G"
- Delete "Until an application" and replace it with "*AUTH* 6.3.4D requires that, until an application"
- Appendix 2 In table 2.1.1 delete row 2.9 "Glossary of Definitions"
- Schedule 2 Cross-references renumbered.
- Schedule 3 Insert table "The table below summarises fees requirements for credit unions detailed elsewhere in the Handbook."

Description of fee	Reference
<i>FSA fees rules</i> relating to the periodic fee	<i>SUP</i> 20
Schedule of periodic fees payable	<i>SUP</i> 20 Ann 1R Part 2
<i>FSA rules</i> relating to <i>authorisation</i> fees	<i>AUTH</i> 4
Schedule of <i>authorisation</i> fees payable	<i>AUTH</i> 4 Ann 1R
<i>FSCS</i> funding rules	<i>COMP</i> 13
<i>Financial Ombudsman Service</i> funding rules	<i>DISP</i> 5

- Schedule 5 In the table, insert the following as a new penultimate row:

All <i>rules</i> in <i>CRED</i> that require a <i>credit union</i> to have or maintain financial resources	No	No	No
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ANNEX B

Additional consequential amendments

In EMPS 1.2.2G and OMPS 1.2.2G, in the second column of the table, insert "Credit Unions sourcebook (*CRED*)" under "Collective Investment Schemes sourcebook (*CIS*)" and aligned with "None of the other specialist sourcebooks apply" in the third column of the table

In FREN 1.2.2G and SERV 1.2.2G, in the second column of the table, insert "Credit Unions sourcebook (*CRED*)" under "Collective Investment Schemes sourcebook (*CIS*)"

**LISTING RULES (FINANCIAL SERVICES AND MARKETS ACT 2000
AMENDMENT NO. 2) (REVOKING) INSTRUMENT 2002**

The Financial Services Authority revokes the Listing Rules (Financial Services and Markets Act 2000 Amendment No. 2) Instrument 2002 made on 17 January 2002.

By order of the Board
21 February 2002

**LISTING RULES (FINANCIAL SERVICES AND MARKETS ACT 2000
AMENDMENT No. 2) INSTRUMENT 2002**

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Annex 1 to this instrument (Powers exercised).

Commencement

B. This instrument comes into force when the Listing Rules (Regulatory Information Services) Instrument February 2002 comes into force.

Guidance

C. The Financial Services Authority gives the guidance in Annex 2 to this instrument (Listing Rules Guidance Note No. 06).

Amendments to the Listing Rules

D. The Listing Rules are amended in accordance with Annex 3 to this instrument (Amendments to the Listing Rules).

Amendments to the Guidance Manual

E. The UKLA Guidance Manual is amended in accordance with Annex 4 to this instrument (Amendment to the UKLA Guidance Manual).

Citation

F. This instrument may be cited as the Listing Rules (Financial Services and Markets Act 2000 Amendment No. 2) Instrument 2002.

By order of the Board
21 February 2002

ANNEX 1

Powers exercised

1. The following powers and related provisions in the Financial Services and Markets Act 2000 are exercised by the FSA to amend the Listing Rules:
 - (a) sections 74 and 75;
 - (b) section 77;
 - (c) sections 79 to 89 (inc);
 - (d) section 91;
 - (e) section 96;
 - (f) section 98 to 101 (inc).

2. The FSA exercises its power under section 157(1) to give guidance.

ANNEX 2

LISTING RULES - GUIDANCE NOTE No. 06

Status of Guidance Notes

This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.

This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.

Conditions for listing: the nature and duration of business activities

Introduction

- 1.1 This note provides guidance on the factors that the UK Listing Authority will take into account when determining whether an applicant meets the requirement in paragraph 3.6(a) which requires its business to be supported by its historic revenue earning record.
- 1.2 Under paragraph 3.6A of the listing rules, the UK Listing Authority may list the securities of a company which cannot comply with paragraph 3.6 (a). This Guidance Note is also concerned with those applicants that cannot comply with the requirement for the business of an applicant to be supported by its historic revenue earning record and sets out the additional disclosure requirements and additional continuing obligations that may be applied where that requirement cannot be met.
- 1.3 The UK Listing Authority may admit such securities if it is satisfied that the admission of such companies is desirable in the interests of the applicant and investors. The UK Listing Authority may impose additional disclosure requirements and additional continuing obligations to ensure that it is satisfied that investors have the necessary information available to arrive at an informed judgement concerning the applicant and the securities for which listing is sought.
- 1.4 Companies seeking admission through paragraph 3.6A should contact the UK Listing Authority at an early stage to discuss their proposed application for listing.
- 1.5 By publishing this Guidance Note, the UK Listing Authority is seeking to standardise the additional information to be included in listing documents for securities admitted under paragraph 3.6A, improve consistency and promote comparability.

Background

- 2.1 Paragraph 3.6(a) of the listing rules requires an applicant to satisfy a number of criteria before its application for admission to the Official List will be approved. An applicant must:
 - be carrying on as its main activity an independent business either by itself or through one or more of its subsidiary undertakings;

- have control over the majority of its assets;
 - have been in existence for at least three years and earned revenue throughout that period; and
 - have a business which is supported by its historic revenue earning record.
- 2.2 For some applicants, typically those operating in established markets, prospective investors can make a reasonable assessment of what its future prospects might be by considering the company's historic revenue earning record in the light of its own particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate.
- 2.3 The fact that some applicants may not meet this conventional business profile has challenged the principle in paragraph 3.6(a) that the business of an applicant must be supported by its historic revenue earning record. In particular this is true of applicants which are early stage businesses in new and volatile industry sectors. For such companies it may not be possible to make any reasonable assessment of what the future prospects of the applicant might be through any traditional assessment or analysis. Future prospects are much more likely to be determined by projections of demand for the applicant's products and services for which there may be no established pattern or precedent. The listing of such companies may however be desirable in the interests of both the applicant and investors.
- 2.4 Given the forward looking nature of these companies and the volatility of the industry sectors in which they typically operate, it is appropriate to require the inclusion of information in listing documents that more properly reflects these characteristics.
- 2.5 The introduction of chapter 25 of the listing rules has brought the operation of paragraph 3.6A into focus. Under chapter 25, young companies are able to list without having to comply with paragraph 3.6(a). On the other hand, businesses more than three years old, with similar characteristics but which are unable to meet the criteria in chapter 25 as they have been in existence for three years or more, must comply with the requirement in paragraph 3.6(a) and have a business which is supported by its historic revenue earning record. The end result is that such applicants may have been penalised for having a three-year revenue earning record and may have been considered to be ineligible under a strict interpretation of the listing rules.
- 2.6 Pursuant to paragraph 3.6A, we have adopted an approach whereby applicants which are unable to meet the particular requirements of paragraph 3.6(a) may nonetheless be eligible for listing provided they include in their listing documents certain additional information and comply with certain continuing obligations. As many of these prospective applicants have similar characteristics to some companies admitted under chapter 25, these additional disclosures and continuing obligations are based on those contained in that chapter.
- 2.7 Section 3 of this Guidance Note sets out the list of factors that the UK Listing Authority will take into account when determining whether an applicant complies with paragraph 3.6(a). Section 4 of this Guidance Note describes the additional requirements and disclosures that the UK Listing Authority may require when admitting securities to listing under paragraph 3.6A.

Factors that the UK Listing Authority will take into consideration

- 3.1 The business of an applicant that has been in existence for three years or more but which demonstrates one or more of the following characteristics may not satisfy the

criteria in paragraph 3.6(a) requiring the business of an applicant to be supported by its historic revenue earning record:

- a listing document that places significant emphasis on the development or marketing of products or services for which there is little evidence in the issuer's historic revenue earning record;
- evidence that the value of the business on admission will be determined, to a significant degree, by reference to future developments for which there has been little evidence to date in the historic revenue earning record presented in the listing document;
- an absence of evidence supporting a record of consistent revenue or profit growth throughout the historic revenue earning record presented in its listing document;
- evidence that the business of the applicant has undergone a significant change in its scale of operations during the revenue earning record which resulted in significant increases in revenue and/or profits or whether the listing document indicates that the applicant is expected to undergo such a change;
- evidence that the applicant is or has been loss-making or generating negative operating cash flows during the whole or part of the track record period;
- evidence that the relationship between the value of the business and its revenue or profit earning record is significantly different from those of similar companies in the same sector; or
- evidence of unusual levels of research and development expenditure or unusual levels of capital expenditure.

3.2 The criteria set out above are often evident in early stage businesses or in businesses that have spent a significant part of the track record period developing products which they are yet to exploit or to profit from. In such cases it is likely that the marketing undertaken by the applicant's advisers before admission will be geared very much towards the prospects for the development of the applicant's products and markets for which there may have been little actual evidence during the track record period. For such an applicant it may be in the interests of the applicants and investors that it be admitted to listing if the information that investors may reasonably require to make an informed decision on the securities will be available.

3.3 These characteristics may therefore be indicative that paragraph 3.6(a) is not satisfied and that the applicant may therefore have to rely on the exercise of discretion under paragraph 3.6A leading to a requirement for an applicant to include the information set out in the appendix in its listing document. They are not however exhaustive and applicants displaying some of these or similar characteristics should contact the UK Listing Authority at an early stage.

Additional information that may be required to be included in listing documents and continuing obligations

4.1 The UK Listing Authority will consider all relevant circumstances when determining whether to exercise the discretion to admit securities to listing under paragraph 3.6A and whether additional information should be disclosed or additional continuing obligations should be imposed.

4.2 Having taken into account the factors set out in paragraph 3.1 of this Guidance Note and any other relevant considerations drawn to the attention of the UK Listing

Authority by the sponsor or the issuer in relation to the issuer's application to the Official List, the UK Listing Authority may impose additional requirements and may require the disclosure as described in the appendix to be included in the issuer's listing document.

- 4.3 Where additional information is required to be included in the issuer's listing document, the applicant may also be required to comply with the continuing obligations set out in paragraphs 10 to 13 of the appendix to this Guidance Note.
- 4.4 In assessing whether the additional disclosures and continuing obligations set out in the Guidance Note will apply, the UK Listing Authority reserves the right to require the presentation to it of information such as market research, financial projections and roadshow presentation material to assist it in assessing the eligibility of an applicant.

Other matters

- 5.1 These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.
- 5.2 Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7943 0333.

Related rules

- 6.1 3.6(a), 3.6A.

Appendix

The UKLA will be minded to impose the conditions in this Appendix as a condition of exercising its power referred to in rule 3.6A.

Conditions for listing

1. The financial record for the period of existence of a business activity must be presented for up to three years and the latest accounts, if any, must be in respect of a period ended not more than six months prior to the date of the listing particulars. The company must comply with paragraph 3.3(b) to (e) in respect of this financial information. Where a company chooses to include quarterly report information since the latest accounts, this must also be prepared in accordance with paragraphs 3.3(b) to (e).
2. The UK Listing Authority reserves the right to require the presentation to it of material such as market research, financial projections and road show presentations to assist it assess the eligibility of an applicant. This information may be shared with the UK Listing Authority's independent expert advisers.

Non-financial operating data

3. When an issuer listed under the provisions of this Guidance Note publishes non-financial operating data in listing particulars, that data must have been derived from sources covered by the confirmation required under paragraph 25.5.
4. Non-financial operating data includes any information, statistics, ratios or other data which purports to represent the performance of the issuer's business activities and which cannot be sourced or derived from the issuer's financial data included in the listing particulars pursuant to the requirements of chapter 12.
5. Any non-financial operating data must be clearly identified as such in the listing particulars and must be presented in a summarised form together with details of the definitions and basis of preparation adopted. The listing particulars must clearly state the purpose for which the information has been prepared. The listing particulars should also include a clear statement that the non-financial operating data is that used by the directors in managing the issuer's business and that such data will be reported in subsequent interim and annual reports.
6. Where non-financial operating data is published in the listing particulars, the sponsor must:
 - (a) obtain written confirmation from the issuer that the non-financial operating data published in the listing particulars has been properly extracted from the issuer's records; and
 - (b) be satisfied that this confirmation has been given after due and careful enquiry by the issuer.
7. In the case of a new applicant to which this Guidance Note applies or, in exceptional circumstances where the UK Listing Authority so requires of a listed issuer to which this Guidance Note applies, the sponsor must:

- (a) obtain written confirmation from the issuer that the directors have established procedures which provide a reasonable basis for them to make proper judgements as to the reporting of non-financial operating data of the issuer and its group; and
- (b) be satisfied that this confirmation has been given after due and careful enquiry by the issuer.

Listing Particulars

8. The listing particulars of a new applicant applying the provisions of this Guidance Note must comply with the requirements of chapter 5 and must contain:
 - (a) in a separate prominent section, entitled “Business development and prospects”, a detailed explanation of the issuer’s business plan and strategic objectives, including, in particular, the development in the foreseeable future of new sales markets, new products and/or services, the introduction of new methods of business, processes or technology, and the assumptions upon which the plan is based. This section should include the issuer’s commentary on key milestones in the development of the business;
 - (b) in another separate prominent section, entitled “Risk factors”, full details and an explanation of the risks associated with the business and in particular, any factors which could have a substantial adverse effect on the issuer’s financial condition or which could endanger the issuer’s business success.
9. The listing particulars must also give, in relation to each of the new applicant’s products and services the development of which may have a material effect on the future prospects of the company, a full description of:
 - (a) the type of product and/or services being developed;
 - (b) the expected advantages of the product and/or services including any appropriate technical information;
 - (c) the nature and effectiveness of the research and development undertaken, if relevant;
 - (d) the development status of the product and/or service including the results of validations, if relevant;
 - (e) in relation to any product or technologies undergoing validation, any material information relating to the prospects of the successful completion of such validation;
 - (f) all material information relating to any relevant intellectual property rights of the company, including:
 - (i) the extent to which such rights are registered or unregistered;
 - (ii) the extent to which such rights comprise confidential or proprietary information;
 - (iii) the exact status of any patent position, which must include

details of the nature of the applications filed, the expected timetable in relation to any patents pending and the potential impact of any significant prior applications by third parties;

- (iv) the copyright position in relation to any software which is a part of or connected with the product;
 - (v) any third party rights which could affect the development or operation of the company's business; and
 - (vi) the extent to which the company relies on any intellectual property rights of third parties;
- (g) the extent to which the development of the company's business is dependent on any key individuals, identifying the individuals concerned;
- (h) the current or expected market competitors;
- (i) the basis of any claimed market potential; and
- (j) the future strategy of the company regarding the generation of significant revenues from the product and/or services, including:
- (i) whether the company intends to implement the strategy itself or in collaboration with others;
 - (ii) the extent to which the company will need to rely on third parties to exploit the company's products or services;
 - (iii) where the company intends to collaborate with others in relation to the implementation of the strategy, details (including the consideration and parties) and the financial effect of any agreement or intended agreement; and
 - (iv) if the strategy varies according to the expected major markets for the product, an explanation of any geographical or segmental variants.

Continuing obligations

Quarterly reporting

10. The issuer must prepare and publish (by notifying it to a Regulatory Information Service) a report, on a group basis where relevant, on its activities for each quarter of each financial year. The quarterly report shall contain financial data and non-financial operating data relating to the business operations and the results of the issuer for the reporting period, including explanatory notes thereto.
11. The first quarterly report shall cover the first three months, the half-yearly report shall cover the first six months and the third quarterly report shall cover the first nine months of the financial year. A fourth quarterly report will not be required if the fourth quarter ends with the financial year end.
12. First and third quarterly reports shall be prepared in accordance with the provisions of paragraphs 12.46 to 12.60. Where the figures in the quarterly report have been audited or reviewed by auditors pursuant to guidance

published by the Auditing Practices Board on Review of Interim Financial Information, the report of the auditors must be reproduced in full.

Non-financial operating data

13. Where the issuer's listing particulars contain non-financial operating data as key measures of the development of the company's business, the issuer must include comparative data for all such figures in its subsequent quarterly and half-yearly reports and in the annual financial statements, unless otherwise agreed by the UK Listing Authority.

ANNEX 3

Amendments to the Listing Rules

The following parts of the listing rules are amended as shown (a sideline indicates where the change occurs, underlining indicates new text, striking through indicates deleted text).

DEFINITIONS

Document Viewing Facility	a place in or near the City of London nominated by the UK Listing Authority and identified on the Website at which the documents referred to in the listing rules as being documents to be made available at the Document Viewing Facility can be inspected by the public
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APPENDIX TO CHAPTER 1

PROVISIONS OF LISTING RULES FOR WHICH SAFE HARBOURS ARE PROVIDED

Disclosure of information which is not generally available	8.3 9.4, 9.5, 9.15 17.25, 17.26, 17.67 paragraphs 11 and 12 of the Model Code
Standards of care	9.3A 17.24A 23.22(a) and 23.58A
Timing of announcements, documentation and dealings	9.4, 9.10(j), 9.11, 9.12, 9.14, 9.35 12.40, 12.48 15.9, 15.15 16.14 17.25, 17.33, 17.54 23.22(g), 23.61
Content of announcements	9.1, 9.2 14.1(a) and (b) 17.22, 17.23 23.22(a), 23.58
Purchase of own securities	15.1(b)

Applications for listing

- 2.12 In the case of any application for listing which requires the production of listing particulars, the sponsor must complete the declaration by a sponsor in the form issued by the UK Listing Authority (see schedule 4A) confirming that, to the best of its knowledge and belief, it has performed all the relevant services set out in chapter 2 with due care and skill and has satisfied itself having made due and careful enquiry of the issuer and its advisers:
- (a) about the matters described in paragraph 2.13 and, if relevant, paragraphs 2.15, 2.17, 2.20, 25.5 and 25.12 and, in the case of a new applicant, paragraph 2.16;

General Obligation of disclosure for companies

- 9.5 The categories of recipient referred to in paragraph 9.4 are:
- (a) the company's advisers and advisers of any other persons involved or who may be involved in the development or matter in question;
- (b) persons with whom the company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or placees of securities of the company);

Copies of circulars and resolutions

- 9.31 A company must forward to the UK Listing Authority two copies of:
- (a) all circulars, notices, reports, announcements or other documents to which the listing rules apply at the same time as they are issued; and
- (b) all resolutions passed by the company other than resolutions concerning ordinary business at an annual general meeting without delay after the relevant annual general meeting;
- for publication by making them available to the public for inspection at the Document Viewing Facility.
- 9.32 ~~Paragraph deleted—August 1995.~~ A company must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 9.31, unless the full text of the document is provided to a Regulatory Information Service.

Copies of circulars

- 17.44 An overseas company must send by airmail, or an equivalent service that is no slower, to the UK Listing Authority at the same time as they are issued, two copies of any circular, notice, report, announcement or other document issued by the company in compliance with the listing rules or the requirements of any other stock exchange on which it has its securities listed, or any competent authority or equivalent regulatory authority which regulates it, for publication by making them available to the public for inspection at the Document Viewing Facility.
- 17.44A A company must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 17.44, unless the full text of the document is provided to a Regulatory Information Service.

Continuing obligations

23.23 Issuers other than states and their regional and local authorities must lodge with the UK Listing Authority two copies of any document required pursuant to paragraph 23.22 (at the same time as they are issued) for publication by making them available to the public for inspection at the Document Viewing Facility.

23.23A An issuer must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 23.23, unless the full text of the document is provided to a Regulatory Information Service.

Copies of circulars

23.65 The issuer must send by airmail or an equivalent service that is no slower to the UK Listing Authority at the same time as they are issued, two copies of any circular, notice, report or other document issued by the issuer in compliance with the requirements of the listing rules or any stock exchange on which it has its securities listed, or any competent authority or equivalent regulatory authority which regulates it, for publication by making them available at the Document Viewing Facility.

23.65A An issuer must, without delay, notify a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility under paragraph 23.65, unless the full text of the document is provided to a Regulatory Information Service.

Continuing obligations

24.38 Issuers of warrants (other than states) are subject to the same continuing obligations as issuers of specialist debt securities, as set out in paragraphs 23.22, ~~and 23.23~~ and 23.23A, with the exception of those relating to interest (paragraph 23.22(d)) and new issues (paragraph 23.22(e)). States are subject to the requirements referred to in paragraph 22.30 subject to paragraph 22.31 with the exception of that relating to interest (paragraph 22.30(d)).

Continuing obligations

24.66 Issuers of certificates representing debt securities are subject to the same continuing obligations as issuers of specialist debt securities, as set out in paragraphs 23.22, ~~and 23.23~~ and 23.23A, with the exception of those relating to new issues (paragraph 23.22(e)) and publication of annual accounts (paragraph 23.22(g)). The obligation relating to repurchases (paragraph 15.13) referred to in paragraph 23.22(p) only applies in circumstances where the proposed repurchase will affect the holders of the certificates.

SCHEDULE 3B

**APPLICATION FOR ADMISSION OF SECURITIES TO THE OFFICIAL LIST
(SPECIALIST AND MISCELLANEOUS SECURITIES)**

To: UK Listing Authority _____ 20__

Details of securities to be listed

<p>_____ [insert name of issuer(s)] (“the issuer(s)”) hereby apply for the securities detailed below to be admitted to the Official List of the UK Listing Authority subject to the listing rules of the UK Listing Authority.</p>
<p>Amounts and descriptions of securities for which application is now being made (where the securities are to be issued under a programme, give a description of the programme and the maximum amount of securities which may be listed at any one time):</p>
<p>Type of issue for which application is being made</p>

<p>Please specify where the issuer is listed and the nature of the listing</p>
<p>Primary</p>
<p>Secondary</p>

<p>Please specify on which RIEs the issuer has applied to have its securities traded</p>

Confirmation

We acknowledge our obligations arising under the listing rules and the legal implications of listing under the Financial Services and Markets Act 2000. Accordingly, we confirm that:

- (a) all the conditions for listing in the listing rules which are required to be fulfilled prior to application have been fulfilled in relation to the issuer(s) and the securities for the admission of which application is now made;
- (b) all information required to be included in the listing particulars/prospectus* has been included therein, or, if the final version has not yet been submitted (or approved), will be included therein before it is so submitted; and
- (c) all the documents and information required to be included in the application have been or will be supplied in accordance with the listing rules and all other requirements of the UK Listing Authority in respect of the application have been or will be complied with.

We undertake to comply with the listing rules of the UK Listing Authority from time to time so far as applicable to the issuer(s). We acknowledge the obligation to comply with the continuing obligations and the requirements in paragraphs 5.14 to 5.16 to publish supplementary listing particulars or a supplementary prospectus if, at any time after listing particulars or a prospectus have been approved and before dealings in any securities covered by this application commence, the issuer(s) becomes aware that:

- (a) there has been a significant change affecting any matter contained in the listing particulars or prospectus; or
- (b) a significant new matter has arisen the inclusion of information in respect of which would have been required to be mentioned in the listing particulars or prospectus if it had arisen at the time of their preparation.

Signed

Director, secretary or other duly authorised officer, agent or attorney for and on behalf of

Name of Issuer(s)

To be completed in all cases

Application to be heard on:

Admission expected to be effective on:

Name(s) of contact(s) at issuer regarding the Application

Telephone number:

ANNEX 4

Amendments to the Guidance Manual

The following parts of the Guidance Manual are amended as shown (a sideline indicates where the change occurs and underlining indicates new text, striking through indicates deleted text).

Appendix 2 of the Guidance Manual

The Price Sensitive Information Guide

Annex 1

Extracts from the Listing Rules

Publication of information

- 1.5 The UK Listing Authority may, at any time, require an issuer to publish such information in such form and within such time limits as it considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.
- 1.6 If an issuer fails to comply with a requirement under paragraph 1.5 the UK Listing Authority may itself publish the information after having given the issuer an opportunity to make representations to the UK Listing Authority as to why the information should not be published.

APPENDIX TO CHAPTER 1 OF THE LISTING RULES

PROVISIONS OF LISTING RULES FOR WHICH SAFE HARBOURS ARE PROVIDED

Disclosure of information which is not generally available	8.3 9.4, 9.5, 9.15 17.25, 17.26, 17.67 paragraphs 11 and 12 of the Model Code
Standards of care	9.3A 17.24A 23.22(a) and 23.58A
Timing of announcements, documentation and dealings	9.4, 9.10(j), 9.11, 9.12, 9.14, 9.35 12.40, 12.48 15.9, 15.15 16.14

	17.25, 17.33, 17.54 23.22(g), 23.61
Content of announcements	9.1, 9.2 14.1(a) and (b) 17.22, 17.23 23.22(a), 23.58
Purchase of own securities	15.1(b)

Appendix 3 of the Guidance Manual

The Continuing Obligations Guide

Circulars

7.23 **Listed companies** must:

- a) seek prior approval from the UKLA before any circular, save those defined as of a routine nature, may be circulated or made publicly available;
- b) support their application for prior approval by providing the UKLA with three copies of (as applicable) the:
 - (i) circular;
 - (ii) working capital letter and confirmation of independence in the form set out in Schedule 1A from the sponsor; and
 - (iii) statement of adjustments.
- c) ensure the circular provides a clear and adequate explanation of the subject matter;
- d) ensure two copies of any circular in its final form (whether or not required to be submitted to the UKLA for prior approval) are lodged with the UKLA for publication by making them available to the public at the Document Viewing Facility at the same time as it is despatched to shareholders; and
- e) notify, without delay, a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility, unless the full text of the document is provided to a Regulatory Information Service.

**LISTING RULES (REGULATORY INFORMATION SERVICES) INSTRUMENT
FEBRUARY 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers in section 74(4) of the Financial Services and Markets Act 2000 (The official list).

Commencement

- B. This instrument comes into force on 15 April 2002.

Amendments to the Listing Rules

- C. The Listing Rules are amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Listing Rules (Regulatory Information Services) Instrument February 2002.

By order of the Board
21 March 2002

ANNEX

The Listing Rules are amended as shown in the document attached (sidebar indicates new text, striking through indicates deleted text).

SCHEDULE 12

REGULATORY INFORMATION SERVICES

~~List of services to be added~~ Business Wire Regulatory Disclosure provided by Business Wire
Newslink Financial provided by Newslink
PimsWire provided by Pims
PR Newswire Disclose provided by PR Newswire
RNS provided by the London Stock Exchange

The above services have been included in accordance with criteria published by the FSA in ~~"Proposed changes to the UK mechanism for disseminating regulatory information by listed companies. Feedback on CP92 and "made" text"~~ appendix 5 of the UKLA Guidance Manual.

WHISTLEBLOWING INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority amends Senior Management Arrangements, Systems and Controls (“SYSC”) in the exercise of the powers listed in Schedule 4 to SYSC (Powers exercised).
- B. The provisions of the Financial Services and Markets Act 2000 (the “Act”) relevant to rules and listed in that Schedule are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 May 2002.

Amendments to Senior Management Arrangements, Systems and Controls

- D. SYSC is amended by inserting, after SYSC 3, the provisions in Annex A to this instrument.

Consequential amendments to SYSC, AUTH and CRED

- E. SYSC, AUTH (the Authorisation manual) and CRED (the Credit Unions sourcebook) are amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Whistleblowing Instrument 2002.

By order of the Board
21 March 2002

Annex A

Chapter 4

Guidance on Public Interest Disclosure Act: Whistleblowing

4.1 Application and purpose

Application

- 4.1.1 **G** This chapter is relevant to every *firm* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

- 4.1.2 **G** (1) The purposes of this chapter are:
- (a) to remind *firms* of the provisions of PIDA; and
 - (b) to encourage *firms* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.
- (2) In this chapter "worker" includes, but is not limited to, an individual who has entered into a contract of employment.
- 4.1.3 The *guidance* in this chapter concerns the effect of PIDA in the context of the relationship between *firms* and the FSA. It is not comprehensive guidance on PIDA itself.

4.2 Practical measures

Effect of PIDA

- 4.2.1 **G** (1) Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports to preclude the worker from making a protected disclosure (that is, "blow the whistle").
- (2) In accordance with section 1 of PIDA:
- (a) a protected disclosure is a qualifying disclosure which meets the relevant requirements set out in that section;
 - (b) a qualifying disclosure is a disclosure, made in good faith, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a "failure") has been, is being, or is likely to be, committed:
 - (i) a criminal offence; or
 - (ii) a failure to comply with any legal obligation; or
 - (iii) a miscarriage of justice; or
 - (iv) the putting of the health and safety of any individual in danger; or
 - (v) damage to the environment; or
 - (vi) deliberate concealment relating to any of (i) to (v);
- it is immaterial whether the relevant failure occurred, occurs or would

occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

Internal Procedures

- 4.2.2 G**
- (1) *Firms* are encouraged to consider adopting (and encouraged to invite their *appointed representatives* 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*.
 - (2) Smaller *firms* may choose not to have as extensive procedures in place as larger *firms*. For example, smaller *firms* may not need written procedures. The following is a list of things that larger and smaller *firms* may want to do.
 - (a) For larger *firms*, appropriate internal procedures may include:
 - (i) a clear statement that the *firm* takes failures seriously; (see SYSC 4.2.1 G(2)(b));
 - (ii) an indication of what is regarded as a failure;
 - (iii) respect for the confidentiality of workers who raise concerns, if they wish this;
 - (iv) an assurance that, where a protected disclosure has been made, the *firm* will take all reasonable steps to ensure that no *person* under its control engages in victimisation;
 - (v) the opportunity to raise concerns outside the line management structure, such as with the Compliance Director, Internal Auditor or Company Secretary;
 - (vi) penalties for making false and malicious allegations;
 - (vii) an indication of the proper way in which concerns may be raised outside the *firm* if necessary (see (3));
 - (viii) providing access to an external body such as an independent charity for advice;
 - (ix) making whistleblowing procedures accessible to staff of key contractors; and
 - (x) written procedures.
 - (b) For smaller *firms*, appropriate internal procedures may include:
 - (i) telling workers that the *firm* takes failures seriously (see SYSC 4.2.1.G(2)(b)) and explaining how wrongdoing affects the organisation;
 - (ii) telling workers what conduct is regarded as a failure;
 - (iii) telling workers who raise concerns that their confidentiality will be respected, if they wish this;

- (iv) making it clear that workers will be supported and protected from reprisals;
 - (v) nominating a senior officer as an alternative route to line management and telling workers how they can contact that individual in confidence;
 - (vi) making it clear that false and malicious allegations will be penalised by the *firm*;
 - (vii) telling workers how they can properly blow the whistle outside the *firm* if necessary (see (3));
 - (viii) providing access to an external body for advice such as an independent charity; and
 - (ix) encouraging managers to be open to concerns.
- (3) (a) *Firms* should also consider telling workers (through the *firm's* internal procedures, or by means of an information sheet available from the *FSA's* website, or by some other means) that they can blow the whistle to the *FSA*, as the regulator prescribed in respect of financial services and markets matters under PIDA.
- (b) The *FSA* will give priority to live concerns or matters of recent history, and will emphasise that the worker's first port of call should ordinarily be the *firm* (see Frequently Asked Questions on www.fsa.gov.uk/whistle/).
- (c) For the *FSA's* treatment of confidential information, see *SUP 2.2.4G*.

Link to fitness and propriety

- 4.2.3 G** The *FSA* would regard as a serious matter any evidence that a *firm* had acted to the detriment of a worker because he had made a protected disclosure (see *SYSC 4.2.1G(2)*) about matters which are relevant to the functions of the *FSA*. Such evidence could call into question the fitness and propriety of the *firm* or relevant members of its staff, and could therefore, if relevant, affect the *firm's* continuing satisfaction of *threshold condition 5* (Suitability) or, for an *approved person*, his status as such.

Annex B
Consequential amendments to SYSC, AUTH and CRED

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

SYSC 1.1

SYSC 1.1 Change the title of this section to “Application of SYSC 2 and SYSC 3”

Before SYSC 1.1.1R, insert:

Purpose of this section

1.1.-2G This section sets out the application of *SYSC 2* (Senior management arrangements) and *SYSC 3* (Systems and controls).

1.1.-1G The application of *SYSC 4* (Guidance on Public Interest Disclosure Act: Whistleblowing) is set out in *SYSC 4.1.1G* (Application).

SYSC 1.1.1R Amend as shown below:

SYSC 2 and SYSC 3 ~~apply~~ applies to every *firm* except that:

...

(2) for an *incoming EEA firm* *SYSC 2 and SYSC 3* ~~do~~ does not apply;

...

SYSC 1.1.2G(2) Amend as shown below:

SYSC 1.1.7R and *SYSC 1.1.10R* (Where?) further restrict the territorial application of *SYSC 2* and *SYSC 3* for an *incoming EEA firm*, ...

SYSC 1.1.3R Amend as shown below:

SYSC 2 and SYSC 3 ~~apply~~ applies with respect to the carrying on of:

...

SYSC 1.1.4R Amend as shown below:

SYSC 2 and SYSC 3 also ~~apply~~ applies with respect to the *communication* and *approval* of *financial promotions* which:

...

SYSC 1.1.7R Amend as shown below:

SYSC 2 and SYSC 3 ~~apply~~ applies with respect to ... in which case *SYSC 2 and SYSC 3* ~~apply~~ applies with ...

SYSC 1.1.8G Amend as shown below:

... Therefore, SYSC 2 and SYSC 3 ~~apply~~ applies to the *custody* activities ...

SYSC 1.1.9R Amend as shown below:

SYSC 2 and SYSC 3 also ~~apply~~ applies in a *prudential context*

SYSC 1.1.11G(1) Amend as shown below:

In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to ...

SYSC 1.1.12R Amend as shown below:

A contravention of the *rules* in SYSC 2 and SYSC 3 does not ...

AUTH 5 Ann 3G

AUTH 5 Ann 3G Amend the following row of Table 2 as shown:

<p>SYSC</p>	<p><u>SYSC 1 contains application provisions only. SYSC 2 and SYSC 3 apply</u> As set out in SYSC 1.1.1R(1):</p> <p>(1) SYSC 2.1.1R and SYSC 2.1.2G do not apply;</p> <p>(2) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question in not reserved by a European Community instrument to the <i>firm's Home State regulator</i>; and</p> <p>(3) SYSC 3 applies, but only in so far as responsibility for the matter in question in not reserved by a European Community instrument to the <i>firm's Home State regulator</i>.</p> <p>SYSC 1.1.7R (Where?) further restricts the territorial application of <u>SYSC 1 to SYSC 3</u> for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in SYSC 2.1.6G, Question 12.</p> <p><u>SYSC 4 applies to the extent that the Public Interest Disclosure Act 1998 applies to the firm.</u></p>	<p><u>SYSC 1 to SYSC 3</u> does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (SYSC 1.1.1R(2)).</p> <p><u>SYSC 1 to SYSC 3</u> have <u>has</u> limited application for activities which are not carried on from a <i>UK</i> establishment (see SYSC 1.1.7R).</p> <p>Otherwise, see column (2).</p>
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CRED 4.1

CRED 4.1.3G Amend as shown below:

SYSC 1 to 3 apply to all *credit unions* in respect of the carrying on of their *regulated activities* and unregulated activities in a *prudential context*. *SYSC 4* applies to all *credit unions* without restriction.

CRED 4.1.8G After CRED 4.1.7G insert:

4.1.8 G *SYSC 4* reminds *firms* of the provisions of the Public Interest Disclosure Act 1998 and encourages them to consider adopting appropriate internal whistleblowing procedures. This applies equally to *credit unions* but is not the subject of further *guidance* in this chapter.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(AMENDMENT No 3) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for insurers 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).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force immediately.

Amendment of the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Amendment No 3) Instrument 2002.

By order of the Board
21 March 2002

ANNEX

Rule 10.2(2) is substituted by the following:

"The declaration required by (1) must also include separate statements in respect of each of the *ultimate insurance parent undertaking* and *ultimate EEA insurance parent undertaking* of:

- (a) the value as determined in accordance with the *Valuation of Assets Rules* (other than rule 4.14(a) to (c)) of its *surplus assets*, less:
 - (i) any provision for *related undertakings* valued on the basis of rule 5.3A (except to the extent already included in the value of *surplus assets*), and
 - (ii) where the *surplus assets* are valued at nil, the amount of any deficit in the assets available to cover:
 - (A) any liabilities not already provided for, and
 - (B) the *notional required minimum margin* (if any) of the *ultimate insurance parent undertaking* or, as the case may be, the *ultimate EEA insurance parent undertaking*; and
- (b) if the result of the calculation in (a) is negative, the reasons why such deficit has arisen and any remedial action taken or planned."

LATE SUBMISSION OF REPORTS INSTRUMENT 2002

Powers exercised

A. The Financial Services Authority amends the Enforcement manual, Decision making manual, Supervision manual, Lloyds sourcebook, Interim prudential sourcebook for investment business and Credit Unions sourcebook 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 210 (Statements of policy);

(5) section 318 (Exercise of powers through Council); and

(6) section 395(5) (The Authority's procedures).

B. The provisions of the Act relevant to rules and listed above are specified for the purposes of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force as follows:

(1) the amendments in Annexes C, D, E and F come into force on 18 April 2002;

(2) the remainder comes into force on 11 April 2002.

Amendments to the Handbook

D. The Enforcement manual is amended in accordance with the Annex A to this instrument.

E. The Decision making manual is amended in accordance with Annex B to this instrument.

F. The Supervision manual is amended in accordance with Annex C to this instrument.

G. The Lloyds sourcebook is amended in accordance with Annex D to this instrument.

H. The Interim prudential sourcebook for investment business is amended in accordance with Annex E to this instrument.

I. The Credit Unions sourcebook is amended in accordance with Annex F to this instrument.

Citation

I. This instrument may be cited as the Late Submission of Reports Instrument 2002.

By order of the Board
21 March 2002

ANNEX A

1. In the transitional provisions of ENF, delete all the text and insert the following:

Transitional provisions

1. Table Transitional provisions applying to the Enforcement manual

(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
1	<i>ENF 13 Ann 1G</i>	G	<p>(1) Paragraph (2) applies to every <i>firm</i> except a <i>firm</i> which becomes <i>authorised</i> after 1 December 2001.</p> <p>(2)</p> <p>(a) Except for a <i>firm</i> within (b), the sum of all the annual fees invoiced for the period 1 April 2001 to 31 March 2002 (or any part for which the <i>firm</i> was authorised) by the <i>firm's previous regulator</i> or <i>regulators</i> is to be treated as the annual fee payable by the <i>firm</i>.</p> <p>(b) In the case of a <i>firm</i> which was formerly regulated by</p>	Until the <i>FSA</i> has fully invoiced the <i>firm</i> in respect of its annual fee for the period 1 April 2002 to 31 March 2003	<i>Commencement</i>

			a <i>recognised professional body</i> in respect of the carrying on of investment business under the Financial Services Act 1986, the annual fee last invoiced by the <i>firm's recognised professional body</i> is to be treated as the annual fee payable by the <i>firm</i> .		
2	<i>ENF</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. Amend ENF 13.5 as follows (underlining indicates new text, striking through indicates deleted text):

ENF 13.5.1G Amend the two introductory sentences preceding ENF 13.5.1G (1) as follows:

This section sets out the *FSA's* policy and procedures in relation to financial penalties for late submission of reports. It applies specifically to reporting by *firms* required under all *rules* (not including the *listing 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 various types of reports and other *documents* (references in *ENF* 13.5 to 'reports' include these other *documents*), including annual *controllers'* reports, annual *close link* reports, compliance reports, financial reports, accounts and balance sheets, *actuaries'* and *auditors'* reports, and certificates and~~

statements that must be submitted to the *FSA* in accordance with: The following is a list of the main periodic reporting rules (the list may not be comprehensive) and those other provisions:

ENF 13.5.1G (3) Amend as follows:

(3) ~~*IPRU(FSOC) 3.1(8)R*~~, *IPRU(FSOC) 3.1(7)R*, ~~*IPRU(FSOC) 3.2(5)R*~~ (Management and control), *IPRU(FSOC) 5.1(2)R*, and *IPRU(FSOC) 5.2(2)R*, and *IPRU(FSOC) 5.2(3)R* (Prudential reporting);

ENF 13.5.1G (4) Amend as follows:

(4) ~~*DISP 1.1.8R*~~, *DISP 1.5.4 R* to *DISP 1.5.7 R*, (Reporting complaints to the FSA) ~~Complaint handling procedures for firms~~, ~~*DISP 1.5.11 R*~~, ~~*DISP 5.1.7 R*~~ and *DISP 5.5.1 R* (Information requirement) ~~{(Draft Financial Ombudsman Service Funding rules)}~~; and

ENF 13.5.1G (5) Amend as follows:

(5) *LLD 3.3.1R* to *LLD 3.3.2R* (The Central Fund), and *LLD 4.3.1R* to *LLD 4.3.2R* (Capacity transfer market) and the *rules* set out in *LLD 15.2.1R* and *LLD 15.10.2R* (Reporting by the ~~*Society*~~ Society);

ENF 13.5.1G Add, after subparagraph (5), the following subparagraphs:

(6) the reporting requirements in the pensions review provisions and *FSAVC* review provisions; that is, the provisions of the deemed scheme under the Financial Services and Markets Act 2000 (Transitional Provisions) (Review of Pensions Business) Order 2001 (SI 2001/2512); and

(7) *IPRU(INV) 4.4.2D* to *IPRU(INV) 4.4.5D* (Financial resource requirements).

ENF 13.5.1G Add after subparagraph (7) the following paragraph:

References in ENF 13.5 to 'reports' include all the various types of reports and other documents, including annual controllers reports, annual close links reports, compliance reports, financial reports, persistency reports, accounts and balance sheets, and actuary and auditor reports that must be submitted to the FSA in accordance with the rules and other provisions specified in (1) to (7).

ENF 13.5.3G (2) Amend as follows:

(2) There may, however, be exceptional circumstances in which the FSA considers that it is appropriate not to seek a penalty, or to impose a lower penalty than the one indicated by the scale. This may be appropriate if the firm is an individual. 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 ENF 13.3.3G (3). It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute an exceptional circumstance for this purpose.

ENF 13.5.5AG Insert the following new paragraphs after ENF 13.5.5G:

ENF 13.5.5AG In applying the guidance in ENF 13.5, 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.

ENF 13.5.5BG In most late reporting cases, it will not be necessary for the FSA to appoint an investigator under its powers discussed in ENF 2 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 (see ENF 2.5.12 G) for late-reporting disciplinary action.

ENF 13.5.5CG A failure by a *firm* to submit a report by the due date may indicate wider problems within the *firm*, for which more serious disciplinary sanctions or other enforcement action (see ENF 11.2.3G) or both, may be appropriate.

ENF 13.5.6G

Amend as follows:

The FSA will use the decision making procedure set out in DEC 4.5.2G to DEC 4.5.6G ~~When it~~ decides whether to impose a financial penalty for the late submission of a report. It will use this procedure (whether the period of delay is more than or less than 28 *business days*, including if no submission has been made at all), ~~the FSA will use the decision making procedure set out in DEC.~~

3. Amend ENF 13 Annex 1G as follows (underlining indicates new text, striking through indicates deleted text):

ENF 13 ANN 1G Indicative scale of financial penalties for ~~returns~~ reports no more than 28 business days late (see ENF 13.5)

1 Table Indicative scale of financial penalties for ~~returns~~ reports no more than 28 business days late

Number of working business days late	Annual fees payable by firm				
	Note				
	<10K	<20K	<50K	<100K	>100K
	<u>£1 to less</u>	<u>£10,000 to</u>	<u>£20,000 to</u>	<u>£50,000 to</u>	<u>£100,000</u>
	<u>than</u>	<u>less than</u>	<u>less than</u>	<u>less than</u>	<u>or greater</u>
	<u>£10,000</u>	<u>£20,000</u>	<u>£50,000</u>	<u>£100,000</u>	

Number of working business days late	Annual fees payable by firm				
	Note				
22-28	400	800	2000	4000	6000
15-21	300	600	1500	3000	4500
8-14	200	400	1000	2000	3000
1-7	100	200	500	1000	1500

Note

1. For this purpose, the annual fee payable by the *firm* is the annual fee for the most recent financial year for which the *FSA* has fully invoiced the *firm* before the date on which the relevant report first became late.

2. Where the *firm* first becomes *authorised* after 1 December 2001, and at the time the report first becomes late the *firm* has not previously been fully invoiced by the *FSA* for an annual fee, the annual fee of the *firm* will be treated as less than £10,000.

ANNEX B

Amend DEC 4.5.2G as follows (underlining indicates new text, striking through indicates deleted text):

DEC 4.5.2G (2) Amend as follows:

(2) not directly involved in the day-to-day supervision of the *firm* concerned, or in establishing the evidence on which the decision is based.

Amend DEC Appendix 1 as follows:

DEC Appendix 1.4.2G In sub-paragraph (3), replace the full stop with “; or” and insert after that sub-paragraph a new sub-paragraph:

(4) cases involving disciplinary action for late submission of a report as referred to in *ENF* 13.5.

ANNEX C

1. Amend SUP 15 as follows (underlining indicates new text, striking through indicates deleted text):

SUP 15.7.5R

Amend as follows:

Table Methods of notification

Method of delivery

1. *Post* to the appropriate published address in ~~SUP 15.7.6R~~ of the FSA for postal submissions of notifications
2. Leaving the notification at the appropriate published address in ~~SUP 15.7.6R~~ of the FSA for hand delivery of notifications and obtaining a ~~time-stamped~~ dated receipt
3. Electronic mail to an address for the *firm's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt
4. Hand delivery to the *firm's* usual supervisory contact at the *FSA*
5. Fax to a fax number for the *firm's* usual supervisory contact at the *FSA*, followed by delivery by one of the methods 1- 4 in this table within five *business days* after the date of the faxed notification

15.7.6R

Re-designate the paragraph as guidance and amend as follows:

The current published address of the FSA ~~address for a written postal submission or hand delivery of notifications to the FSA~~ is:

(1) The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

if the *firm's* usual supervisory contact at the *FSA* ~~operates from~~ is based in London, or

(2) The Financial Services Authority

Sutherland House

108-114 Dundas Street

Edinburgh EH3 5DQ

if the *firm's* usual supervisory contact at the *FSA* ~~operates from~~ is based in Edinburgh

2. Amend SUP 16 as follows (underlining indicates new text, striking through indicates deleted text):

SUP 16.3.6R Amend as follows:

~~Unless a *rule* in this chapter states otherwise, a~~ A periodic report required to be submitted under this chapter, or under any other rule, must be submitted in writing in accordance with ~~SUP 16.3.7R~~ to SUP 16.3.10RG, ~~unless:~~

(1) a contrary intention appears; or

(2) the report is required under the *listing rules*.

SUP 16.3.7R Amend as follows:

~~A report required under this chapter must~~ A written report must:

(1) give the *firm's FSA* firm reference number; and

(2) if submitted in paper form, be submitted with the cover sheet contained in *SUP* 16 Ann 13R.

SUP 16.3.9R

Amend as follows:

Table Method of submission of reports (see *SUP* 16.3.8R)

Method of delivery

1. *Post* to the appropriate published address in ~~SUP 16.3.10R~~ of the FSA for postal submission of reports

2. Leaving the report at the appropriate published address in ~~SUP 16.3.10R~~ of the FSA for hand delivery of reports and obtaining a ~~time stamped~~ dated receipt

3. Electronic mail to an address for the *firm's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt

4. Hand delivery to the *firm's* usual supervisory contact at the *FSA* and obtaining a dated receipt

5. Fax to the number notified by the *firm's* usual supervisory contact at the *FSA*, followed by submission by one of the methods 1-4 in this table within five *business days* after the date of the faxed submission

SUP 16.3.10R

Re-designate the paragraph as guidance and amend as follows:

(1) The current published address of the FSA for postal submission of reports is:

The Financial Services Authority

PO BOX 35747

London E14 5WP

(2) ~~The current published address of the FSA for the submission of reports to the FSA~~ hand delivery of reports is:

(4a) The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

if the *firm's* usual supervisory contact at the FSA ~~operates from~~ is based in London, or:

(2b) The Financial Services Authority

Sutherland House

108-114 Dundas Street

Edinburgh EH3 5DQ

if the *firm's* usual supervisory contact at the FSA ~~operates from~~ is based in Edinburgh.

SUP 16 Annexes Except for the forms listed as exceptions below, in each form, replace the address for submission of the form (if any) with:

"see SUP 16.3 for method of submission"

Exceptions

All copies of BSD3, M1, B7, SLR1 and LR in Annex 1R and Annex
2G

ANNEX D

Amend LLD as follows

LLD 3.3.4G Add the following new guidance after LLD 3.3.3G:

3.3.4G The report referred to in *LLD 3.3.1R* must be submitted in writing in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

LLD 4.3.3G Add the following new guidance after LLD 4.3.2R:

4.3.3G The report referred to in *LLD 4.3.1R* must be submitted in writing in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

LLD 15.2.6AG Add the following new guidance after LLD 15.2.6R:

15.2.6AG The report referred to in *LLD 15.2.1R* must be submitted in writing in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

LLD 15.10.6G Add the following new guidance after LLD 15.10.5R:

15.10.6G The copy of the accounts referred to in *LLD 15.10.5R* must be submitted in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

ANNEX E

Amend IPRU(INV) as follows:

IPRU(INV) 4.4.5AD Add the following new direction after IPRU(INV) 4.4.5D:

4.4.5AD The *Society* must submit the reports in *IPRU(INV)* 4.4.2D to *IPRU(INV)* 4.4.5D in accordance with the *rules* in *SUP* 16.3 (General provision on reporting).

ANNEX F

Amend CRED as follows (underlining indicates new text, striking through indicates deleted text):

CRED 14.9.19G Amend as follows:

SUP 15.7.4R and *SUP* 15.7.5R state that the notification should be addressed to the *credit union's* usual supervisory contact at the *FSA* using one of these methods:

- (1) by post to the *FSA's* address;
- (2) self delivery to the *FSA's* address (and obtaining a ~~time-stamped~~ dated receipt);
- (3) electronic mail to an address for the *credit union's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt;
- (4) hand delivery to the *credit union's* usual supervisory contact at the *FSA*;
- (5) fax number to the *credit union's* usual supervisory contact at the *FSA*, followed by submission by one of the methods in *CRED* 14.9.19G (1) – (4).

CRED 14.10.4G Amend as follows:

SUP 16.3.6R – *SUP* 16.3.13R state that a report must:

- (1) be in writing;
- (2) give the *credit union's FSA* reference number;

(3) be given to or addressed for the attention of the *credit union's* usual supervisory contact at the *FSA*;

(4) be delivered to the *FSA* by one of the following methods ~~in SUP 15.7.5R (summarised in CRED 14.9.19G)~~ .:

(a) by *post* to The Financial Services Authority, PO Box 35747, London E14 5WP;

(b) self delivery to The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS (and obtaining a dated receipt);

(c) electronic mail to an address for the *credit union's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt;

(d) hand delivery to the *credit union's* usual supervisory contact at the *FSA* and obtaining a date receipt;

(e) fax to the number notified by the *credit union's* usual supervisory contact at the *FSA*, followed by one of the methods in (a) – (d) within five *business days* after the date of the faxed submission.

APPLICATION FEES (2002/2003) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) Section 156 (General supplementary powers);
 - (2) Section 157(1) (Guidance);
 - (3) Paragraph 17(1) of Schedule 1 (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 April 2002.

Amendment of AUTH

- D. AUTH is amended by inserting after AUTH 4 the provisions in Annex A to this instrument.

Amendment of PROF

- E. PROF is amended by inserting after PROF 6 the provisions in Annex B to this instrument.

Amendment of CIS

- F. CIS is amended by inserting after CIS 18 the provisions in Annex C to this instrument.

Amendment of REC

- G. REC is amended by inserting after REC 7 the provisions in Annex D to this instrument.

Citation

- H. This instrument may be cited as the Application Fees (2002/2003) Instrument 2002.

By order of the Board
21 March 2002

Annex A

Authorisation fees payable in relation to the period from 1st April 2002 to 31 March 2003

Part 1 – Authorisation fees payable

1 Table

Application type (see Part 2)	Amount payable
(a) Version 1 <i>credit unions</i> – authorisation	£200
(b) <i>Credit unions</i> – registration of common bond	£300
(c) E–money issues	£750
(d) Version 2 <i>credit unions</i> – authorisation	£1,800
(e) Straightforward	£2,000
(f) Moderately complex	£5,000
(g) Complex	£25,000

Part 2 – Complexity Groupings

2 Table Straightforward Cases

Activity grouping	Description
A.3	Friendly societies only
A.4	Friendly societies only
A.12	Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)
A.13	Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)
A.14	Corporate finance advisers
A.15	Advisory only firms

3 Table Moderately Complex Cases

Activity grouping	Description
A.5	Managing agents at Lloyd's
A.7	Fund managers (holding or controlling client money and/or assets)
A.8	Fund managers (not holding or controlling client money and/or assets)
A.9	Operators, trustees and depositaries of collective investment schemes
A.10	Firms dealing as principal
A.11	Execution only arrangers, dealers or brokers

4 Table Complex Cases

Activity grouping	Description
A.1	Deposit acceptors (excluding e-money issuers and <i>credit unions</i>)
A.3	Firms conducting insurance activities subject only to prudential regulation (excluding friendly societies)
A.4	Firms conducting insurance activities subject to both prudential and conduct of business regulation (excluding friendly societies)

Part 3 – Variation of Permission Fees

- 5 The fee payable under SUP 6.3.22R is 50% of that payable under AUTH 4.2.2R.
- 6 There are no circumstances specified for the purposes of SUP 6.3.22R(2).

Part 4 – Authorisation Fees for Treaty Firms

- 7 If the Treaty firm wishes to undertake the permitted activities in question through its branch in the United Kingdom, the fee is 50% of the fee that would be payable under AUTH 4.2.2R.
- 8 If the Treaty firm wishes to undertake the permitted activities in question by providing services in the United Kingdom, the fee is 25% of the fee which would be payable under AUTH 4.2.2R.

Part 5 – Activity Groupings

- 9 The activity group definitions are set out in SUP 20 Annex 1R

Part 6 – Application for a certificate under article 54 of the Regulated Activities Order.

10 Table

1. The amount payable in relation to each application is £2,000.

Annex B

Fees payable for the period from 1 April 2002 to 31 March 2003

1 Table Fees payable by designated professional bodies

Name of <i>designated professional body</i> (Periodic fees will be made at a later date.)	Amount Payable	Due Date
Any person seeking an order under section 326(1) of the <i>Act (Designation of professional bodies)</i>	£5,000	30 days after the order is laid before Parliament

Annex C

Fees payable in relation to the period from 1 April 2002 to 31 March 2003

1 Table Part A – Application and notification fees payable in relation to the period from 1 April 2002 to 31 March 2003.

Section of the Act etc	Date payable, nature and purpose of fee	Payable by	Amount of fee	Umbrella scheme factor (Note 5)
Regulation 12 of the OEIC Regulations	On application for an order declaring a scheme to be an <i>ICVC</i>	An applicant (Note 3)	£1,200	2
Section 251 or Regulation 21 of the OEIC Regulations	On the day on which an alteration to the instrument constituting the scheme in compliance with paragraphs 2 and 4 of the CIS transitional provisions comes into effect	An applicant (Note 3)	£300	2
Section 242	On application for an order declaring a scheme to be an AUT	An applicant (Note 3)	£1,200	2
Section 264	On giving notice to the FSA under section 264 of the Act	The operator (Note 4)	£600	2
Section 270	On giving a notice to the FSA under section 270 of the Act	The operator (Note 4)	£600	2
Section 272	On application for an order declaring a scheme to be an individually recognised overseas <i>scheme</i>	An applicant (Note 3)	£14,000	2

2 Table Part B – Periodic fees payable in relation to the period from 1 April 2002 to 31 March 2003

(This part will be made at a later date)

Notes

- 3 The fee must accompany the application

-
- 4 The fee must accompany the notice
 - 5 For an umbrella scheme the fee is multiplied by the factor shown in the final column of the above tables.

Annex D

Fees payable in relation to the period from 1 April 2002 to 31 March 2003.

R

1 Table Fees payable in relation to the period from 1 April 2002 to 31 March 2003

In this table:

the term *recognised body* includes a recognised investment exchange or a recognised clearing house recognised under the Financial Services Act 1986 and which is a *recognised body* as a result of Regulation 9 of the *Recognition Requirements Regulations*; and

the term *recognition order* includes a recognition order made by the FSA 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* in relation to the period from 1 April 2002 to 31 March 2003.

Name of UK <i>recognised body</i>	Amount payable	Due date
(This part will be made at a later date.)		

Part 2 – Periodic fees for recognised overseas bodies in relation to the period from 1 April 2002 to 31 March 2003.

Name of recognised overseas body	Amount payable	Due date
(This part will be made at a later date.)		

Part 3 – Application fees for applicants for recognition as a UK *recognised body* for an application made in the period from 1 April 2002 up to 31 March 2003.

Description of applicant	Amount payable	Due date
Applicant for recognition as a UK <i>RIE</i>	£ 75,000	Date application is made
Applicant for recognition as a UK <i>RCH</i>	£ 75,000	
Additional fees for applicant who proposes to:		
– act as a central counterparty	£ 25,000	
– offer safeguarding and administration services	£ 25,000	
– use substantially new and untested information technology systems in the performance of its relevant functions	£ 25,000	

Part 4 – Application fees for applicants for recognition as an overseas recognised body for an application made in the period from 1 April 2002 up to 31 March 2003.

Description of applicant	Amount payable	Due date
Applicant for recognition as an recognised overseas body	£ 35,000	Date application is made

PERIODIC FEES (2002/2003) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) Section 156 (General supplementary powers);
 - (2) Section 157(1) (Guidance);
 - (3) Paragraph 17(1) of Schedule 1 (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 April 2002.

Amendment of SUP

- D. SUP is amended by inserting after SUP 20 the provisions in the Annex to this instrument.

Citation

- E. This instrument may be cited as the Periodic Fees (2002/2003) Instrument 2002.

By order of the Board
21 March 2002

Annex

Periodic fees payable in relation to the period from 1 April 2002 to 31 March 2003

The activity groups and tariff bases applicable to Parts 1 to 5 are defined in Part 7.

Part 1 – Date on which payment is required (see also GEN 3.3.1R) and payment methods

1 Table

Every *firm* whose periodic fee to its *previous regulator* for the previous financial year was equal to or more than £50,000 must pay a sum on account of its periodic fee as follows:

Date payable	Amount payable
30 April 2002	50% of the periodic fee payable for the previous financial year

2 Table

Every *firm* must pay using one of the following methods:

Payment Method	Additional Amount or Discount Applicable
Direct debit	Discount of £20
Credit transfer (BACS, CHAPS)	Discount of £10
Cheque	None
Switch	None
Credit card (Visa or Mastercard only)	Additional 2% of sum paid

Part 2 – Fee tariffs

(This part will be made at a later date.)

Part 3 – Permitted deductions

(This part will be made at a later date.)

Part 4 – Fee tariffs applicable to firms with new or extended permissions

(This part will be made at a later date.)

Part 5 – Modification of fee tariffs for incoming EEA firms and incoming Treaty firms

(This part will be made at a later date.)

Part 6 – Transaction reporting fees

(This part will be made at a later date.)

Part 7 – Activity groups and tariff bases**3 Table**

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.1 Deposit acceptors	its <i>permission</i> includes <i>accepting deposits</i> or <i>issuing e-money</i> ; BUT DOES NOT include any of the following: <ul style="list-style-type: none"> • effecting contracts of insurance; • carrying out contracts of insurance. 	(This part will be made at a later date.)
A.2	This activity group does not apply for this period.	
A.3 Firms conducting insurance activities subject only to prudential regulation	its <i>permission</i> includes one or more of the following: <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>; BUT ONLY in respect of <i>specified investments</i> that are: <ul style="list-style-type: none"> – <i>general insurance contracts</i>; or – <i>long-term insurance contracts</i> other than <i>life-policies</i>. 	(This part will be made at a later date.)

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation	its <i>permission</i> includes one or more of: <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance;</i> BOTH IN respect of <i>specified investments</i> including <i>life policies;</i> <ul style="list-style-type: none"> • <i>entering as provider into a funeral plan contract.</i> 	(This part will be made at a later date.)
A.5 Managing agents at Lloyd's	its <i>permission</i> includes <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's.</i>	(This part will be made at a later date.)
A.6 The Society of Lloyd's	it is the <i>Society of Lloyd's.</i>	(This part will be made at a later date.)

GENERALLY, FOR FEE-BLOCKS A.7 TO A.15 BELOW, ONLY THOSE REGULATED ACTIVITIES THAT ARE NOT LIMITED TO NON-MAINSTREAM ACTIVITIES SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHICH FEE-BLOCK(S) FEE-PAYERS BELONG TO.

HOWEVER, IN THE CASE THAT ALL THE REGULATED ACTIVITIES WITHIN A FIRM'S PERMISSION ARE LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES, THEN THAT FIRM SHALL BE ALLOCATED TO FEE-BLOCK A.13 ALONE.

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.7 Fund Managers (holding or controlling client money and/or assets)	its permission includes <i>managing investments</i> ; AND one or more of the following: <ul style="list-style-type: none"> • <i>safeguarding and administering of investments (without arranging)</i>; • <i>arranging safeguarding and administration of assets</i>; • the ability to hold and/or control <i>client money</i>: <ul style="list-style-type: none"> – that is, there is no <i>requirement</i> which prohibits the <i>firm</i> from doing this; – and provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>. 	(This part will be made at a later date.)
A.8 Fund Managers (not holding or controlling client money and/or assets)	its <i>permission</i> includes <i>managing investments</i> ; BUT NEITHER of the following: <ul style="list-style-type: none"> • <i>safeguarding and administration of assets (without arranging)</i>; • <i>arranging safeguarding and administration of assets</i>; AND if it EITHER : <ul style="list-style-type: none"> • has a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; OR • if it does not have such a <i>requirement</i>, only holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>. 	(This part will be made at a later date.)

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.9 Operators, Trustees and Depositors of collective investment schemes	<p>(1) its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> • <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> <p>AND</p> <p>(b) PROVIDED the <i>firm</i> is NOT one of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm;</i> • a <i>firm</i> in which the above activities are limited to carrying out <i>corporate finance business;</i> • a <i>venture capital firm;</i> <p>OR</p> <p>(2) the fee-payer has none of the <i>regulated activities</i> above within its <i>permission</i>, but ALL the remaining <i>regulated activities</i> in its <i>permission</i> are limited to carrying out <i>trustee activities</i>.</p>	<p>(This part will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.10 Firms dealing as principal	<p>its <i>permission</i> includes <i>dealing in investments as principal</i>;</p> <p>BUT NOT if one or more of the following apply:</p> <ul style="list-style-type: none"> • the above activity is carried on exclusively in respect of <i>life policies</i>; • the <i>firm</i> is acting exclusively as a matched principal broker; • the above activity is limited either to acting as an operator of a <i>collective investment scheme</i>, or to carrying out <i>trustee activities</i>; • the <i>firm</i> is a <i>corporate finance advisory firm</i>; • the above activity is otherwise limited to carrying out <i>corporate finance business</i>; • the <i>firm</i> is subject to a <i>limitation</i> to the effect that the <i>firm</i>, in carrying on this <i>regulated activity</i>, is limited to entering into transactions in a manner which, if the <i>firm</i> was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments). 	(This part will be made at a later date.)
A.11 Execution-only arrangers, dealers or brokers	<p>its <i>permission</i> includes,</p> <p>(a) one or more 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>; 	(This part will be made at a later date.)

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.11 Execution-only arrangers, dealers or brokers</p> <p>Continued...</p>	<ul style="list-style-type: none"> • <i>making arrangements with a view to transactions in investments;</i> • <i>dealing as principal in investments where the activity is carried on exclusively in respect of life policies or where the firm acts as a matched principal broker;</i> <p>(b) BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance;</i> • <i>advising on investments (except pensions transfers and pension opt-outs); or</i> • <i>advising on pension transfers and pension opt-outs; or</i> • <i>accepting deposits;</i> <p>AND</p> <p>(c) PROVIDED the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i> • <i>a firm whose activities are limited to carrying out venture capital business;</i> • <i>a firm whose activities are limited to acting as an operator, depositary or trustee of a collective investment scheme, or trustee activities</i> 	<p>(This part will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)	<p>its <i>permission</i>,</p> <p>(a) includes one or more 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>dealing as principal in investments where the activity is carried on as a matched principal broker;</i> <p>AND</p> <p>(b) AT LEAST one of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs);</i> • <i>advising on pension transfers and pension opt-outs;</i> • <i>advising on syndicate participation at Lloyd's;</i> <p>(c) BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance; or</i> • <i>carrying out contracts of insurance.</i> 	<p>(This part will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)</p> <p>Continued...</p>	<p>AND</p> <p>(d) CAN HAVE one or more of the following:</p> <ul style="list-style-type: none"> • <i>safeguarding and administering of assets;</i> • <i>arranging safeguarding and administration of assets;</i> • the ability to hold and/or control <i>client money</i>: <ul style="list-style-type: none"> – that is, there is no <i>requirement</i> which prohibits the <i>firm</i> from doing this; – and provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>; <p>AND</p> <p>(e) PROVIDED the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm</i>; • a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>; • a <i>firm</i> whose activities are limited to carrying out <i>venture capital business</i>; • a <i>firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>; • a <i>firm</i> whose activities are limited to carrying out <i>trustee activities</i>. 	<p>(This part will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)	<p>(1) ALL the <i>regulated activities</i> in its <i>permission</i> are limited to non-mainstream activities;</p> <p>OR</p> <p>(2) its <i>permission</i> contains both:</p> <ul style="list-style-type: none"> • <i>making arrangements with a view to transactions in investments</i>; and • <i>accepting deposits</i>. <p>OR</p> <p>(3) its <i>permission</i>,</p> <p>(a) includes one or more 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>dealing as principal in investments</i> where the activity is carried on as a matched principal broker; <p>AND</p> <p>(b) AT LEAST one of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs)</i>; • <i>advising on pension transfers and pension opt-outs</i>; • <i>advising on syndicate participation at Lloyd's</i>; 	<p>(This will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.13 Advisory arrangers, dealers or brokers (not holding or controlling client money and/or assets)</p> <p>Continued...</p>	<p>(c) BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance;</i> • <i>safeguarding and administration of assets;</i> • <i>arranging safeguarding and administration of assets;</i> <p>AND</p> <p>(d) MUST EITHER:</p> <ul style="list-style-type: none"> • have a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; OR • if it does not have such a <i>requirement</i>, only holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>; <p>AND</p> <p>(e) PROVIDED the fee-payer is NOT one of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm</i>; • a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>; • a <i>firm</i> whose activities are limited to acting as an operator a <i>collective investment scheme</i>; • a <i>firm</i> whose activities are limited to carrying out <i>trustee activities</i>. 	<p>(This part will be made at a later date.)</p>
<p>A.14 Corporate finance advisers</p>	<p>the <i>firm</i> is carrying on <i>corporate finance business</i>.</p>	<p>(This will be made at a later date.)</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.15 Advisory only firms	<p>its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs);</i> • <i>advising on pension transfers and pension opt-outs;</i> • <i>advising on syndicate participation at Lloyd's;</i> <p>(b) BUT MUST NOT include:</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>dealing as principal in investments where the activity is carried on as a matched principal broker;</i> <p>AND</p> <p>(c) PROVIDED the fee-payer is NOT one of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i> • <i>a firm whose activities are limited to carrying out venture capital business;</i> 	(This will be made at a later date.)

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.15 Advisory only firms	<ul style="list-style-type: none"> a <i>firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>; 	(This will be made at a later date.)
Continued...	<ul style="list-style-type: none"> a <i>firm</i> whose activities are limited to acting carrying out <i>trustee</i> activities 	
A.16 Pensions review levy firms	it was liable to pay the Pensions Levy to the <i>PIA</i> in 2001/2002.	(This will be made at a later date.)
B	Firms that have been designated as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996.	(This will be made at a later date.)

Part 8 – Periodic fees for certificates under article 54 of the Regulated Activities Order

(This part will be made at a later date.)

**COMPLAINTS SOURCEBOOK (FINANCIAL OMBUDSMAN SERVICE GENERAL
AND SUPPLEMENTARY LEVIES 2002/2003) INSTRUMENT 2002**

Powers exercised

A. The Financial Services Authority amends the Complaints sourcebook ('DISP') in the exercise of the following powers and related provisions in the Financial Services and Market Act 2002 (the "Act"):

- (1) section 138 (General rule making power);
- (2) section 156 (General supplementary powers);
- (3) section 157(1) (Guidance); and
- (4) section 234 (Funding).

B. The provisions of the Act relevant to rules and 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 April 2002.

Amendment of the Complaints sourcebook

D. The Complaints sourcebook is amended:

(1) by inserting, after Chapter 4 of DISP, the provisions in Annex A to this instrument, except for the following provisions which are to be or have been made exclusively by the Financial Ombudsman Service Limited and not by the Financial Services Authority:

- (a) DISP 5.1.6R;
- (b) DISP 5.6.1R;
- (c) DISP 5.6.3R;
- (d) DISP 5.6.4R;
- (e) DISP 5.6.6R;

- (f) DISP 5.6.7R;
- (g) DISP 5.6.8R;
- (h) DISP 5.6.10R;
- (i) DISP 5.6.11R;
- (j) DISP 5.6.12R;
- (k) DISP 5.8.2R;
- (l) DISP 5.8.4R;
- (m) DISP 5.10.1R;
- (n) part 3 DISP 5 Ann1R; and
- (o) part 4 DISP 5 Ann1R; and

(2) in accordance with Annex B to this instrument.

Amendment of the Glossary

E. The Glossary is amended in accordance with Annex C to this instrument.

Citation

F. This instrument may be cited as the Complaints Sourcebook (Financial Ombudsman Service General and Supplementary Levies 2002/2003) Instrument 2002.

By order of the Board

21 March 2002

Annex A

Chapter 5

Financial Ombudsman Service Funding Rules

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PAGE
1





5.1 Application

5.1.1

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This chapter applies to:

- (1) every *firm* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and
- (2) every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.

5.1.2

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The relevant provisions of *DISP 5* are applied to *VJ participants* by the *standard terms* (see *DISP 4*).

5.1.3

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References in this chapter to "*firms*" are to be construed, where relevant, as including:

- (1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see *Transitional Provisions 6 and 7*); and
- (2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.

Exemption

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A *firm* which is exempt under *DISP 1.1.7R* is also exempt from *DISP 5.2* to *DISP 5.8*.

5.1.5

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A *firm* which ceases to be exempt under *DISP 5.1.4R* is to be treated, for the purposes of its contribution to the *general levy*, as a *firm* to which *DISP 5.9* applies.

5.1.6

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A *firm* which becomes exempt under *DISP 5.1.4R* during the course of a *financial year* is to be treated for the purposes of its contribution to the *general levy*, as a *firm* to which *DISP 5.10* applies.



5.2 Purpose

5.2.1

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The purpose of this chapter is to set out the requirements on *firms* to pay annual fees (through a *general levy*) and case fees to *FOS Ltd* in order to fund the operation of the *Financial Ombudsman Service*. This chapter also contains a requirement on *firms* to pay a *supplementary levy* towards the costs of establishing the *Financial Ombudsman Service*. It also provides for *unauthorised persons* to pay case fees to *FOS Ltd* in respect of any *relevant complaints* which it handles.

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5.3 Introduction

- 5.3.1**  Paragraph 9 of Schedule 17 to the *Act* (The Ombudsman Scheme) requires *FOS Ltd* to adopt an annual budget which has been approved by the *FSA*. The *annual budget* must distinguish between the costs of operating the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*.
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- 5.3.2**  Section 234 of the *Act* (Industry Funding) enables the *FSA* to require the payment to it or to *FOS Ltd*, by *firms* or any class of *firm*, of specified amounts (or amounts calculated in a specified way) to cover the costs of:
- (1) establishing the *Financial Ombudsman Service*; and
 - (2) its operation in relation to the *Compulsory Jurisdiction*.
- 5.3.3**  Paragraph 15 of Schedule 17 to the *Act* enables *FOS Ltd* to require *firms* subject to the *Compulsory Jurisdiction* and any other respondents to a complaint to pay specified fees to it in respect of complaints closed by the *Financial Ombudsman Service*.
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- 5.3.4**  The *Ombudsman Transitional Order* provides for *unauthorised persons* to be charged fees in respect of any *relevant complaints* against them which the *Financial Ombudsman Service* handles.
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- 5.3.5**  Paragraph 18 of Schedule 17 to the *Act* enables *FOS Ltd* to require *VJ participants* to pay to it such amounts at such times as it specifies in the *standard terms*.
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- 5.3.6**  The relevant provisions of these rules will be applied to *VJ participants* through the *standard terms* made by *FOS Ltd* under paragraph 18 of Schedule 17 to the *Act* (see *DISP 4*).
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- 5.3.7**  This chapter sets out the framework for the funding arrangements of the *Financial Ombudsman Service*, including the method by which fees will be calculated. Details of the actual fees payable will vary from year to year, depending on the annual budget of the *Financial Ombudsman Service*. These details will be set out in an annex to this chapter (*DISP 5 Ann 1R*). A new annex will be prepared and consulted on for each *financial year*.
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5.4 The general levy

- 5.4.1** **G** Each *financial year*, the FSA and FOS Ltd will consult on the amount of the annual budget of the *Financial Ombudsman Service* which is to be raised by the *general levy*.
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- 5.4.2** **G** For the purposes of the *general levy*, a *firm* will fall into one or more of the *industry blocks* set out in DISP 5 Ann 1R depending on the business activities which it conducts.
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- 5.4.3** **G** The FSA will determine, following consultation, the amount to be raised from each *industry block*. This will be based on the budgeted costs and numbers of *Financial Ombudsman Service* staff required to deal with the volume of complaints which the *Financial Ombudsman Service* expects to receive about the *firms* in each *industry block*. Modified arrangements have been made for certain types of small *firms* (see DISP 5.6.3R to 5.6.5G).
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- 5.4.4** **G** Part 2 of DISP 5 Ann 1R sets out the fee tariffs for each *industry block*.
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- 5.4.5** **G** The FSA will specify a *minimum levy* for *firms* in each *industry block*.
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- 5.4.6** **R** A *firm* must pay to FOS Ltd a *general levy* towards the costs of operating the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*.
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- 5.4.7** **G** Under the *standard terms*, VJ participants will be required to pay an amount calculated on a similar basis towards the costs of operating the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
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- 5.4.8** **R** A *firm's general levy* is calculated as follows:
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- (1) identify each of the tariff bases set out in part 2 of DISP 5 Ann 1R which apply to the *relevant business* of the *firm* for the relevant year;
 - (2) for each of those tariff bases, calculate the sum payable in relation to the *relevant business* of the *firm* for that year;
 - (3) add together the amounts calculated under (2).
- 5.4.9** **R** For the purpose of DISP 5.4.6R and DISP 5.4.8R, a *member* of the *Society of Lloyd's* or a *managing agent* at Lloyd's will not in that capacity be treated as a *firm* but the *Society of Lloyd's* will pay a *general levy* in respect of Lloyd's *insurance business* conducted with *eligible complainants*.
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5.5 Information requirement

5.5.1

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- (1) A *firm* must provide the *FSA* by the end of February each year with a statement of the total amount of *relevant business* (measured in accordance with the appropriate tariff base(s)) which it conducted, as at or in the year to 31 December of the previous year as appropriate, in relation to the tariff base for each of the relevant *industry blocks* set out in part 2 of *DISP 5 Ann 1R*.
- (2) Paragraph (1) does not apply if the *firm* pays a *general levy* on a flat fee basis only.
- (3) If a *firm* cannot provide a statement of the total amount of *relevant business* as required by *DISP 5.5.1R*, it must provide the best estimate of the amount of *relevant business* that it conducted.

5.5.2

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SUP 16.3 (General provisions on reporting) contains further *rules* on the method of submission of reports under *DISP 5.5.1R*.



5.6 Case fees

Standard case fee

- 5.6.1** **R** ^{/1} A *firm* must pay to FOS Ltd the standard case fee specified in part 3 of DISP 5 Ann 1R in respect of each *chargeable case* relating to that *firm* which is closed by the *Financial Ombudsman Service*, unless a special case fee is payable or has been paid in respect of that case under DISP 5.6.6R to DISP 5.6.12R.
- 5.6.2** **G** ^{/1} The standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Compulsory Jurisdiction*, less the amount to be raised by the *general levy*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.
- 5.6.3** **R** ^{/1} A *credit union* which is subject to the *minimum levy* in an *industry block* is not required to pay a standard case fee in respect of *chargeable cases* relating to that *industry block*.
- 5.6.4** **R** ^{/1} Any *firm* falling into either *industry block 13* or *industry block 15* in part 2 of DISP 5 Ann 1R is not required to pay the standard case fee in respect of *chargeable cases* relating to those *industry blocks*.
- 5.6.5** **G** ^{/1} The *firms* in *industry blocks 13* and *15* are cash plan health providers and small *friendly societies*. These arrangements have been made in respect of these *firms* to take account of the fact that the amount at issue is likely to be small relative to the case fee. Instead, the full unit cost of handling complaints against these *firms* will be recovered through the *general levy* in accordance with the relevant tariff-base and no case fee will be payable. Similar arrangements have been made under DISP 5.6.3R in respect of small *credit unions*.

Special case fees: complaints from small businesses

- 5.6.6** **R** ^{/1} A *firm* must pay to FOS Ltd a special case fee, as specified in part 3 of DISP 5 Ann 1R, in respect of each *chargeable case* relating to that *firm* closed by the *Financial Ombudsman Service* which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within DISP 2.4.3R(1)(b), (c) or (d).

Special case fees: firms which cease to be authorised

- 5.6.7 **R**_{/1} A *firm* which ceases to be *authorised* must pay to *FOS Ltd* a special case fee, as specified in part 3 of *DISP 5 Ann 1R*, in respect of each *chargeable case* relating to that *firm* closed by the *Financial Ombudsman Service* which concerned an act or omission occurring when the *firm* was *authorised* and where the complaint was made after its *authorisation* ceased.

Special case fees: relevant complaints against persons who were subject to a former scheme

- 5.6.8 **R**_{/1} An *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay to *FOS Ltd* a special case fee as specified in part 3 of *DISP 5 Ann 1R* in respect of each *chargeable case* relating to that *unauthorised person* closed by the *Financial Ombudsman Service*.

- 5.6.9 **G**_{/1} Under the *Ombudsman Transitional Order*, *FOS Ltd* can handle complaints about *members* of a *former scheme* which that scheme could have handled before *commencement*, even if the *unauthorised person* concerned does not become *authorised* by the *FSA* after that date. Where *FOS Ltd* handles such complaints, the *unauthorised person* concerned will be required to pay a special case fee.

Special case fees for 2001/02

- 5.6.10 **R**_{/1} A *firm* which was a *member* of *PIA* before *commencement* must pay to *FOS Ltd* a special case fee, as specified in *DISP 5 Ann 1R*, in respect of each *chargeable case* relating to that firm received by the *Financial Ombudsman Service* after *commencement* and before 31 March 2002.

- 5.6.11 **R**_{/1} *DISP 5.6.10R* does not apply in relation to a *chargeable case* which relates to a complaint which proceeded or would have proceeded under a *former scheme* other than the *PIAOB* scheme.

- 5.6.12 **R**_{/1} A *firm* which was not a *member* of a *former scheme* before the *commencement day* must pay to *FOS Ltd* a special case fee, as specified in *DISP 5 Ann 1R*, in respect of each *chargeable case* which relates to business conducted by the firm after the *commencement day* and which is closed by the *Financial Ombudsman Service* before 31 March 2002.

- 5.6.13 **G**_{/1} The relevant provisions of *DISP 5.6* will be applied to *VJ participants* through the *standard terms*.

- 5.6.14 **G**_{/1} A *firm* which was, before *commencement*, a *member* of *PIA* and a *former scheme* other than the *PIAOB* scheme will not, on account of the exclusion in *DISP 5.6.11R*, be required to pay the special case fee specified by *DISP 5.6.10R* in respect of all *chargeable cases* relating to it but only those which arise in respect of

investment business matters which would have been eligible under the PIAOB scheme.

5.7 The supplementary levy

- 5.7.1** **G**_{/1} For the purposes of calculating the *supplementary levy*, the *FSA* will apportion the *establishment costs* between the *industry blocks* in the same proportions as the operating costs for the purposes of the *general levy*. The *supplementary levy* will therefore be raised from *firms* on the same basis and at the same time as the *general levy* (see part 2 of *DISP 5 Ann 1R*).
- 5.7.2** **G**_{/1} The *establishment costs* will be recovered via the *supplementary levy* over the first three full *financial years* of the *Financial Ombudsman Service's* operation.
- 5.7.3** **G**_{/1} The amount of *establishment costs* to be raised each year through the *supplementary levy* will be specified in part 2 of *DISP 5 Ann 1R*.
- 5.7.4** **G**_{/1} The *supplementary levy* will be identified separately from the *general levy* for the purposes of invoicing *firms* and *VJ participants*.
- 5.7.5** **R**_{/1} **A firm must pay to FOS Ltd a supplementary levy towards the costs of establishing the Financial Ombudsman Service.**
- 5.7.6** **R**_{/1} **A firm's supplementary levy is a sum payable in accordance with the fee tariffs set out in part 2 of DISP 5 Ann 1R and will be calculated by following the steps set out in DISP 5.4.8R.**
- 5.7.7** **G**_{/1} Under the *standard terms*, *VJ participants* will also be required to pay an amount calculated on a similar basis towards the costs of establishing the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

5.8 Payment

- 5.8.1** **R** ^{/1} A *firm* must pay the *general levy* and any *supplementary levy* to which it is subject to *FOS Ltd* either:
- (1) annually, on or before the later of 1 April and 30 calendar *days* after the date when the invoice is issued by *FOS Ltd*; or
 - (2) provided the amount payable exceeds the *minimum levy*, quarterly, at the beginning of each quarter, by direct debit agreement.
- 5.8.2** **R** ^{/1} A *firm* must pay to *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *DISP 5.6.1R*, *DISP 5.6.6R*, *DISP 5.6.7R*, *DISP 5.6.8R*, *DISP 5.6.10R*, or *DISP 5.6.12R*, as appropriate, in respect of *chargeable cases* for which it is invoiced by *FOS Ltd* within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.
- 5.8.3** **G** ^{/1} The *Financial Ombudsman Service* will invoice *firms* for case fees on a *monthly* basis and *firms* will be required to pay these fees within 30 calendar *days* of receiving the invoice.
- 5.8.4** **R** ^{/1} A *firm* or an *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay any standard case fee or special case fee within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.
- 5.8.5** **G** ^{/1} *FOS Ltd* will issue invoices for the *general levy*, any *supplementary levy*, standard case fees and special case fees. The invoice will be payable within 30 calendar *days*. Invoices will be sent to the *firm's* Compliance Officer at the principal place of business in the *United Kingdom* last notified to the *FSA*.
- 5.8.6** **R** ^{/1} If a *firm* or an *unauthorised person* does not pay a levy or case fee in full within 30 calendar *days* of the date when the invoice is issued, it must, from that date, pay interest at 10% per annum for each *day* the unpaid part remains outstanding.
- 5.8.7** **G** ^{/1} If a *firm* (or *unauthorised person*) fails to make payment under this chapter, after expiry of the 30 *day* period, *FOS Ltd* may:
- (1) Take steps to recover any money owed (including interest);

(2) Refer the matter to the *FSA* so that the *FSA* may take whatever disciplinary action it considers necessary.

5.8.8

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If it appears to the *FSA* or *FOS Ltd* that, owing to the exceptional circumstances of a particular case, the payment of any fee would be inequitable, the *FSA* or *FOS Ltd* may reduce or remit all or part of the fee in question which would otherwise be payable.

5.8.9

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If it appears to the *FSA* or *FOS Ltd* that, owing to the exceptional circumstances of a particular case to which *DISP* 5.8.8R does not apply, the retention by the *FSA* or *FOS Ltd* of a fee which has been paid would be inequitable, the *FSA* or *FOS Ltd* may refund all or part of the fee.



5.9 Joining the Financial Ombudsman Service

5.9.1 **R** ^{/1} A *firm* which becomes subject to the *Financial Ombudsman Service* part way through a *financial year* must pay a rateable proportion of the *general levy* and the *supplementary levy* as indicated in Table DISP 5.9.2R.

5.9.2 **R** ^{/1} Table Table DISP 5.9.2

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Quarter in which the firm becomes subject to the Financial Ombudsman Service	Proportion payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%



5.10 Leaving the Financial Ombudsman Service

5.10.1

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Where a *firm* ceases to be *authorised* part way through a *financial year*:

- (1) it will remain liable to pay standard case fees in respect of *chargeable cases* against it closed by the *Financial Ombudsman Service* for the remainder of that *financial year*; and
- (2) it must pay the special case fee specified under *DISP 5.6.7R* in respect of any other *chargeable cases* against it closed by the *Financial Ombudsman Service*.

5.10.2

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Firms which cease to be *authorised* and, therefore subject to the *Compulsory Jurisdiction* part way through the year will not, normally, receive a refund of their *general levy* (or *supplementary levy*). However, exceptions may be made if *firms* have informed the *FSA* of their plans before the end of the previous *financial year*. *Firms* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised*. *Firms* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased. The special case fee will apply to any complaint closed after the end of that year since the *firm* will no longer be contributing to the *general levy*.

DISP 5 Ann 1R: Annual Fees Payable in Relation to 2002/03

Introduction: annual budget

- 1 The annual budget for 2002/03 approved by the FSA is £28.2m.

Part 1: general levy and supplementary levy

- 2 The total amount expected to be raised through the general levy in 2002/03 will be £14.1m.

Part 2: Fee tariffs for general levy and supplementary levy

- 3 The total amount of establishment costs to be raised in 2002/03 by the supplementary levy is £1.6m.
- 4 Table: fee tariffs for industry blocks

Industry block	Tariff base	General levy payable by firm	Supplementary levy payable by firm
1–Deposit acceptors, mortgage lenders and administrators (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R	£0.01573 per relevant account, subject to a minimum levy of £250	£0.0018 per relevant account, subject to a minimum levy of £29
2– <i>Firms</i> that undertake insurance activities, subject to prudential regulation only (excluding <i>firms</i> in blocks 13 & 15).	Relevant annual gross premium income	£0.1593 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £250	£0.0184 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £29
3– <i>Society</i> of Lloyd's	To be allocated by the <i>Society</i>	£201,100 to be allocated by the <i>Society</i>	£23,000 to be allocated by the <i>Society</i>
4– <i>Firms</i> that undertake insurance activities, subject to both prudential and conduct of business regulation (<i>long-term life insurers</i>) (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.098 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100	£0.0113 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £12

5–Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i>)	Relevant funds under management	£0.00132 per £1,000 of relevant funds under management, subject to a minimum levy of £100	£0.00015 per £1,000 of relevant funds under management, subject to a minimum levy of £12
6–Operators, trustees and depositaries of collective investment schemes	Flat fee	Levy of £100	Levy of £12
7–Dealers as principal	Number of relevant traders	£100 per relevant trader, subject to a minimum levy of £100	£12 per relevant trader, subject to a minimum levy of £12
8–Advisory arrangers, dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)	£40 per relevant approved person (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £100	£5 per relevant approved person (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £5
9–Advisory arrangers, dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)	£35 per relevant approved person (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £100	£4 per relevant approved person (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £4
10–Corporate finance advisers	Flat fee	Levy of £100	Levy of £12
11–Execution-only arrangers, dealers or brokers	Flat fee	Levy of £100	Levy of £12
12–Advisory only firms	Number of relevant approved persons (controlled functions 21, 22, 24, 25, 26)	£50 per relevant approved person (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £100	£6 per relevant approved person (controlled functions 21, 22, 24, 25, 26), subject to a minimum levy of £12
13–Cash plan health providers	Flat fee	Levy of £50	Levy of £6
14–Credit unions	Flat fee	Levy of £50	Levy of £6
15–Friendly societies whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £50	Levy of £6

5 The industry blocks in the table are the same as the equivalent activity groups set out in part 7 of SUP 20 Ann 1R

- 6 Where the tariff base in the table is defined in similar terms as the tariff base for the equivalent activity group set out in part 7 of SUP 20 Ann 1R, it must be calculated in the same way as that tariff base except that it takes into account only the firm's relevant business.

Part 3: case fees

- 7 Standard case fees and special case fees

Governing Provisions	Case Fee	Amount
DISP 5.6.1R	Standard	£360
DISP 5.6.6R	Special case fee: complaints from small businesses	£720
DISP 5.6.7R	Special case fee: firms which cease to be authorised	£720
DISP 5.6.8R	Special case fee: unauthorised persons who were subject to a former scheme	£720

Part 4: VJ participants

- 8 **Table Fee tariffs and case fees for VJ participants**

Voluntary jurisdiction industry block	Tariff base	General levy payable by firm	Minimum general levy per firm	Supplementary levy payable by firm	Minimum supplementary levy per firm	Case Fee
1V Mortgage lenders and administrators	Number of relevant accounts	£0.01573 per relevant account	£250	£0.0018 per relevant account	£29	£360
2V <i>VJ participants</i> undertaking insurance activities subject only to prudential regulation	Relevant annual gross commission income	£0.1593 per £1,000 of relevant annual gross commission income	£250	£0.0184 per £1,000 of relevant annual gross commission income	£29	£360

3V	Insurance brokers, loss adjusters, claims handling firms and mortgage intermediaries who were members of a <i>former scheme</i> .	Relevant annual gross commission or fee income	Nil	£200	Nil	£23	£360
4V	<i>VJ participants</i> falling into none of the above categories	Relevant annual gross premium income	Nil	Nil	Nil	Nil	£720

- 9 The industry blocks in the table are the same as the equivalent activity groups for authorised firms, as set out in part 7 of SUP 20 Ann 1R.
- 10 Where the tariff base in the table is defined in similar terms as the tariff base for the equivalent activity group set out in part 7 of SUP 20 Ann 1R, it must be calculated in the same way as that tariff base except that it takes into account only the VJ participant's relevant business.
- 11 'Relevant business' for the purposes of funding the Voluntary Jurisdiction means that part of a VJ participant's business which it conducts with private individuals and which is subject to the Voluntary Jurisdiction of the Financial Ombudsman Service as provided for in DISP 2.6.9R (The Voluntary Jurisdiction), as measured by the appropriate tariff base for each industry block.

Annex B

DISP Schedule 2 Insert the following new row at the end of table 2:

<i>DISP</i> 5.5.1R	<i>Relevant business conducted</i>	The total amount of <i>relevant business</i> (measured in accordance with the appropriate tariff base(s)) which the <i>firm</i> conducted as at or in the year to 31 December as appropriate, in relation to the tariff base for each of the relevant <i>industry blocks</i> set out in <i>DISP 5 Ann 1R</i>	N/A	By the end of February each year
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DISP Schedule 3 Delete the existing text and insert the following two tables:

1 Table

G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant requirements for fees and other required payments.

It is not a complete statement of those requirements and should not be relied on as if it were.

2 Table

Type of fee	Trigger event	Date/Time for payment	Amount/rate	Handbook reference
<i>General levy</i>	Annual invoice from <i>FOS Ltd</i>	(1) On or before the later of 1 April and 30 calendar <i>days</i> after the date when the invoice is issued by <i>FOS Ltd</i> ; or (2) for amounts exceeding the <i>minimum levy</i> , quarterly, at the beginning of each quarter, by direct debit.	Amount of <i>relevant business</i> according to applicable tariff base; or <i>minimum levy</i> .	<i>DISP 5.4</i> <i>DISP 5.8</i> Part 2 of <i>DISP 5 Ann1R</i>
<i>Supplementary levy</i>	Annual invoice from <i>FOS Ltd</i>	(1) On or before the later of 1 April and 30 calendar <i>days</i> after the date	Amount of <i>relevant business</i> according to applicable	<i>DISP 5.7</i> <i>DISP 5.8</i> Part 2 of <i>DISP 5 Ann1R</i>

		when the invoice is issued by <i>FOS Ltd</i> ; or (2) for amounts exceeding the <i>minimum levy</i> , quarterly, at the beginning of each quarter, by direct debit.	tariff base; or <i>minimum levy</i>	
Case fees	<i>Monthly invoice from FOS Ltd</i>	Within 30 calendar <i>days</i> of date when the invoice is issued by <i>FOS Ltd</i>	Standard case fee (£360) or special case fee (£720), as applicable	<i>DISP 5.6</i> <i>DISP 5.8</i> Part 3 of <i>DISP 5</i> Ann1R

DISP Schedule 4 In Table 1, insert the following paragraph after paragraph 1(4):

(4A) Section 234 (Funding)

In Table 2, insert the following rows at the end of the table:

DISP 5	5.1.6R 5.6 (all rules) 5.8.2R 5.8.4R 5.10.1R
DISP 5 Ann1R	part 3 part 4

Annex C

Amend the Glossary, as shown below:

industry-block In column 1, replace “industry-block” with “industry block”

relevant business Replace “industry-block” with “industry block”

**COMPENSATION SOURCEBOOK
(MANAGEMENT EXPENSES LEVY LIMIT 2002/2003)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Compensation sourcebook in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
 - (2) section 213 (The compensation scheme); and
 - (3) section 223 (Management expenses).
- B. The powers relevant to rules and referred to above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force immediately.

Amendment of the Compensation sourcebook

- D. The Compensation sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Compensation Sourcebook (Management Expenses Levy Limit 2002/2003) Instrument 2002.

By order of the Board
21 March 2002

Annex

Amend the table in COMP 13 Ann 1R (Management Expenses Levy Limit) as shown (underlining indicates new text):

Period	Limit on total of all management expenses levies attributable to that period (£)
1 December 2001 to 31 March 2002	£4,209,000
<u>1 April 2002 to 31 March 2003</u>	<u>£13,228,000</u>

**LISTING RULES (REGULATORY INFORMATION SERVICES) (REVOKING)
INSTRUMENT FEBRUARY 2002**

The Financial Services Authority revokes the Listing Rules (Regulatory Information Services) Instrument February 2002 made on 21 February 2002.

By order of the Board

21 March 2002

**LISTING RULES (REGULATORY INFORMATION SERVICES) INSTRUMENT
FEBRUARY 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers in section 74(4) of the Financial Services and Markets Act 2000 (The official list).

Commencement

- B. This instrument comes into force on 15 April 2002.

Amendments to the Listing Rules

- C. The Listing Rules are amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Listing Rules (Regulatory Information Services) Instrument February 2002.

By order of the Board
21 March 2002

ANNEX

The Listing Rules are amended as shown in the document attached (sidebar indicates new text, striking through indicates deleted text).

SCHEDULE 12

REGULATORY INFORMATION SERVICES

~~List of services to be added~~ Business Wire Regulatory Disclosure provided by Business Wire

Newslink Financial provided by Newslink

PimsWire provided by Pims

PR Newswire Disclose provided by PR Newswire

RNS provided by the London Stock Exchange

The above services have been included in accordance with criteria published by the FSA in ~~"Proposed changes to the UK mechanism for disseminating regulatory information by listed companies. Feedback on CP92 and "made" text"~~ appendix 5 of the UKLA Guidance Manual.

**LISTING RULES (REGULATORY INFORMATION SERVICES) INSTRUMENT
MARCH 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers in section 74(4) of the Financial Services and Markets Act 2000 (The official list).

Commencement

- B. This instrument comes into force on 29 April 2002.

Amendments to the Listing Rules

- C. The Listing Rules are amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Listing Rules (Regulatory Information Services) Instrument March 2002.

By order of the Board
21 March 2002

ANNEX

The Listing Rules are amended as shown in the document attached (underlining indicates new text, striking through indicates deleted text).

SCHEDULE 12
REGULATORY INFORMATION SERVICES

Business Wire Regulatory Disclosure provided by Business Wire

FirstSight provided by Waymaker

Newslink Financial provided by Newslink

PimsWire provided by Pims

PR Newswire Disclose provided by PR Newswire

RNS provided by the London Stock Exchange

The above services have been included in accordance with criteria published by the FSA in appendix 5 of the UKLA Guidance Manual.

**FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
(2002-2003) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) Section 156 (General supplementary powers);
 - (2) Section 157(1) (Guidance);
 - (3) Paragraph 17(1) of Schedule 1 (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 April 2002.

Amendment to Unauthorised mutuals registration fees rules

- D. The Unauthorised mutuals registration fees rules are amended by inserting after the end of the rules the provisions in the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Unauthorised Mutual Societies Registration) (2002/2003) Instrument 2002.

By order of the Board
21 March 2002

Annex

ANNEX 1R

FEES PAYABLE IN RELATION TO THE PERIOD FROM 1 APRIL 2002 TO 31 MARCH 2003

Periodic Fee Payable by Registered Societies

(This part will be made at a later date.)

Application fees payable to register a new society

Transaction	Amount Payable (£)
Application using <i>model rules</i> without any amendment to the model	100
Application using <i>model rules</i> with between 1 and 6 amendments to the model	120
Application using <i>model rules</i> with between 7 and 10 amendments to the model	350
Application using <i>model rules</i> with 11 or more amendments to the model, or using free draft rules	950

Periodic fee payable by sponsoring bodies

(This part will be made at a later date.)

Application fees payable by sponsoring bodies

Transaction	Amount Payable (£)
Application for a new set of <i>model rules</i>	950

Methods of payment of periodic fees

(This part will be made at a later date.)

Method of payment of application fees

Payment Method	Additional amount or discount applicable
Cheque	None

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT No 5)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority alters the Conduct of Business sourcebook in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 May 2002.

Amendment of the Conduct of Business sourcebook

- C. The Conduct of Business sourcebook is amended as set out in the Annex to this instrument.

Citation

- D. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 5) Instrument 2002.

By order of the Board
18 April 2002

ANNEX

Amendments to the Conduct of Business sourcebook

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

Amend COB 3 Ann 1G by inserting the entry relating to article 16 (2) at the beginning of Table 2 and article 28A immediately after article 28.

Article no. and name of exemption	Type of promotion: Unsolicited real time, solicited real time, non-real time	Controlled activity/ controlled investment	Other conditions
<u>16 (2)</u> <u>Exempt persons</u>	<u>Unsolicited real time</u>	<u>All</u>	<u>Made by a person who is an appointed representative carrying on the business for which his principal has accepted responsibility for the purposes of section 39 of the Act; and in relation to which the appointed representative is exempt from the general prohibition; and where the communication is one which, if made by the principal, would comply with the financial promotion rules relevant to a communication of that kind.</u>

Article no. and name of exemption	Type of promotion: Unsolicited real time, solicited real time, non-real time	Controlled activity/ controlled investment	Other conditions
<p><u>28A</u></p> <p><u>One off unsolicited real time communications</u></p>	<p><u>Unsolicited real time</u></p>	<p><u>Note 1</u></p>	<p><u>One off communication where the communicator believes on reasonable grounds that the recipient understands the risks associated with engaging in the investment activity to which the communication relates; and at the time that the communication is made the communicator believes on reasonable grounds that the recipient would expect to be contacted by him in relation to the investment activity to which the communication relates.</u></p>

Amend the format of Notes to table 2 to insert a heading for Note 1 as follows:

Notes to Annex 1G
<p><u>Note 1:</u></p> <p>References in these notes to paragraphs are to paragraphs of schedule 1 to the <i>Financial Promotion Order</i>. The <i>controlled investments</i> italicised in these notes are defined in the same way in both the <i>Financial Promotion Order</i> and the <i>Regulated Activities Order</i>.</p>
<p><u>Note 1:</u></p> <p><u>The following <i>controlled activities</i>:</u></p> <p>(1) effecting and carrying out contracts of insurance within paragraph 2 in relation to <i>life policies</i>;</p> <p>...</p>

Traded Endowment Policy and Open Market Option Disclosure Requirements Instrument 2002

Powers exercised

- A. The Financial Services Authority amends the Conduct of Business sourcebook and the Glossary 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).
- B. The provisions of the Act relevant to making rules and 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 September 2002.

Amendments to the Conduct of Business sourcebook and the Glossary

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.
- E. Schedule 1 to the Conduct of Business sourcebook (Record keeping requirements) is amended in accordance with Annex B to this instrument.
- F. The Glossary is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the Traded Endowment Policy and Open Market Option Disclosure Requirements Instrument 2002.

By order of the Board
18 April 2002

Annex A

Amendments to the Conduct of Business sourcebook

In COB 6.1.1R (4), replace the full stop with “; or” and insert:

- (5) which is a *long-term insurer* and receives:
 - (a) a request from a *private customer* for a quotation for the surrender value of a *life policy*; or
 - (b) any other indication that a *private customer* wishes to surrender a *life policy*: or
- (6) which receives a request from a *private customer* for a retirement quotation in respect of any of the following contracts provided by it:
 - (a) a *personal pension scheme*;
 - (b) a *stakeholder pension scheme*;
 - (c) a *free-standing additional voluntary contribution* contract;
 - (d) (where an *open market option* is available under the contract terms) a *retirement annuity* contract; or
 - (e) (where an *open market option* is available under the contract terms) a *pension buy-out contract*.

After COB 6.5.49R, insert:

Life policies: requests for quotations for surrender values

6.5.50R

When a *long-term insurer* receives:

- (1) a request from a *private customer* for a quotation for the *surrender value* of a *life policy*; or
- (2) any other indication that a *private customer* wishes to surrender a *life policy*;

which is of a type which may be traded on an existing secondary market for *life policies*, it must, before or when providing the quotation (or, if no quotation is provided, before accepting a surrender), make the *policyholder* aware in writing of:

- (3) the fact that, as an alternative to surrendering to the *long-term insurer*, the *life policy* may be traded on that secondary market;

- (4) the fact that there may be financial benefits in trading the *life policy* when compared to surrendering it to the *long-term insurer*;
- (5) how the *policyholder* may trade the *life policy* on the secondary market should he decide to do so; and
- (6) other relevant options available to the *policyholder*.

6.5.51G

- (1) When complying with COB 6.5.50R, a *long term insurer* may identify whether the policy is of a type which may be traded by obtaining information from a trade association or other body which holds information on the relevant secondary market.
- (2) COB 6.5.50R(5) requires a *firm* to ensure that the *policyholder* is made aware of the existence of the secondary market and how he might access it. A *firm* may, if it wishes, go further than this (for example, by telling the *policyholder* more about the market and the procedures) but it is not obliged to do so.
- (3) The other relevant options referred to in COB 6.5.50R(6) may, for example, include informing the *policyholder* about making the policy paid-up or taking a loan against the policy, and about the desirability of obtaining professional advice before surrendering.

6.5.52R

Where a *long-term insurer* believes that COB 6.5.50R does not apply because its own policies are of a type which are not tradable, it must review the position every six months and make and retain records indefinitely to support its view.

Open market option: “Wake-up letter”

6.5.53R

- (1) A *firm* must provide a scheme member or *policyholder* described in (2) with the information set out in (3) in writing:
 - (a) when there is a request for a retirement quotation more than four months before the scheme member's or *policyholder's* *intended retirement date*; and
 - (b) at least four months before the scheme member's or *policyholder's* *intended retirement date*.
- (2) A person in relation to whom (1) applies is a *private customer* who:
 - (a) is a member of a *personal pension scheme*; or
 - (b) is a member of a *stakeholder pension scheme*; or

- (c) is the holder of a *free-standing additional voluntary contribution* contract; or
- (d) (where an *open market option* is available under the contract terms) is the holder of a *retirement annuity* contract; or
- (e) (where an *open market option* is available under the contract terms) is the holder of a *pension buy-out contract*.

(3) The information which a *firm* must provide in writing under (1) is an explanation of:

- (a) the *open market option* (including the fact that companies offer different annuity rates and different types of annuity, and that the scheme member or *policyholder* may get a better deal by shopping around);
- (b) the financial advantages and disadvantages in general terms of making use of this option when compared with taking a pension annuity with that *firm*;
- (c) how the scheme member or *policyholder* may make use of the *open market option* should he decide to do so; and
- (d) the advisability of taking professional advice.

6.5.54G *Principle 7* (Communications with clients) requires a *firm* to 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. In the *FSA's* view, a *firm* would not normally be able to satisfy its obligations under *Principle 7* if it sent the information required under COB 6.5.53R(1)(b) more than six months before the scheme member's or *policyholder's* intended retirement date.

6.5.55G (1) A *firm* may comply with its obligations under COB 6.5.53R(3)(a) (b) (c) and (d) by providing a copy of the *FSA's* factsheet about annuities entitled "Your pension – it's time to choose". However, if a *firm* is aware that its pension scheme or contract offers particular features which are likely to be relevant to customers' decisions (for example, an option to acquire an annuity at a guaranteed rate of interest) then the *firm* would also be expected to draw attention to those features. *Firms* can obtain copies of this factsheet by contacting the *FSA's* Consumer Helpline on 0845 606 1234.

(2) Where a *firm* provides the *FSA's* factsheet about annuities ("Your pension – it's time to choose") under COB 6.5.53R, it may wish to include the following wording in its covering letter:

"The enclosed factsheet about your options is from the Financial Services Authority (FSA), the independent watchdog set up by Parliament. Please read this document carefully."

Open market option: “Reminder letter”

6.5.56R A *firm* which has provided information under COB 6.5.53R must, at least six weeks before his *intended retirement date*, remind the scheme member or *policyholder* of that communication, and must provide him with an estimated *final transfer value*.

Annex B

Amendments to Conduct of Business Schedule 1 (Record keeping requirements)

In the table, after COB 5.3.27R insert:

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COB 6.5.52R	Non-tradable life policy	Sufficient information to support classification that own policies are not tradable	Upon assessment of the firm's position and every 6 months thereafter	Indefinitely

Annex C

Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>intended retirement date</i>	(a) according to the most recent recorded information available to the provider, the date when the scheme member or <i>policyholder</i> intends to retire, or to bring the benefits in the scheme or <i>policy</i> into payment, whichever is the earlier; or (b) where no such date is recorded, the scheme member's or <i>policyholder's</i> state pension age.
<i>final transfer value</i>	the sum of money available at retirement to provide retirement benefits through the <i>open market option</i> .

ELECTRONIC MONEY SOURCEBOOK INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes the rules, gives the guidance and makes the directions and requirements in this instrument in the exercise of the powers listed in Schedule 4 to the Annex to this instrument (Powers exercised).
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

Commencement

- C. This instrument comes into force on 27 April 2002.

Citation

- D. This instrument may be cited as the Electronic Money Sourcebook Instrument 2002.
- E. The Annex to this instrument (including its schedules) may be cited as the Electronic Money sourcebook (or ELM).

By order of the Board
18 April 2002

Annex



Electronic money

Electronic Money

1 Table 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
1	Every provision in <i>ELM</i>	R	The transitional provisions in <i>GEN</i> apply in relation to the provisions in <i>ELM</i> except that a reference to “ <i>commencement</i> ” is to be treated as a reference to “e–money issuer day” (note).	From “e–money issuer day” (note)	27 April 2002
2	Every provision in the <i>Handbook</i> which applies to an <i>ELMI</i>	R	Where a transitional provision in the <i>Handbook</i> refers to “ <i>commencement</i> ”, in relation to an <i>ELMI</i> , it means “e–money issuer day” (note).	From “e–money issuer day” (note)	Varies depending on provision concerned

(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
3	As for 2	G	Where a provision applies to an <i>ELMI</i> , its related transitional provision will also apply. The effect of paragraph 2 is to ensure that the transitional provision applies from “e–money issuer day” (note) (and not from the earlier date of <i>commencement</i>).	As for 2	As for 2

Note

For the purposes of these transitional provisions, “e–money issuer day” means:

- (1) the beginning of 27 April 2002 unless (2) applies;
- (2) in relation to an “existing issuer”:
 - (a) the beginning of 27 October 2002; or
 - (b) if earlier, the beginning of the day on which the issuer is given *permission to issue electronic money*.

“Existing issuer” means a *body corporate* or *partnership* which, immediately before 27 April 2002:

- (a) has its head office in the *United Kingdom*, and is carrying on by way of business in the *United Kingdom* the activity of *issuing electronic money*; or
- (b) has its head office in an *EEA State* other than the *United Kingdom*, and is carrying on such an activity by way of business in the *United Kingdom* without contravening the law of that other *EEA State*.

Electronic money

Chapter 1

Application, contents, purpose and general



1.1 Application

1.1.1 **R** *ELM applies to every firm and every other person within a category listed in column (2) of the table in ■ ELM 1.1.2R and in accordance with column (3) of that table. ■ ELM 1.1.3R applies to an incoming EEA firm and an incoming Treaty firm instead of ■ ELM 1.1.2R.*

27.04.02/001

1.1.2 **R** Table Application of different chapters of ELM (except for an incoming EEA firm or an incoming Treaty firm)

27.04.02/001

(1) Chapter	(2) Categories of person to which chapter applies	(3) Applicable rules and guidance
1 (Application, contents, purpose and general)	Every <i>firm</i> that wishes to <i>issue e-money</i> An <i>e-money firm</i> A <i>small e-money issuer</i> and an applicant for a <i>small e-money issuer certificate</i>	<i>ELM 1.3</i> The whole chapter The whole chapter except <i>ELM 1.5</i>
2 (Initial and continuing own funds requirements)	An <i>ELMI</i> that is not a <i>lead regulated firm</i>	The whole chapter
3 (Management of the e-money float)	An <i>ELMI</i> that is not a <i>lead regulated firm</i>	The whole chapter
4 (Limitations on activities)	An <i>ELMI</i> An <i>e-money firm</i> that is not an <i>ELMI</i>	The whole chapter The whole chapter except <i>ELM 4.3</i>
5 (Systems and controls; Rules for making calculations)	An <i>ELMI</i>	The whole chapter
6 (Redemption, information requirements and purse limits)	An <i>e-money firm</i> that is not an <i>ELMI</i> An <i>e-money firm</i>	<i>ELM 5.1, ELM 5.2 and ELM 5.4</i> The whole chapter

(1) Chapter	(2) Categories of person to which chapter applies	(3) Applicable rules and guidance
7 (Consolidated financial supervision)	An <i>ELMI</i> that is a member of a <i>group</i> and is not a <i>lead regulated firm</i>	The whole chapter
8 (Small e-money issuers)	An applicant for a <i>small e-money issuer certificate</i> and a <i>small e-money issuer</i>	The whole chapter

Incoming EEA firms and incoming Treaty firms

1.1.3

R

27.04.02/001

(1) ■ ELM 1 applies to an *e-money firm* that is:

- (a) an *incoming EEA firm*; or
- (b) an *incoming Treaty firm*;

if it has not established a *branch* in the *United Kingdom*. Otherwise *ELM* does not apply to such *firms*.

(2) ■ ELM 1 and ■ ELM 6 apply to an *e-money firm* that is:

- (a) an *incoming EEA firm*; or
- (b) an *incoming Treaty firm*;

if it has established a *branch* in the *United Kingdom*. Otherwise *ELM* does not apply to such *firms*.

Firms established outside the EEA

1.1.4

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27.04.02/001

The definition of *ELMI* covers *firms* that are established outside the *EEA*. Thus all those parts of *ELM* that apply to *ELMIs* apply to such *firms*. However if the *ELMI* is a *lead regulated firm*, chapters 2, 3 and 7 of *ELM* do not apply.

1.2 Contents and purpose

- 1.2.1**  This chapter sets out which parts of *ELM* apply to which *persons*. It also explains that the *regulated activity of issuing e-money* is restricted to *banks, building societies and ELMIs*. It also sets out which parts of the rest of the *Handbook* apply to *ELMIs*.
27.04.02/001
- 1.2.2**  Chapter 2 sets out *rules and guidance* on the capital adequacy of *ELMIs*. Chapter 3 sets out *rules and guidance* on the investment of the *e-money float* in high quality liquid assets. It also restricts the use by *ELMIs* of *derivatives* and *quasi-derivative contracts*. Chapter 4 sets out *rules and guidance* that restrict the business of *ELMIs* to activities closely related to *issuing e-money*. It also prohibits *issuing e-money* at a discount. Chapter 5 has *rules and guidance* on systems and controls and *rules* relevant to making calculations under the *ELM financial rules*. Chapter 6 has *rules and guidance* on redemption of *e-money*, the supply of information and purse limits. Chapter 7 has *rules and guidance* about the measure of capital adequacy by reference to an *ELMI's* membership of a *group*. Chapter 8 contains provisions relevant to *small e-money issuers* and applications for a *small e-money issuer certificate*.
27.04.02/001
- 1.2.3**  *ELM* implements the parts of the *E-Money Directive* and (for *ELMIs*) the *Banking Consolidation Directive* dealing with these topics.
27.04.02/001
- 1.2.4**  The *rules and guidance* in *ELM* will help the *FSA* to meet the *regulatory objectives* of protecting *consumers* and maintaining market confidence. They do so by setting standards about the backing of *e-money* issued by an *ELMI* with high quality liquid assets. They also do so by setting minimum capital and other risk management standards. This mitigates the risk that *ELMIs* will be unable to meet their liabilities and commitments to *consumers*. *ELM* also protects *consumers* by regulating the relationship between issuers of *e-money* and those who hold their *e-money*.
27.04.02/001
- 1.2.5**  The requirements for *ELMIs* are intended to take account of the following principles, which are based on the recitals to the *E-Money Directive*.
27.04.02/001
- (1) It is desirable to provide a regulatory framework that helps to ensure that *e-money* delivers its full potential benefits and that avoids hampering technological innovation. Therefore the regime provides a "technology neutral" regulatory framework.
 - (2) In order to respond to the specific risks associated with *e-money*, the supervisory regime is targeted specifically at issues relating to *issuing e-money*. As a result, parts of the prudential supervisory regime applying to *banks* do not apply to *ELMIs*.
 - (3) It is necessary to preserve a level playing field between *ELMIs* and *banks* and *building societies issuing e-money* and, thus, to ensure fair competition among a wider range of institutions to the benefit of holders of *e-money*. To assist in achieving this, the removal of some features of the prudential supervisory

regime applying to *banks* and *building societies* is balanced by *rules* that are stricter than those applying to *banks* and *building societies*. The main example of these stricter requirements is the limits on the business activities that *ELMIs* may carry on and the requirements about asset-liability management of the *e-money float*. As the main prudential measures that apply to *ELMIs* are targeted specifically at the issue of *e-money*, it is necessary to restrict the business of *ELMIs* to that activity.

1.3 Restriction on issuing e-money

1.3.1

 27.04.02/001

Article 1(4) of the *E-Money Directive* says that “Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of issuing electronic money”. The purpose is to ensure that only *persons* who are subject to a prudential regime designed to deal with the risks of *issuing e-money* engage in that activity.

1.3.2

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For *persons* who are not *firms*, this is implemented by the *general prohibition*. For *firms*, this is achieved by the *rules* in *ELM*. The definition of *ELMI* covers any *firm* whose *permitted activities* include *issuing e-money*. Only a *bank*, *building society*, *incoming Treaty firm* and *incoming EEA firm* are excluded. If a *firm* falls into the definition of an *ELMI*, all the *rules* in *ELM* about *ELMIs* apply. These include ■ *ELM 4.3.1R*(Restriction on activities), which prevents an *ELMI* from doing anything except *issuing e-money* and certain related activities. Therefore if a *firm* (other than a *building society*) wishes to have a *Part IV permission* that includes *issuing e-money*, it will either have to become an *ELMI*, and accept the restrictions that come with that status, or become a *bank*.

1.3.3

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However, article 8 of the *E-Money Directive* says that *EEA States* may allow their competent authorities to waive the application of some or all of the provisions of that Directive and the application of the *Banking Consolidation Directive* to certain small or local *e-money* schemes. The regime for such schemes is described in ■ *ELM 8* . Even though a *small e-money issuer* does not have a *Part IV permission* that includes *issuing e-money*, it does not infringe the *general prohibition* by issuing *e-money*.



1.4 Meaning of e-money and application of financial promotion

1.4.1



27.04.02/001

Guidance on the meaning of *e-money* and the applicability of the parts of the *Act* and the *Handbook* that apply to *financial promotions* can be found in ■ AUTH App 3.



1.5 Application of other parts of the Handbook to ELMIs

1.5.1

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The application of other parts of the rest of the *Handbook* to *ELMIs* is summarised in ■ ELM 1.5.2G. For the detailed application of each chapter, see the Application provision at the start of the chapter or section. ■ ELM 1.5.2G does not apply to an *incoming EEA firm*, *incoming Treaty firm* or *small e-money issuer*.

1.5.2

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Table Application of other parts of the Handbook to ELMIs

Block	Module	Application
Block 1 (High level standards)	Principles for businesses (<i>PRIN</i>)	Applies to every <i>ELMI</i> . As explained in <i>PRIN</i> 1.1.3G, the <i>Principles</i> apply with respect to <i>regulated activities</i> generally, but, in applying the <i>Principles</i> with respect to <i>issuing e-money</i> , the <i>FSA</i> will proceed only in a <i>prudential context</i> .
	Threshold conditions (<i>COND</i>)	Applies to every <i>ELMI</i> . <i>Threshold condition 1</i> says that a <i>firm</i> that wishes to <i>issue e-money</i> must be a <i>body corporate</i> or a <i>partnership</i> . (See <i>COND</i> 2.1 for more detail.)
	Statements of principle and code of practice for approved persons (<i>APER</i>)	Applies to every <i>approved person</i> who performs a <i>controlled function</i> for an <i>ELMI</i> .

Block	Module	Application
Block 2 (Business Standards)	The fit and proper test for approved persons (<i>FIT</i>)	Applies in relation to the criteria that the <i>FSA</i> will consider when assessing the fitness and propriety of a <i>candidate</i> for a <i>controlled function</i> to be performed for an <i>ELMI</i> . It is also relevant in assessing the continuing fitness and propriety of <i>approved persons</i> carrying on such a <i>controlled function</i> .
	Senior management arrangements, systems and controls (<i>SYSC</i>)	Applies to every <i>ELMI</i> .
	General provisions (<i>GEN</i>)	Applies to every <i>ELMI</i> .
	Interim Prudential sourcebooks: <i>IPRU(INS)</i> , <i>IPRU(FSOC)</i> , <i>IPRU(BANK)</i> , <i>IPRU(BSOC)</i> and <i>IPRU(INV)</i>	<i>ELM 7</i> (Consolidated financial supervision) applies <i>IPRU(BANK)</i> , <i>IPRU(BSOC)</i> and <i>IPRU(INV)</i> to certain <i>ELMIs</i> who are members of a <i>group</i> . Chapter NE of <i>IPRU(BANK)</i> is relevant to <i>ELM 3.5.16R</i> , as described in <i>ELM 3.5.20G</i> . Otherwise, these sourcebooks do not apply to <i>ELMIs</i> .
	Market Conduct (<i>MAR</i>)	<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> .

Block	Module	Application
	Conduct of Business sourcebook (<i>COB</i>)	Does not apply to an <i>ELMI</i> when <i>issuing e-money</i> . As explained in <i>AUTH</i> App 3, the <i>rules</i> in <i>COB</i> about <i>financial promotions</i> do not usually apply to <i>e-money</i> , but may do so in certain situations.
	Training and Competence Sourcebook (<i>TC</i>)	<i>TC</i> 1 (Commitments) applies to <i>ELMIs</i> . <i>TC</i> 2 (Rules and Guidance) applies to a <i>firm</i> whose <i>employees</i> carry on activities listed in <i>TC</i> 2.1.4R. Those activities do not include <i>issuing e-money</i> .
	Money Laundering sourcebook (<i>ML</i>)	For the avoidance of doubt, it is the <i>FSA's</i> view that, where it has an establishment in the <i>United Kingdom</i> , an <i>ELMI</i> is subject to the <i>Money Laundering Regulations</i> . In addition, <i>ML</i> applies to every <i>ELMI</i> .
Block 3 (Regulatory processes)	Authorisation manual (<i>AUTH</i>)	Applies to every <i>ELMI</i> .
	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> .
Block 4 (Redress)	Decision-making manual (<i>DEC</i>)	Applies to every <i>ELMI</i> .
	Complaints (<i>DISP</i>)	Applies to every <i>ELMI</i> .

Block	Module	Application
	Compensation (<i>COMP</i>)	An <i>ELMI</i> is not a <i>participant firm</i> for the purposes of <i>COMP</i> in relation to <i>issuing e-money</i> . Under article 9J of the <i>Regulated Activities Order</i> , the <i>compensation scheme</i> is not to provide for the compensation of <i>persons</i> in respect of claims made in connection with <i>issuing e-money</i> .
Block 5 (Specialist sourcebooks other than <i>ELM</i>)	Complaints against the FSA (<i>COAF</i>) Credit unions (<i>CRED</i>), Professional firms, (<i>PROF</i>), Lloyd’s (<i>LLD</i>), Collective Investment Schemes (<i>CIS</i>) and Recognised Investment Exchanges and Recognised Clearing Houses (<i>REC</i>).	Applies to every <i>ELMI</i> . These sourcebooks do not apply to an <i>ELMI</i> .
Block 6 (Special Guides)	Energy Market Participants (<i>EMPS</i>), Small Friendly societies (<i>FREN</i>), Oil Market Participants (<i>OMPS</i>) and Service companies (<i>SERV</i>)	These guides do not apply to an <i>ELMI</i> .

1.6 Actions for damages

- 1.6.1** **R** 27.04.02/001 A contravention of the *rules* in *ELM* 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) unless ■ **ELM 1.6.2R** applies.
- 1.6.2** **R** 27.04.02/001 ■ **ELM 1.6.1R** does not apply to the *rules* in ■ **ELM 6** (Redemption, information requirements and purse limits) or ■ **ELM 8** (Small e-money issuers).

Chapter 2

Initial and continuing own funds requirements

2.1 Application

2.1.1

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27.04.02/001

The effect of ■ ELM 1.1.1 R to ■ ELM 1.1.3 R is that this chapter:

- (1) applies to an *ELMI* other than a *lead regulated firm*;
- (2) does not apply to:
 - (a) an *incoming EEA firm*; or
 - (b) an *incoming Treaty firm*.



2.2 Purpose

2.2.1



This chapter requires *ELMIs* to have a minimum amount of capital.

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2.2.2



In addition, *threshold condition 4* says that ‘The resources of the [*firm*] must, in the opinion of the [*FSA*], be adequate in relation to the *regulated activities* that he seeks to carry on, or carries on’. *Principle 4* also requires all *firms* ‘to maintain adequate financial resources’.

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2.2.3



The purpose of the capital requirements in this chapter is to:

27.04.02/001

- (1) help an *ELMI* to maintain itself as a viable going concern, to overcome expected and unexpected difficulties and to sustain its infrastructure;
- (2) help an *ELMI* to secure, in conjunction with the asset-liability management requirements in ■ *ELM 3*, its ability to redeem *e-money* whenever redemption may be required; and
- (3) help to maintain public confidence in an *ELMI*’s ability to redeem *e-money* as and when required.

2.2.4



This chapter implements article 4 of the *E-Money Directive*.

27.04.02/001

2.3 Base capital requirements

2.3.1

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27.04.02/001

A *firm* must:

- (1) (at the time it is *granted an e-money permission*) have *initial capital*, calculated in accordance with ■ ELM 2.4.2 R;
- (2) (at all times) maintain *own funds*, calculated in accordance with ■ ELM 2.4.2 R;

amounting to not less than:

- (3) (if the *firm's base currency* is the euro) one million euro;
- (4) (if the *firm* has another *base currency*) the equivalent amount in that currency.



2.4 Calculation of initial capital and own funds

2.4.1 **R** *Initial capital and own funds* are calculated in accordance with ■ ELM 2.4.2 R. 27.04.02/001

2.4.2 **R** Table Calculation of initial capital and own funds 27.04.02/001

the sum of:

- ordinary *share* capital (see *ELM 2.4.3R*)
- share* premium account (see *ELM 2.4.3R*)
- audited reserves excluding revaluation reserves (see *ELM 2.4.4R*)
- externally verified interim net profits (see *ELM 2.4.6R*)
- partnership capital (see *ELM 2.4.7R*)

= *initial capital*: (A)

the sum of:

- investments in own *shares*
- intangible assets (see *ELM 2.4.9R*)
- interim net losses (see *ELM 2.4.10R*)

= deductions for calculating *tier one capital*: (B)

tier one capital = A – B (C)

the sum of:

- subordinated debt forming part of *upper tier 2 capital* (see *ELM 2.4.11R* and *ELM 2.4.13R*)
- revaluation reserves

= *upper tier 2 capital* (D)

subordinated debt forming *lower tier 2 capital* (see *ELM 2.4.11R* and *ELM 2.4.12R*) (E)

D + E = *tier two capital*

material holdings in financial institutions or credit institutions (see *ELM 2.4.17R*) (F)

C + D + E – F = *own funds*

Ordinary share capital

2.4.3 **R** Ordinary *share* capital may only be included when making the calculations in ■ ELM 2.4.2 R to the extent that it is paid up and permanent. In addition, there must be no fixed dividend and, if the *shares* carry a dividend, the terms of those *shares* must provide that a dividend payment can only be made if the *firm's governing body* has agreed that it should be made and must provide that the amount of

the dividend payment cannot exceed the amount recommended or decided on by the *firm's governing body*. Accordingly, any dividends must be non-cumulative. Sums credited to a *firm's* share premium account are only included in its *own funds* if they are in respect of *shares* forming part of its *own funds*.

Reserves

2.4.4 **R** Audited reserves are audited accumulated profits retained by the *firm* after deduction of tax and dividends and other audited reserves created by similar realised appropriations. Reserves include gifts of capital.
27.04.02/001

2.4.5 **R** If a reserve in **■ ELM 2.4.2 R** is negative, it must be deducted at the relevant stage of the calculation in **■ ELM 2.4.2 R**.
27.04.02/001

Net profits

2.4.6 **R** Externally verified interim net profits are interim net profits that the *firm's* external auditor has verified. They are net of any foreseeable charge, proprietors' drawings, dividend or similar amount.
27.04.02/001

Partnership capital

2.4.7 **R** Partnership capital is made up of the partners' capital accounts. The capital account is an account:
27.04.02/001

- (1) into which capital contributed by the partners is paid; and
- (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 a 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 otherwise dissolved or wound up.

If partnership capital is negative, it must be deducted.

2.4.8 **R** Partnership capital is eligible for inclusion in a *firm's own funds* only to the extent that it is permanent and that no obligation that cannot be cancelled without cost exists to pay costs on it (for example in the form of interest).
27.04.02/001

Intangible assets

2.4.9

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27.04.02/001

Intangible assets are the full balance sheet value of intangible assets including goodwill, capitalised development costs, licences and intellectual property.

Losses

2.4.10

R

27.04.02/001

Interim net losses are any interim net losses (audited or unaudited).

Subordinated debt capital: requirements for both upper and lower tier two capital

2.4.11

R

27.04.02/001

Subordinated debt capital does not form part of the *own funds* of a *firm* unless the following requirements are met:

- (1) the claims of the subordinated creditors (whether in respect of principal, interest or otherwise) must rank behind those of all unsubordinated creditors of the *firm* and behind any unsubordinated creditors of any partner in it;
- (2) the debt capital is unsecured and fully paid up;
- (3) to the fullest extent permitted under the laws of all relevant jurisdictions, creditors must waive their right to set off amounts they owe the *firm* against the subordinated debt capital;
- (4) the remedies (other than rights falling into (3)) available to the subordinated creditor in the event of non-payment, an event of default, breach of agreement or other default in respect of the subordinated debt capital (so far as applicable) must be limited to:
 - (a) bringing proceedings for the winding up, bankruptcy or administration of the *firm* (or any partner in the *firm*) or any similar or equivalent proceedings under the law of any part of the *United Kingdom* or of any other country; or
 - (b) proving for the debt and claiming in the liquidation of the *firm* or in any other proceedings referred to in (4)(a);
- (5) neither the *firm* nor any partner in it may by virtue of any remedy mentioned in ■ ELM 2.4.11 R(4) be obliged to pay any sum or sums sooner than the same is payable under ■ ELM 2.4.12 R(1) (in the case of *lower tier two capital*) or ■ ELM 2.4.13 R(1) (in the case of *upper tier two capital*);
- (6) the terms of the subordinated debt capital must be set out in a written agreement or instrument that contains terms that provide for the conditions set out in:

- (a) (1) to (5); and
 - (b) ■ ELM 2.4.12 R (in the case of *lower tier two capital*) or ■ ELM 2.4.13 R (in the case of *upper tier two capital*); and
- (7) the *firm* has obtained a written legal opinion from a suitably experienced external lawyer confirming that the debt capital meets the requirements of:
- (a) (1) to (6); and
 - (b) ■ ELM 2.4.12 R (in the case of *lower tier two capital*) or ■ ELM 2.4.13 R (in the case of *upper tier two capital*).

Subordinated debt capital: additional requirements for lower tier two capital

2.4.12

R

27.04.02/001

Subordinated debt capital does not form part of the of the *lower tier two capital* of a *firm* unless the following requirements are met (in addition to those in ■ ELM 2.4.11 R):

- (1) (without limiting the requirements in ■ ELM 2.4.11 R(1)) the subordinated debt capital must not be capable of becoming due and payable before any maturity date set under (2) except (if it is subject to any events of default) on an event of default complying with (3);
- (2) (without limiting the requirements in ■ ELM 2.4.11 R(1)) the subordinated debt capital must:
 - (a) have a fixed original maturity of at least five years; or
 - (b) be subject to notice of repayment of at least five years; or
 - (c) be perpetual; or
 - (d) be repayable only in a winding up of the *firm* or in any other proceedings referred to in ■ ELM 2.4.11 R(4)(a) ;
- (3) any events of default are limited to the winding-up of the *firm* or the bringing of any other proceedings referred to in ■ ELM 2.4.11 R(4)(a); and
- (4) any:
 - (a) events of default; or
 - (b) remedy referred to in ■ ELM 2.4.11 R(3) or ■ ELM 2.4.11 R(4); or
 - (c) provision for a final maturity date;

must not prejudice the subordination set out in (1) and ■ ELM 2.4.11 R(1).

Subordinated debt capital: additional requirements for upper tier two capital

2.4.13

R

27.04.02/001

Subordinated debt capital does not form part of a *firm's upper tier two capital* unless the following requirements are met (in addition to those in ■ ELM 2.4.11 R):

- (1) (without limiting the requirements in ■ ELM 2.4.11 R(1)) the subordinated debt capital is perpetual or is only repayable in a winding up of the *firm* or in any similar proceedings relating to the *firm* or relating to the *firm* and any partner of the *firm*;
- (2) no interest, principal or other amount may be payable:
 - (a) at a time when the *firm* is in breach of any *ELM financial rule* or is insolvent; or
 - (b) if making that payment would result in the *firm* breaching any *ELM financial rule* or becoming insolvent;
- (3) the *firm* may defer the payment of any interest;
- (4) the subordinated debt capital complies with the conditions in article 35(2)(d) of the *Banking Consolidation Directive*;
- (5) the debt capital is not subject to any event of default; and
- (6) any remedy referred to in ■ ELM 2.4.11 R(3) or ■ ELM 2.4.11 R(4) must not prejudice the subordination set out in (1) and ■ ELM 2.4.11 R(1).

2.4.14

R

27.04.02/001

For the purposes of calculating the amount of subordinated debt capital which may be included in a *firm's own funds* as *lower tier two capital* in its final five years to maturity the principal amount must be amortised on a straight line basis by 20% per annum.

2.4.15

R

27.04.02/001

A *firm* may treat subordinated debt capital that would be eligible to form part of its *upper tier two capital* as falling into stage E of the calculation in ■ ELM 2.4.2 R rather than stage D.

2.4.16

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27.04.02/001

■ ELM 2.4.13 R(4) refers to article 35(2)(d) of the *Banking Consolidation Directive*. This article says that “the documents governing the issue of the [subordinated debt capital] must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the [*firm*] in a position to continue trading”. Compliance with the other conditions of ■ ELM 2.4.11 R and ■ ELM 2.4.13 R will usually ensure that a *firm* complies with article 35(2)(d). The debt capital may only be repayable on a winding up of the *firm*. This contrasts with the corresponding provisions for *lower tier two capital* subordinated debt, where repayment is allowed in a wider range of circumstances. For instance, *upper tier two capital* should not become repayable merely because the *firm* goes into administration. Even in a winding up, the debt

capital may only be repaid if all other creditors have been repaid and the *firm* has enough assets left to repay the debt capital. If the *firm* does not have enough assets to repay it, the debt is never repayable.

Material holdings

2.4.17

R

27.04.02/001

- (1) *Material holdings in financial institutions or credit institutions* are the sum of:
 - (a) the total value of all *ownership shares* and all subordinated loan capital owned by the *firm* (or in which it has a position) in any *financial institution* in which the *firm* owns more than 10% of the *ownership shares*; and
 - (b) the amount by which the total amount specified in (3) exceeds 10% of the *firm's own funds* (calculated before the deduction of *material holdings* at stage F of the calculation in ■ ELM 2.4.2 R).
- (2) In the case of *ownership shares* in an issuer with a *share premium* account, the figure of 10% in (1)(a) must be calculated by reference to the *share capital plus share premium* of that issuer.
- (3) The amount referred to in (1)(b) is the sum of the total value of all the *ownership shares* and all subordinated loan capital owned by the *firm* (or in which it has a position) in *financial institutions* or *credit institutions* except for *financial institutions* or *credit institutions* that fall into (1)(a).
- (4) The *firm* must include *ownership shares* and subordinated loan capital of which it is not the registered owner but which it owns beneficially and *ownership shares* and subordinated loan capital that are or should be included as an asset in its accounting records.
- (5) The value of *ownership shares* and subordinated loan capital for the purposes of (1)(a) and (3) is the full balance sheet value.

Limits on components of own funds

2.4.18

R

27.04.02/001

Any item that would otherwise form part of a *firm's tier two capital* must be excluded from the *firm's own funds* to the extent that the *firm's tier two capital* would otherwise exceed its *tier one capital*.

2.4.19

R

27.04.02/001

Any item that would otherwise fall into stage E of the calculation in ■ ELM 2.4.2 R must be excluded from *own funds* to the extent that the sum of items falling into that stage would exceed 50% of the amount calculated at stage C of the calculation in ■ ELM 2.4.2 R.

Adjustments to own funds

2.4.20

R

27.04.02/001

In accordance with article 34(4) of the *Banking Consolidation Directive*, tier one capital and revaluation reserves must not be included within a *firm's own funds* to the extent that those items do not represent capital that is available to the *firm* for unrestricted and immediate use to cover risks and losses as soon as these occur, whether because of taxation charges, any future foreseeable taxation charges or for any other reason.

Credit institutions and material holdings

2.4.21

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27.04.02/001

Credit institutions are not included in ■ ELM 2.4.17 R(1)(a) as ■ ELM 4.3.9 R does not allow a *firm* to have any *ownership shares* in a *credit institution*.

2.5 Continuing capital requirement

Obligation to meet own funds requirement

- 2.5.1 **R** 27.04.02/001 A *firm* must, at all times, maintain *own funds* equal to or in excess of its *own funds requirement*.

Calculation of own funds requirement

- 2.5.2 **R** 27.04.02/001 A *firm's own funds requirement* is, at any time, 2% of the higher of the following amounts:

- (1) its *e-money outstandings* at that time; and
- (2) the average of its *daily e-money outstandings amount* for the six *month* period ending at that time.

Newly authorised ELMI without a six month average

- 2.5.3 **R** 27.04.02/001 If a *firm* has not been an *ELMI* for the whole of the period referred to in ■ ELM 2.5.2 R(2), the *firm* must calculate the amount in ■ ELM 2.5.2 R(2) from the projected amounts of its *daily e-money outstandings amount* for the six *month* period beginning on the day it is *granted an e-money permission*. Those projections must be the ones contained in the business plan supplied by the *firm* to the *FSA* as part of its application for the *granting an e-money permission* or (if the plan is amended and resubmitted to the *FSA* before the *granting an e-money permission*) the plan as so amended and resubmitted.

- 2.5.4 **R** 27.04.02/001 If, in relation to a *firm*:
- (1) the projections referred to in ■ ELM 2.5.3 R (or any further projections prepared under this *rule*) have proved to be significantly incorrect; or
 - (2) it is reasonably likely that those projections will prove to be significantly incorrect;

and more than one *month* of the six *month* period beginning on the date the *firm* is granted an *e-money permission* remains at the time that the circumstances in ■ ELM 2.5.4 R(1) or ■ ELM 2.5.4 R(2) first arise, the *firm* must prepare revised projections of its *daily e-money outstandings amount* for the rest of that period.

2.5.5

R

27.04.02/001

The revised projections in ■ ELM 2.5.4 R must:

- (1) be prepared to a high standard and be fair and reasonable;
- (2) be based on reasonable and appropriate assumptions and research and (where appropriate) fact; and
- (3) be completed and sent to the FSA within ten *business days* of the circumstances in ■ ELM 2.5.4 R(1) or ■ ELM 2.5.4 R(2) first arising.

2.5.6

R

27.04.02/001

If a *firm* produces new projections under ■ ELM 2.5.4 R, the amount referred to in ■ ELM 2.5.2 R(2) must be calculated from the average of its *daily e-money outstandings amount* for the six *month* period beginning on the day it is granted an *e-money permission*, as follows:

- (1) (for the period prior to the *day* as of which the calculation is being made) from the *firm's* actual *e-money outstandings*; and
- (2) (for the remainder of the six *month* period) from those new projections.

2.5.7

G

27.04.02/001

The effect of the *rules* in ■ SYSC 3 is that a *firm* should take reasonable care to establish and maintain systems and controls that ensure that the *firm* will know as soon as reasonably possible if the projections referred to in ■ ELM 2.5.4 R(1) have proved to be significantly incorrect or if it is reasonably likely that those projections will prove to be significantly incorrect.

Electronic money

Chapter 3

3

Management of the e-money float

PAGE
1



3.1 Application

3.1.1

G

27.04.02/001

The effect of ■ ELM 1.1.1 R to ■ ELM 1.1.3 R is that this chapter:

- (1) applies to an *ELMI* other than a *lead regulated firm*;
- (2) does not apply to:
 - (a) an *incoming EEA firm*; or
 - (b) an *incoming Treaty firm*.



3.2 Purpose

- 3.2.1** G The purpose of this chapter is to apply to *ELMIs* prudent limits on their investments aimed at helping to ensure that their financial liabilities related to outstanding *e-money* are backed at all times by sufficiently liquid low risk assets.
27.04.02/001
- 3.2.2** G This involves addressing credit risk, market risk, foreign exchange risk, large exposure risk and liquidity risk.
27.04.02/001
- 3.2.3** G In addition, *threshold condition 4* says that ‘The resources of the [*firm*] must, in the opinion of the [FSA], be adequate in relation to the *regulated activities* that he seeks to carry on, or carries on’. *Principle 4* also requires all *firms* ‘to maintain adequate financial resources’.
27.04.02/001
- 3.2.4** G Credit risk is incurred whenever a *firm* is exposed to loss if another party fails to perform its financial obligations to the *firm*. This includes issuer risk, which could potentially result in a *firm* losing the full price of its investments, since default by the issuer could result in their value falling to nil.
27.04.02/001
- 3.2.5** G Liquidity is the ability of a *firm* to meet its liabilities at the time they fall due. Adequate liquidity is vital to the continuing viability of a *firm* and to maintaining the stability of the financial system as a whole. If *consumers* could not rely on being able to redeem their *e-money* in full in a timely fashion, they would lose confidence in the sector.
27.04.02/001
- 3.2.6** G The purpose of the liquidity requirements of this chapter is to help to enable a *firm* to be able to do the following in particular:
27.04.02/001
- (1) to meet maturing obligations in the normal course of business (business liquidity);
 - (2) to maintain an additional cushion of liquidity to cope with unexpected events such as the failure of a significant counterparty or debtor (contingent liquidity); and
 - (3) to survive in a wider market-generated crisis (market liquidity).
- 3.2.7** G Where the *firm’s* exposure to its counterparty is large, it risks a large loss should the counterparty default. Such a loss may be enough on its own to threaten the solvency of the *firm* and its ability to redeem *e-money* when required to do so. The purpose of the large exposure requirements is to help to ensure that a *firm* manages and diversifies its exposures to counterparties relating to its *e-money float* within suitable limits related to its capital resources.
27.04.02/001
- 3.2.8** G The purpose of the foreign exchange risk requirements in this chapter is to help to ensure that the *e-money float* is not put at risk by foreign exchange exposures.
27.04.02/001

3.2.9

G

27.04.02/001

This chapter implements article 5 of the *E-Money Directive*. Although article 2 of the *E-Money Directive* disappplies the large exposures section of the *Banking Consolidation Directive*, article 5(2) reapplies it in part.



3.3 Asset-liability management

- 3.3.1** R *A firm must, at all times, have **qualifying liquid assets** of a value no less than the amount of its **e-money outstandings** at that time.*
27.04.02/001
- 3.3.2** R *For the purpose of **ELM 3.3.1 R**, a **firm's qualifying liquid assets** must be valued at the lower of:*
27.04.02/001
- (1) **cost;**
 - (2) **the amount that can reasonably be realised in *money* from that *investment* (within the time specified in **ELM 3.3.11 R(2)** or less) by redemption, realisation, sale, exchange or other disposal of that asset.**
- 3.3.3** G *Where an asset is marketable the value attributed to it under **ELM 3.3.2 R(2)** should normally be the quoted market price, except where there is reason to suggest that it could not realise the asset held in the quantity actually held at that price. If there is reason to suggest that the asset could not be realised at that price, the value attributed to it under **ELM 3.3.2 R(2)** should be the price at which it can be realised.*
27.04.02/001
- 3.3.4** G *In determining the value attributed to assets, the *firm* should take into account any difficulty it might have in realising value from any concentration of assets.*
27.04.02/001
- Liquid assets**
-
- 3.3.5** R *A **qualifying liquid asset** is an *investment* fulfilling all the following criteria:*
27.04.02/001
- (1) **it is unsubordinated;**
 - (2) **it ranks at least equally with the unsubordinated, non-preferred and unsecured obligations of the *person* who owes the obligation under the *qualifying liquid asset* in question;**
 - (3) **it is:**
 - (a) **a *zero weighted asset*; or**
 - (b) **a deposit that is repayable on demand and is held with a *Zone A credit institution*; or**

- (c) a *qualifying debt security*; and
- (4) either:
 - (a) it has a residual maturity of one year or less; or
 - (b) (in the case of an *investment* on which a floating rate of interest is payable) the interest rate will be redetermined no later than one year from the time in question.

3.3.6

R

27.04.02/001

The total amount of *investments* that fall into (b) or (c) of ■ ELM 3.3.5 R(3) that are included as *qualifying liquid assets* in the calculation in ■ ELM 3.3.1 R must not exceed an amount equal to 20 times the *firm's own funds* at the time in question.

3.3.7

G

27.04.02/001

■ ELM 3.3.6 R only applies to *qualifying liquid assets* held to comply with ■ ELM 3.3.1 R. It does not prohibit holding *qualifying liquid assets* that fall into (b) and (c) of ■ ELM 3.3.5 R(3) in excess of 20 times the *firm's own funds*. Instead, it requires that the *firm* should have sufficient *zero weighted assets* or *own funds* to ensure that the *firm* complies with the limit in ■ ELM 3.3.6 R.

3.3.8

R

27.04.02/001

A *zero weighted asset* is any of the following:

- (1) cash;
- (2) a *security* issued by and representing a claim on (or that is fully, directly and unconditionally guaranteed by):
 - (a) a central government or central bank of a *Zone A country*; or
 - (b) the European Communities; or
 - (c) the European Central Bank;
 but only if it is *sufficiently liquid*.

3.3.9

R

27.04.02/001

A *qualifying debt security* means a *debenture* or *government and public security* (other than a *zero weighted asset*) that:

- (1) is *sufficiently liquid*;
- (2) is not issued by a *controller* of the *firm* or by a *person* in the same *group* as the *firm*; and
- (3) satisfies the condition in ■ ELM 3.3.10 R.

3.3.10

R

27.04.02/001

The condition referred to in ■ ELM 3.3.9 R is that either:

- (1) the *security* is issued by and represents a claim on (or it is fully, directly and unconditionally guaranteed by):
 - (a) a *multilateral development bank*; or

- (b) the regional or local government of a *Zone A country*; or
 - (c) a *Zone A credit institution*, but only if the *security* does not form part of its *regulatory capital resources*; or
 - (d) an *ISD investment firm* or *recognised third country investment firm*, but only if the *shares* of that *person* are listed on a *recognised investment exchange* or *designated investment exchange*; or
- (2) the *security*:
- (a) is listed on a *recognised investment exchange* or *designated investment exchange*; and
 - (b) is subject to a degree of default risk that, by virtue of the solvency of the issuer or guarantor (as the case may be) is no greater than what would be within the range of what is normal for a *security* falling into ■ ELM 3.3.10 R(1).

Test for liquidity

3.3.11

R

27.04.02/001

Investments held by a *firm* are only *sufficiently liquid* if they satisfy all of the following requirements:

- (1) the *firm* is without delay able to get quotations for the sale or purchase of the *investments* complying with the following conditions:
 - (a) the prices are for transactions that would fall into ■ ELM 3.3.11 R(2) and ■ ELM 3.3.11 R(3); and
 - (b) the *firm* gets the prices from *persons* who are not *associates* of the *firm*, who are independent of the *firm* and who are willing and able to buy and purchase those *investments* at the prices they quote;
- (2) it is reasonable to conclude that, except in exceptional circumstances, the *firm* will be able to find a buyer for the *investments* and complete the sale, for *money*, within a time that is within the range of (or that is quicker than) what is normal for a sale falling into (5);
- (3) it is reasonable to conclude that, except in exceptional circumstances, the price that the *firm* will be able to obtain for the sale of the *investments* will not be materially affected by either the speed of the sale or the amount of the *investments* sold;
- (4) they are regularly traded;

- (5) taking into account all other factors such as the volume of trading and the number of *persons* who frequently trade in them, their liquidity is at least as great as would be within the range of what is normal for *government and public securities* (being traded on the main market for those *government and public securities*) of the central government of a *Zone A country* that are widely and continuously traded in large volumes; and
- (6) the *firm* can buy or sell the *investments* in a market in which:
 - (a) there is a timetable for the settlement of sales of those *investments*; and
 - (b) it is general market practice in that market to follow that timetable;

so that the settlement timetable for purchases of those *investments* is generally not a matter for negotiation.

3.3.12

R

27.04.02/001

■ ELM 3.3.11 R(1) does not apply to a *security* listed on a *recognised investment exchange* or *designated investment exchange*.

Establishment of the e-money float

3.3.13

R

27.04.02/001

A *firm* must choose which particular *qualifying liquid assets* to treat as the *e-money float* for the purposes of *ELM*. The *firm* must do so on a consistent basis. In particular, the *firm* must not treat a particular *investment* as part of its *e-money float* for the purposes of some of the *rules* in *ELM* and not for others.



3.4 Foreign exchange risk

3.4.1

R

27.04.02/001

A *firm* must, at all times, have sufficient *own funds* to ensure that its *FX exposure* does not exceed its *absolute FX exposure limit*.

3.4.2

R

27.04.02/001

A *firm* must, at all times, have sufficient *own funds* to ensure that its *FX exposure* does not exceed its *FX exposure limit* on more than:

- (1) *one day* in any one week period; or
- (2) *two days* in any one month period; or
- (3) *five days* in any one year period;

ending on the *day* in question.

Calculation of FX exposure

3.4.3

R

27.04.02/001

A *firm's FX exposure* is its *net FX open position* multiplied by 8%.

3.4.4

R

27.04.02/001

A *firm's net FX open position* is calculated as follows:

- (1) only take into account an asset, liability or other position that:
 - (a) is denominated in, or gives rise to a position in, a *foreign currency*; and
 - (b) forms part of its *e-money outstandings* or *e-money float*;
- (2) items forming part of its *e-money float* must be valued in accordance with ■ ELM 3.3.2 R;
- (3) for each *foreign currency*:
 - (a) sum the long and short positions;
 - (b) calculate the net long or short position for that currency;
- (4) convert each net position, long and short, into the *firm's base currency* at prevailing spot rates;
- (5) sum all short positions and sum all long positions;

3.4.5

R

27.04.02/001

(6) the largest figure from (5) is the *firm's net FX open position*.

For the purposes of determining the currency in which a position is denominated, a *firm* must apply the following principles:

- (1) where the price of an *investment* is quoted in only one currency, a position in that *investment* must be treated as denominated in that currency;
- (2) where the price of an *investment* is quoted in more than one currency, a position in that *investment* must be treated as denominated in the currency in which the *firm* accounts for the *investment*.

FX exposure limits

3.4.6

R

27.04.02/001

A *firm's absolute FX exposure limit* is, at any time, the amount by which, at that time, the *firm's own funds* exceed 2.5% of its *e-money outstandings*. If there is no such excess, the *firm's absolute FX exposure limit* is zero.

3.4.7

R

27.04.02/001

A *firm's FX exposure limit* is, at any time, the amount by which, at that time, the *firm's own funds* exceed 3% of its *e-money outstandings*. If there is no such excess, the *firm's FX exposure limit* is zero.

3.4.8

G

27.04.02/001

The effect of ■ ELM 3.4.1 R and ■ ELM 3.4.2 R is that a *firm* should not generally have any *FX exposure* unless its *own funds* exceed 3% of its *e-money outstandings*.

3.4.9

G

27.04.02/001

If a *firm's own funds* are 2.5% or less of its *e-money outstandings*, the *firm* should not have any *FX exposure*.

3.4.10

G

27.04.02/001

If the *firm's own funds* are between 2.5% and 3% of its *e-money outstandings*, it should not in general have any *FX exposure*, but may occasionally have an *FX exposure* as long as it does so no more frequently than set out in ■ ELM 3.4.2 R. The *FX exposure* must not exceed the amount by which its *own funds* exceed 2.5% of its *e-money outstandings*.

3.4.11

G

27.04.02/001

If the *firm's own funds* exceed 3% of its *e-money outstandings*, it may have an *FX exposure* of up to the amount of that excess. It may exceed that limit by up to ½% of its *e-money outstandings*, but only if it does so occasionally, in accordance with ■ ELM 3.4.2 R.

3.4.12

G

27.04.02/001

The limits in ■ ELM 3.4.2 R are cumulative. Therefore, for example, if a *firm* exceeds its *FX exposure limit* more than once in a one week period, the *firm* will breach ■ ELM 3.4.2 R even though it is within the limits in ■ ELM 3.4.2 R(2) and (3).



3.5 Large exposure risk

Large exposure limits

- 3.5.1** **R** *A firm must not at any time have any large e-money float exposure that exceeds 25% of its own funds.*
27.04.02/001
- 3.5.2** **R** *The total of a firm's large e-money float exposures must not at any time exceed 800% of its own funds.*
27.04.02/001

General rules for calculation of exposures

- 3.5.3** **R** *(1) A firm has an e-money float exposure to a person if the firm is exposed to the risk of incurring losses:*
27.04.02/001
- (a) *in connection with an item that forms part of the firm's e-money float and that involves an obligation of that person; or*
 - (b) *if the firm realises an asset or off-balance sheet position that relates to an investment forming part of the firm's e-money float issued by that person or that otherwise involves an obligation of that person; or*
 - (c) *if the risk:*
 - (i) *relates to an investment forming part of the firm's e-money float; and*
 - (ii) *is wholly or mainly attributable to the risk that the person fails to meet or cannot meet an obligation or to the condition or prospects of that person (including its financial soundness).*
- (2) *The amount of a firm's e-money float exposure in (1) is the maximum loss that the firm might suffer.*
- (3) *An individual item gives rise to an individual e-money float exposure.*

(4) The total *e-money float exposure* to a *person* is the sum of all such individual *e-money float exposures*.

3.5.4

R

27.04.02/001

When calculating the amount of an *e-money float exposure* for the purpose of *ELM*, a *firm* must include accrued interest and dividends due.

3.5.5

G

27.04.02/001

A *firm's e-money float exposures* relate to the *exposures* that it has in connection with its *e-money float*.

Exclusions

3.5.6

R

27.04.02/001

A *firm* must not take account of the following *e-money float exposures* for the purposes of the definition of *large e-money float exposure*:

- (1) a claim or other asset required to be deducted at stages C or F set out in ■ ELM 2.4.2 R;
- (2) a bill endorsement on a bill already endorsed by another *firm*;
- (3) an *e-money float exposure* under a *zero weighted asset*;
- (4) an *e-money float exposure* that is secured by collateral held by the *firm* in the form of:
 - (a) *zero weighted assets*; or
 - (b) a deposit of money with or certificates of deposit issued by the *firm*;

(but see ■ ELM 3.5.16 R);
- (5) an *e-money float exposure* with a residual maturity of one year or less to a *full credit institution* (including a deposit that is a *qualifying liquid asset* under ■ ELM 3.3.5 R(3)(b)), but only if that *e-money float exposure* does not form part of that *credit institution's regulatory capital resources*.

Calculation of large e-money float exposure

3.5.7

R

27.04.02/001

Each of the following is a *large e-money float exposure* of a *firm*:

- (1) (if the total of the *firm's e-money float exposures* to a *person* equals or exceeds 10% of the *firm's own funds*) all the *firm's e-money float exposures* to that *person*; and
- (2) (if the total of the *firm's e-money float exposures* to each member of a *group of closely related counterparties* equals or exceeds

10% of the *firm's own funds*) all the *firm's e-money float exposures* to each member of that *group of closely related counterparties*.

3.5.8 **R** *A person, together with each person who is closely related to that person, is a group of closely related counterparties.*
27.04.02/001

3.5.9 **R** In **■** ELM 3.5.8 R, *persons* are closely related if:
27.04.02/001

- (1) the financial soundness of one of them is, or is likely to be, significantly affected by the financial soundness of the others; or
- (2) it would be prudent to regard them as representing the same risk, because the same factors are likely to affect the financial soundness of them all or for some other reason.

3.5.10 **R** In **■** ELM 3.5.8 R, *persons* are also closely related if there are *close links* between them within the meaning of paragraph (2) of the definition of that term.
27.04.02/001

3.5.11 **R** (1) **■** ELM 3.5.10 R does not apply with respect to particular *e-money float exposures* if the *firm*:
27.04.02/001

- (a) has taken all steps that are reasonably required to prove that the *persons* in question are not closely related as defined in **■** ELM 3.5.9 R; and
- (b) makes and retains a record of the steps taken under (1)(a).

(2) A *firm* must retain the record in (1) for the period of three years after the *firm* ceases to take advantage of the disapplication of **■** ELM 3.5.10 R by (1) (including where the *firm* ceases to have that *e-money float exposure*).

3.5.12 **R** The *persons* who are closely related to each other under **■** ELM 3.5.9 R and each *person* who is linked with any of them under **■** ELM 3.5.10 R are all closely related to each other for the purposes of **■** ELM 3.5.8 R.
27.04.02/001

Treatment of guarantees and collateral

3.5.13 **R** To the extent that an *e-money float exposure* is directly and unconditionally guaranteed by a third party, a *firm* may, for the purposes of the *rules* in this section, treat that part of the *e-money float exposure* as having been incurred to the guarantor.
27.04.02/001

3.5.14 **R** If an *e-money float exposure* is secured by collateral in the form of *securities* issued by a third party, a *firm* may, for the purposes of the *rules* in **■** ELM 3.5, treat that *e-money float exposure* as having been incurred to that third party, as long as **■** ELM 3.5.15 R, **■** ELM 3.5.16 R and **■** ELM 3.5.17 R allow this.
27.04.02/001

3.5.15

R

27.04.02/001

A *firm* may not recognise the benefits of collateral or a guarantee for the purpose of ■ ELM 3.5.6 R unless ■ ELM 3.5.6 R specifically permits this.

3.5.16

R

27.04.02/001

A *firm* may not recognise the benefits of collateral for the purpose of this section, unless:

- (1) the *firm* has an unconditional right to apply the collateral to discharge (or to use the proceeds of realising the collateral to discharge) the liability forming the *e-money float exposure*;
- (2) the collateral arrangements are:
 - (a) legally well-founded in all relevant jurisdictions; and
 - (b) enforceable in the default, liquidation, bankruptcy or other similar circumstance of the *person* who provides the collateral, the *person* to whom the *firm* has the *e-money float exposure* and the *firm*; and
- (3) the *firm* has obtained legal opinions from suitably experienced external lawyers confirming that the requirements of (1) and (2) are satisfied and has taken such other steps as are reasonable to confirm that they are satisfied.

3.5.17

R

27.04.02/001

A *firm* may not recognise the benefits of collateral under ■ ELM 3.5.14 unless:

- (1) the *securities* referred to in ■ ELM 3.5.14 are not issued by:
 - (a) the *firm*;
 - (b) another member of its *group*;
 - (c) the *person* to whom the *firm* has the *e-money float exposure* in question; or
 - (d) (in a case in which the question is whether the *firm* has a *large e-money float exposure* under ■ ELM 3.5.7 R(2)) any member of that *group of closely related counterparties*;
- (2) the *securities* are listed on a *recognised investment exchange* or *designated investment exchange*; and
- (3) the mark to market value of the *securities* is at least 200% of the amount of the *e-money float exposure* concerned, except that:
 - (a) the percentage figure is 250% rather 200% in the case of *shares*;
 - (b) the percentage figure is 150% rather than 200% in the case of *debentures* issued by a *full credit institution* if those

debentures do not form part of its *regulatory capital resources*; and

- (c) the percentage figure is 150% rather than 200% in the case of *debentures* or *government and public securities* issued by regional or local authorities of an *EEA State* or by a *multilateral development bank*.

3.5.18 R
27.04.02/001

A *firm* must make the choices set out in this section on a consistent basis. In particular, the *firm* must not:

- (1) treat a guaranteed *e-money float exposure* as being one to the guarantor for the purposes of some of the *rules* in *ELM* and as being to the principal debtor for others; or
- (2) treat a secured *e-money float exposure* as being one to the *person* who is the debtor under the *security* that is held as collateral for the purposes of some of the *rules* in *ELM* and as being to the debtor under the secured obligation for others.

3.5.19 G
27.04.02/001

■ ELM 3.5.17 R does not apply to ■ ELM 3.5.6 R.

3.5.20 G
27.04.02/001

The *guidance* in chapter NE of IPRU(BANK) (collateral and netting) about collateral is also relevant to ■ ELM 3.5.16 R.

Notifying the FSA of reportable large exposures

3.5.21 R
27.04.02/001

A *firm* must notify the *FSA* if:

- (1) it proposes to enter into a transaction or transactions that would result in it having a *reportable large exposure*; or
- (2) it has a *reportable large exposure* not already notified under (1).

3.5.22 G
27.04.02/001

The reporting requirement in ■ ELM 3.5.21 R applies to the total *e-money float exposure*, that is, it includes *e-money float exposures* that are exempt from the limits set in ■ ELM 3.5.1 R and ■ ELM 3.5.2 R as well as those that are not.

Factors to consider when deciding whether to incur an exposure

3.5.23 G
27.04.02/001

When considering the acceptability of a particular *e-money float exposure*, the *FSA* expects a *firm* to consider:

- (1) the standing of the counterparty;
- (2) the nature of the *firm's* relationship with the counterparty;
- (3) the nature and extent of security taken against the *e-money float exposure*;
- (4) the maturity of the *e-money float exposure*; and

(5) the *firm's* expertise in the type of transaction.

3.6 Liquidity and interest rate risk

3.6.1 **R** **A firm must maintain adequate liquidity, taking into account the nature and scale of its business, so that it is able to meet its obligations as they fall due.**

27.04.02/001

3.6.2 **G** A firm should be able to meet its obligations as they fall due. It should hold sufficient liquidity to ensure it can be considered to be conducting its business in a prudent manner. This includes holding adequate liquidity to meet:

27.04.02/001

- (1) its *e-money* outstandings; and
- (2) requirements to make other payments such as cash flows in respect of off-balance sheet instruments and other expenses.

3.6.3 **G** A firm can meet such obligations in a number of ways:

27.04.02/001

- (1) by holding sufficiently immediately available cash (including bank deposits) or marketable assets; this is the primary method to be used to meet *e-money* obligations;
- (2) by securing an appropriate matching future profile of cash flows from maturing assets and liabilities; and
- (3) by borrowing; this is subject to the firm's ability to raise funds and the cost at which they can be raised, which depends upon its standing in the market and on the general liquidity situation at the time.

3.6.4 **G** There are no specific *rules* about holding capital against interest rate risk as this risk is addressed by two other parts of *ELM*. These are the prohibition on paying interest in ■ ELM 4.3.7 R and the limitations on the residual maturity of *qualifying liquid assets* and on the period within which the interest rate on them must be redetermined in ■ ELM 3.3.5 R(4).

27.04.02/001

3.7 Derivatives

3.7.1 **R** A *firm* must not be a party to or have a position in a *derivative* or *quasi derivative contract* unless ■ ELM 3.7.2 R allows this.

27.04.02/001

3.7.2 **R** A *firm* may be a party to a *derivative* or *quasi derivative contract* if:

27.04.02/001

- (1) the sole purpose (ignoring any other purposes which together are insignificant) of becoming a party to it is hedging market risks arising from:
 - (a) *issuing e-money*; or
 - (b) *the e-money float*;
- (2) so far as reasonably possible, being a party to that *derivative* or *quasi derivative contract* achieves the permitted purpose described in ■ ELM 3.7.2 R(1);
- (3) the *derivative* or *quasi derivative contract* is *sufficiently liquid*; and
- (4) either:
 - (a) the *derivative* or *quasi derivative contract* is an exchange rate contract relating to a *foreign currency* with an original maturity of 14 days or less; or
 - (b) the *derivative* or *quasi derivative contract*:
 - (i) is an interest rate or foreign exchange related contract;
 - (ii) is regularly traded on a *recognised investment exchange* or *designated investment exchange*; and
 - (iii) is subject to daily margin requirements under the rules of that exchange.

Electronic money

Chapter 4

Limitations on activities

4

PAGE
1



4.1 Application

4.1.1

G

27.04.02/001

The effect of ■ ELM 1.1.1 R to ■ ELM 1.1.3 R is that:

- (1) this chapter applies to *ELMIs*;
- (2) this chapter, except ■ ELM 4.3 , applies to a *bank* or *building society* that is an *e-money firm*;
- (3) no part of this chapter applies to:
 - (a) an *incoming EEA firm*; or
 - (b) an *incoming Treaty firm*.

4.1.2

R

27.04.02/001

In the case of an *overseas firm*, ■ ELM 4.4 applies only in relation to *e-money* issued from an establishment maintained by the *firm* in the *United Kingdom*.

4.1.3

G

27.04.02/001

Except in the case set out in ■ ELM 4.1.2 R, the *rules* in this chapter apply on a worldwide basis.

4.1.4

G

27.04.02/001

Thus for example an *ELMI* cannot carry on any activity prohibited by ■ ELM 4.3.1 R anywhere in the world.



4.2 Purpose

4.2.1


27.04.02/001

One purpose of this chapter is to limit the activities of an *ELMI* to ones closely connected to *issuing e-money*. *ELM* simplifies, for *ELMIs*, the capital adequacy requirements that apply to *banks* and *building societies* but imposes controls that do not apply to them. Those controls include ones on the activities that an *ELMI* may carry on. The prudential requirements for *ELMIs* are not designed to support a wider range of activities. The limitation on activities provides further help in ensuring that an *ELMI* is able to redeem its *e-money* when it is required to.

4.2.2


27.04.02/001

This chapter implements article 1(5) of the *E-Money Directive* and the prohibition in that Directive on issuing *e-money* at a discount.

4.2.3


27.04.02/001

The prohibition on issuing *e-money* at a discount avoids the financial risk that might affect an *e-money firm* that issues *e-money* for less than the amount required to redeem it. The prohibition also helps to prevent *e-money firms* from creating monetary value in an uncontrolled way. In an extreme case, that could lead the monetary stock to expand without central banks being able to monitor it. That would hinder monetary analysis and affect the adequacy of monetary policy instruments. If the activities of *e-money firms* were to become a source of such instability, that could prejudice *consumers* who deal with them.



4.3 Restriction to issuing e-money and related activities

Restriction on activities

4.3.1 R A *firm* must not undertake or carry on business activities other than *issuing e-money*, except for those in ■ ELM 4.3.2 R.

27.04.02/001

4.3.2 R The activities referred to in ■ ELM 4.3.1 R are:

27.04.02/001

- (1) the provision of financial and non-financial services closely related to *issuing e-money*, such as:
 - (a) the administering of *e-money* by the performance of operational and other ancillary functions related to its issuance; and
 - (b) the issuing and administering of other means of payment; and
- (2) the storing (on behalf of other *undertakings* or public institutions) of data on *e-money electronic devices* on which *e-money* issued by the *firm* is stored or which can be used to use or spend *e-money* issued by the *firm*;

but excluding the granting of any form of credit.

4.3.3 G The activities permitted by ■ ELM 4.3.2 R include distributing *e-money* issued by another *person*.

27.04.02/001

Restriction on giving credit

4.3.4 R A *firm* must not grant any credit in the course of or for the purpose of the business of *issuing e-money*.

27.04.02/001

4.3.5 G ■ ELM 4.3.2 R and ■ ELM 4.3.4 R together prevent a *firm* from granting credit. Granting credit includes making loans.

27.04.02/001

4.3.6 G If a *person* buys *e-money* from a *firm* and pays for it by cheque (so that the *firm* does not immediately receive value for it) that does not amount to granting credit under ■ ELM 4.3.4 R.

27.04.02/001

Restriction on interest

4.3.7 **R** A *firm* must not pay interest or any similar sum on *e-money* issued by it.

27.04.02/001

4.3.8 **G** A *firm* may *issue e-money* in the way described in ■ ELM 4.4.2 G without infringing ■ ELM 4.3.7 R.

27.04.02/001

Restriction on holdings in other undertakings

4.3.9 **R** A *firm* must:

27.04.02/001

- (1) not have an *ownership share*; and
- (2) ensure that no member of its *sub group* has any *ownership share*; in another *undertaking* except in an *undertaking* that falls into ■ ELM 4.3.11 R.

4.3.10 **R** A *firm* must ensure that the only other members of its *sub group* are ones that fall into ■ ELM 4.3.11 R.

27.04.02/001

4.3.11 **R** An *undertaking* only falls into this *rule* if its only activity is the performance of operational or other ancillary functions related to *e-money* issued or distributed by the *firm* referred to in ■ ELM 4.3.9R or ■ ELM 4.3.10 R.

27.04.02/001

4.4 Prohibition on issue of e-money at a discount

4.4.1 **R** A *firm* must not issue e-money that has a monetary value greater than its e-money issue price.

27.04.02/001

4.4.2 **G** A *firm* may want, for promotional reasons, to issue e-money to a *client* on terms that the *client* pays less than its monetary value. For instance, a *firm* may want to:

27.04.02/001

- (1) give away some e-money to new *clients* on their first load to encourage them to start using the product; or
- (2) give away £X of e-money for each £Y of e-money a *client* buys or for each £Y of goods or services that the *client* buys using e-money issued by the *firm*.

4.4.3 **G** A *firm* may be able to issue e-money in the way described in ■ ELM 4.4.2 G without infringing ■ ELM 4.4.1 R. A sum paid by a third party to the *firm* before the *firm* issues e-money can form part of the e-money issue price for that e-money if:

27.04.02/001

- (1) that sum is paid to the *firm* in payment of part or all of the e-money issue price for that e-money; and
- (2) at the time when the *firm* issues that e-money it applies that sum towards the payment of the e-money issue price of that e-money.

4.4.4 **G** The fact that a *firm* incurs costs distributing e-money does not necessarily mean that that e-money is issued at a discount. But the payment by the *firm* of commission to distributors to whom the *firm* issues e-money may amount to issuing it at a discount.

27.04.02/001

4.4.5 **G** Under *Principle 11*, a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *FSA* appropriately anything relating to the *firm* of which the *FSA* would reasonably expect notice. If a *firm* decides to launch a promotion of the type described in ■ ELM 4.4.2 G, the *firm* should notify the *FSA* of its intention and details about the promotion. Those details should include the type of promotion, any other businesses taking part in it, the likely amount over the life of the promotion of the difference between the monetary value of the e-money and the amount to be paid by those to whom the *firm* issues it and the proposed length of the promotion. The information should also include details about the *persons* who are to make the payments in ■ ELM 4.4.2 G, how much each is to pay and when the payments are to be made.

27.04.02/001

4.4.6 **G** The *firm* should also keep the *FSA* informed of changes in its expectations during the promotion described in ■ ELM 4.4.2 G and of any substantial difference between its expectations and the actual outcome.

27.04.02/001

Electronic money

Chapter 5

Systems and controls; Rules for making calculations

5

PAGE
1



5.1 Application

5.1.1

G

27.04.02/001

The effect of ■ ELM 1.1.1 R to ■ ELM 1.1.3 R is that:

- (1) this chapter applies to *ELMIs*;
- (2) ■ ELM 5.4 applies to a *bank* or *building society* that is an *e-money firm*;
- (3) none of this chapter applies to:
 - (a) an *incoming EEA firm*; or
 - (b) an *incoming Treaty firm*.



5.2 Purpose

- 5.2.1**  This chapter contains *rules* about certain aspects of systems and controls and senior management arrangements. It also contains *guidance* on *rules* elsewhere in the *Handbook* on these topics.

27.04.02/001
- 5.2.2**  In addition, *threshold condition 4* says that ‘The resources of the [*firm*], be adequate in relation to the *regulated activities* that he seeks to carry on, or carries on’. This includes the means by which a *firm* manages the incidence of risk in connection with its business.

27.04.02/001
- 5.2.3**  *Threshold condition 5* says that a *firm* must satisfy the *FSA* that he is a fit and proper *person* having regard to all the circumstances.

27.04.02/001
- 5.2.4**  *Principle 3* also requires a *firm* to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

27.04.02/001
- 5.2.5**  The purpose of this chapter is to amplify the requirements of *Principle 3* for *firms* in specific areas and thus make it more likely that *firms* will have adequate systems and controls. It also increases certainty by providing *guidance* on some of the specific ways in which the *rules* in *SYSC 3* apply in relation to *issuing e-money*. This chapter also helps to establish a *firm’s* compliance with *threshold conditions 4* and *5*.

27.04.02/001
- 5.2.6**  This chapter implements article 7 of the *E-Money Directive* and (for *ELMIs*) article 6(1) of the *Banking Consolidation Directive*.

27.04.02/001

5.3 Business to be directed by at least two individuals

5.3.1 **R** **A firm must ensure that at least two individuals effectively direct its business.**
27.04.02/001

5.3.2 **G** ■ ELM 5.3.1 R, sometimes known as the 'four eyes requirement', provides that at least two individuals must effectively direct the business of a *firm*. Compliance with the *rule* would help to establish a *firm's* compliance with *Principle 3* ("Management and control") and its continued meeting of the *threshold condition 5* ("Suitability"). It also reflects the requirement in Article 6(1) of the *Banking Consolidation Directive*.
27.04.02/001

5.3.3 **G** In the case of a *body corporate*, the *FSA* expects that the individuals concerned are either executive directors or persons granted executive powers by, and reporting immediately to, the board; and, in the case of a *partnership*, the *FSA* looks for at least two general or active partners.
27.04.02/001

5.3.4 **G** Compliance with ■ ELM 5.3.1 R is also in particular relevant to whether a *firm* complies with the *rules* covering senior management arrangements, systems and controls (see *SYSC*).
27.04.02/001

5.3.5 **G** At least two independent minds should be applied to both the formulation and implementation of the policies of the *firm*. Where the *firm* nominates just two individuals to direct its business, the *FSA* will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating only to a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and their implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.
27.04.02/001

5.3.6 **G** The four eyes requirement applies to the *firm* a whole. Thus, in the case of an *overseas firm*, the *FSA* assesses whether at least two individuals effectively direct the business of the *firm* and not just the business of the branch(es) in the *United Kingdom*. The *FSA* also takes into account the manner in which management decisions are taken in the *UK* branch(es) in assessing the adequacy of the *firm's* systems and controls.
27.04.02/001



5.4 Systems and controls: e-money firms

5.4.1

G

27.04.02/001

The *guidance* in ■ ELM 5.4 is *guidance* on the *rules* in ■ SYSC 3 as they apply to *issuing e-money*. It is in addition to the *guidance* in SYSC itself.

5.4.2

G

27.04.02/001

Under ■ SYSC 3.2.3 G and ■ SYSC 3.2.4 G, a *firm* should carry out appropriate due diligence on any *person* to whom it outsources any function or task and keep the suitability of that *person* for that task or function under review. A *firm* should monitor the performance by that *person* of the outsourced tasks and functions.

5.4.3

G

27.04.02/001

A *firm* should, to the degree appropriate in the light of the factors listed in ■ SYSC 3.1.2 G(1):

- (1) authenticate the identity of customers with whom it transacts and the capacity and authority to act of *persons* with whom the *firm* deals;
- (2) use transaction authentication methods that ensure that transactions in *e-money* to which it is a party do not have to be unwound or reversed;
- (3) ensure that proper authorisation controls and access privileges are in place for all its systems, databases and applications;
- (4) ensure that measures are in place to protect the data integrity of transactions in *e-money* to which it is a party and records and information about such transactions;
- (5) ensure that measures are in place to prevent fraud;
- (6) establish clear audit trails for all transactions in *e-money* to which it is a party; and
- (7) ensure the confidentiality of customer and transaction information, having regard to the sensitivity of the information and any other relevant factor.

5.4.4

G

27.04.02/001

The risks of regulatory concern referred to in ■ SYSC 3.2.11 G relating to *e-money* include the following risks:

- (1) unauthorised creation, transfer or redemption of *e-money*;
- (2) incorrect attribution of funds within the system for the creation, circulation and redemption of *e-money* issued by the *firm* or in which it transacts;
- (3) loss of *e-money* within the system referred to in (2) and loss of function of any part of that system; and
- (4) use of the system referred to in (2) for *financial crime* or in a way that may harm or misuse any part of the *financial system*.

5.5 Rules for making calculations

Exchange rates for the ELM financial rules

5.5.1 **R** Except as otherwise provided for in *ELM*, a *firm* must, for the purposes of the *ELM financial rules*, translate assets and liabilities denominated in a *foreign currency* into the *firm's base currency* using the closing mid market rate of exchange.

27.04.02/001

Accounting policy for the ELM financial rules

5.5.2 **R** Except as otherwise provided for in *ELM*, and subject to ■ ELM 5.5.3 R, 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 including those accounting principles and rules contained in the United Kingdom Statements of Standard Accounting Practice (SSAPs) and Financial Reporting Standards (FRSs) effective at the relevant time.

27.04.02/001

5.5.3 **R** A *firm* must determine amounts included in the calculations required by the *ELM financial rules* in such a way as to reflect the substance and not merely the legal form of the underlying transactions and balances.

27.04.02/001

Valuation under the ELM financial rules

5.5.4 **R** A *firm* must value assets, liabilities and positions on a prudent and consistent basis, as well as having regard to the liquidity of the *investment* concerned and any special factors which may adversely affect the closure of the position. This *rule* does not override the valuation requirements in ■ ELM 3.3.2 R (Valuation of qualifying liquid assets).

27.04.02/001

Electronic money

Chapter 6

Redemption, information requirements and purse limits

6

PAGE
1



6.1 Application

6.1.1

G

27.04.02/001

The effect of ■ ELM 1.1.1 R to ■ ELM 1.1.3 R is that this chapter:

- (1) does not apply to an *incoming EEA firm* or *incoming Treaty firm* carrying on business in the *United Kingdom* on a *cross-border services basis* only;
- (2) applies to all other *e-money firms*.

6.1.2

R

27.04.02/001

This chapter applies only in relation to *e-money* issued in the course of the *regulated activity of issuing e-money* carried on from an establishment maintained by the *firm* in the *United Kingdom*, unless ■ ELM 6.10.1 R provides otherwise.

6.2 Purpose

- 6.2.1**  One purpose of this chapter is to ensure that a *firm* redeems on demand any *e-money* issued by it. This will ensure that a *consumer* who finds that for the moment there is nothing he wishes to buy using *e-money* he has bought is not left with an asset that he cannot use and that he cannot turn back to cash to spend elsewhere. This will increase confidence among *consumers* in *e-money* as a product.
- 27.04.02/001
- 6.2.2**  The purse limit in ■ ELM 6.9.1 R protects holders of *e-money* by restricting the financial loss a holder of *e-money* may suffer if he loses his *consumer e-money card* or if the *firm* becomes insolvent. It takes into account the fact that the *compensation scheme* does not apply.
- 27.04.02/001
- 6.2.3**  This chapter implements article 3 of the *E-Money Directive* and article 33a of the *Banking Consolidation Directive*.
- 27.04.02/001
- 6.2.4**  The purpose of the *rules* about redemption in *ELM* is that holders of *e-money* issued by the *firm* should have the right to redeem that *e-money* at par in a simple and easy way. If any fee is charged for redemption, it should be limited. Holders should have the right for redemption proceeds to be paid in the currency in which the *e-money* is denominated and paid immediately in banknotes and coins or by transfer to a conventional bank account. Therefore a *firm* should not have a contract with a holder of *e-money* under which the holder is only entitled to redeem *e-money* on different terms.
- 27.04.02/001
- 6.2.5**  However, ■ ELM 6 does not require a *firm* to redeem *e-money* in a way that the holder does not want; it requires that the holder should be entitled to have the *e-money* redeemed in accordance with ■ ELM 6. Thus if, at the time that a holder of *e-money* is exercising a *redemption right*, the holder asks the *firm* to pay the proceeds in a currency other than the one in which it is denominated, the *firm* may do so. Similarly, the holder may ask the *firm* to pay the proceeds of redemption in a way different from that in ■ ELM 6.5.
- 27.04.02/001
- 6.2.6**  This also means that a *firm* may allow a holder of *e-money* issued by the *firm* to use it to buy a currency other than the one in which the *e-money* is denominated through an automatic teller machine.
- 27.04.02/001

6.3 Duty to redeem

Person entitled to redemption

6.3.1

R

27.04.02/001

A *firm* must, if requested to do so, redeem, at par, any *e-money* it has issued if the request is from a *person* who lawfully holds the *e-money* and who is:

- (1) the *person* to whom the *firm* issued the *e-money*; or
- (2) any other *person*, as long as his holding the *e-money* is not contrary to the *e-money scheme rules*.

Currency of redemption

6.3.2

R

27.04.02/001

A *firm* must give a *person* who is exercising a *redemption right* against the *firm* the right to have the proceeds of redemption paid to him in the currency in which the *e-money* is denominated.

Time of redemption

6.3.3

R

27.04.02/001

A *firm* must give a *person* who is exercising a *redemption right* against the *firm* in accordance with ■ ELM 6.5.1 R:

- (1) (in the case of redemption for cash) the right to receive the cash immediately following the completion of the procedures in ■ ELM 6.3.4 R;
- (2) (in the case of redemption in accordance with ■ ELM 6.5.1(2)) the right to be paid as follows:
 - (a) the *firm* must give the necessary payment instructions immediately following the completion of the procedures in ■ ELM 6.3.4 R; and
 - (b) the *firm* must ensure that the funds reach the holder's account within five *business days* of the *day* on which it gave the instructions in (2)(a).

Money laundering and other checks

- 6.3.4 **R** 27.04.02/001
- (1) The procedures referred to in ■ ELM 6.3.3 R are the carrying out of any checks that are reasonably required to prevent *money laundering* or fraud or to check whether the holder of the *e-money* is a *person* who is entitled to redeem it.
 - (2) A *firm* must complete any procedures referred to in (1) as soon as reasonably possible.

- 6.3.5 **R** 27.04.02/001
- Nothing in ■ ELM 6.3 requires a *firm* to do anything:
- (1) prohibited by any of the *rules* in *ML*; or
 - (2) prohibited by the *Money Laundering Regulations*; or
 - (3) that would be a criminal offence under the law of any part of the *United Kingdom*; or
 - (4) (in relation to *e-money*) that would be a criminal offence under the law of a country other than the *United Kingdom* in which the *firm* redeems or would redeem that *e-money*.

Redemption prevented by circumstances beyond the firm's control

- 6.3.6 **R** 27.04.02/001
- A *firm* does not breach ■ ELM 6.3.3 R(2) if the failure of the funds to reach the holder's account in time is caused by a failure outside the *firm's* control on the part of any third party that is involved in the funds transfer.

Guidance

- 6.3.7 **G** 27.04.02/001
- An example of a *person* coming within ■ ELM 6.3.1 R(2) is a merchant who has accepted payment using that *e-money*.
- 6.3.8 **G** 27.04.02/001
- ELM 6.3.3 R recognises that it may not be possible to make electronic payments to *e-money* holders at once owing to the timetable of the settlement cycle for retail payments.
- 6.3.9 **G** 27.04.02/001
- The par value of *e-money* is its monetary value.
- 6.3.10 **G** 27.04.02/001
- The *redemption right* applies against the issuer of *e-money*. Issuer means the same thing as it does for the purpose of article 74A of the *Regulated Activities Order* (Electronic money). There is *guidance* on the meaning of issuer under that article in ■ AUTH App 3.2 (The regulated activity of issuing e-money).

6.4 Exceptions to the duty to redeem

Minimum redemption amount

6.4.1

R

27.04.02/001

■ ELM 6.3.1 R does not apply if:

- (1) the *e-money* to be redeemed has a par value of less than:
 - (a) (if the *e-money* is denominated in euro) 10 euro; or
 - (b) (if it is denominated in another currency) the equivalent of 10 euro in that currency; and
- (2) this exception is expressly provided for by the *e-money scheme rules*.

Expiration of e-money

6.4.2

R

27.04.02/001

If the *e-money scheme rules* provide that *e-money* ceases to be valid after a specified period, the *redemption right* does not apply after the end of that period.

6.4.3

R

27.04.02/001

A *firm* must not issue *e-money* that is valid for less than a year. If a *firm* issues *e-money* to *banks* or other distributors who then distribute it to the public, the *firm* must use reasonable endeavours to ensure that it remains valid for at least a year after its distribution to the public.

Guidance

6.4.4

G

27.04.02/001

The duty to redeem assumes that the *person* asking for redemption is able to present or make available the *e-money* for redemption. Thus, for example, if the *e-money* scheme in question is card based, and the *person* in question loses his card, ■ ELM 6.3.1 R does not require the *firm* to reimburse the holder or redeem that *e-money* for him.

6.4.5

G

27.04.02/001

A *firm* should consider whether it is under any duty to compensate a holder of *e-money* issued by it who loses his *consumer e-money card* or whose *e-money* is used fraudulently by another. For example, a *firm* should consider whether the

duty of a card issuer under regulation 21 (Payment by card) of the Consumer Protection (Distance Selling) Regulations 2000 to recredit or to return sums in the event of fraudulent use of a payment card applies to it, particularly in the case of *e-money* stored on a *plastic card*.

6.5 Methods of redemption

6.5.1

R

27.04.02/001

A *firm* must give a *person* who is exercising a *redemption right* against the *firm* the right to have the proceeds of redemption paid to him:

- (1) in cash; or
- (2) by electronic transfer to an account with a *bank* or other financial *undertaking* nominated by that *person*.

6.5.2

R

27.04.02/001

A *firm* must ensure that the exercise of the *redemption right* will not be unreasonably difficult for anyone entitled to exercise it.

6.5.3

R

27.04.02/001

Subject to ■ ELM 6.5.2 R, the *firm* may choose which of the methods of redemption in ■ ELM 6.5.1 R to offer.

6.5.4

G

27.04.02/001

■ ELM 6.5.1 R reflects article 3(1) of the *E-Money Directive* and article 33a of the *Banking Consolidation Directive*. Neither ■ ELM 6.5.1 R nor ■ ELM 6.5.2 R takes precedence over the other. A *firm* must therefore organise its affairs so that it can comply with both *rules*.

6.5.5

G

27.04.02/001

If the methods by which the *firm* offers to redeem *e-money* are the same as those by which it is made available to the public, those methods of redemption are likely to be reasonable for the purposes of ■ ELM 6.5.2 R. If a *firm* distributes *e-money* it issues through its branches, restricting the places where it can be redeemed to those branches is likely to be reasonable for the purpose of ■ ELM 6.5.2 R.

6.5.6

G

27.04.02/001

A *firm* does not necessarily breach ■ ELM 6.5.2 R if it does not offer the *redemption right* at each automated teller machine at which *persons* may withdraw cash by using *e-money* issued by the *firm*. For instance, a *firm* may issue *e-money* in the *United Kingdom* that can be used to withdraw cash from automated teller machines abroad. It may be reasonable for the *firm* not to offer the *redemption right* at the automated teller machines abroad.



6.6 Charges for redemption

6.6.1

R

27.04.02/001

A *firm* may not charge a *person* any fee, expenses or other charge for or in connection with the exercise of a *redemption right*, except that a *firm* may charge a fee for the redemption of *e-money* if the following conditions are satisfied:

- (1) the *e-money scheme rules* give the *firm* the right to charge that fee;
- (2) the *person* exercising the *redemption right* is informed of the amount of the fee after the *person* makes the request for redemption and before completion of the redemption;
- (3) that *person* is given the opportunity, after he has received the information as described in (2), of withdrawing the request before the *e-money* is redeemed;
- (4) the fee is in accordance with the *firm's* usual tariff of fees for such redemptions; and
- (5) the fee is no greater than necessary to recover the costs to the *firm* of carrying out that redemption.

6.6.2

R

27.04.02/001

Any fee permitted by ■ ELM 6.6.1 R must never exceed the amount of *e-money* offered for redemption.

6.7 Terms of redemption

Contents of e-money scheme contracts

- 6.7.1** **R** *A firm must ensure that (for each e-money scheme under which it issues e-money) the e-money scheme rules (so far as the firm is a party to the relevant contracts or can control their contents) are consistent with the rules in this chapter.*

27.04.02/001

Obligation to enter into contracts with those entitled to redeem e-money

- 6.7.2** **R** *A firm must (for any e-money scheme under which the firm issues e-money) ensure that there is a contract between it and:*

27.04.02/001

- (1) any person to whom it issues e-money; and
- (2) any other person with a redemption right against the firm.

- 6.7.3** **R** *The contract referred to in ■ ELM 6.7.2 R(1) must be in force at the time the firm issues the e-money.*

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- 6.7.4** **R** *The contract referred to in ■ ELM 6.7.2 R(2) must be in force either before the person with the redemption right referred to in ■ ELM 6.7.2 G(2) obtains the e-money in question or as soon as reasonably possible afterwards, having regard to the laws of the jurisdiction in question and the nature of the scheme. It must however be in force no later than the time of redemption.*

27.04.02/001

Obligation to offer redemption as a contractual right

- 6.7.5** **R** *Any contract referred to in ■ ELM 6.7.2 R must incorporate the duty of the firm under the rules in this chapter to redeem e-money issued by it as a term of that contract. That term must be enforceable against the firm by the person who holds the e-money. That term must include all the rights that the rules in ■ ELM 6.3 to ■ ELM 6.6 say that the firm must give to a person exercising a redemption right against the firm.*

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6.8 Information

6.8.1 **R** A *firm* must not issue *e-money* to any *person* unless that *person* has been supplied with the information in ■ ELM 6.8.2 R.

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6.8.2 **R** A *firm* must make available to actual and prospective holders of *e-money* issued by the *firm* or that may be issued by it in the future:

27.04.02/001

- (1) information about the *redemption right*, including the information specified in ■ ELM 6.8.4 R; and
- (2) the information specified in ■ ELM 6.8.5 R.

6.8.3 **R** The information in ■ ELM 6.8.2 R must be in writing and in a readily comprehensible form.

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6.8.4 **R** The information referred to in ■ ELM 6.8.2 R(1) is:

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- (1) the amount of any fee of the type referred to in ■ ELM 6.6.1 R, or, if there is no such fee, that fact;
- (2) details of how the *redemption right* is to be exercised;
- (3) the amount of any limit of the type set out in ■ ELM 6.4.1 R, or, if there is no such limit, that fact; and
- (4) the length of any period of validity of the type set out in ■ ELM 6.4.2 R, or, if there is no such period of validity, that fact.

6.8.5 **R** The information referred to in ■ ELM 6.8.2 R(2) is:

27.04.02/001

- (1) an explanation of the liability of a holder of *e-money* issued by the *firm*, and of the liability of the *firm*, for loss arising from, and the risks to such a holder arising from:
 - (a) the use, by a *person* other than such a holder, of the *e-money electronic device* used by the holder;
 - (b) fraud by another in relation to such a holder's *e-money*;
 - (c) access to or use of such a holder's *e-money* by another;

- (d) loss, malfunction, theft or damage to or of any *e-money electronic device* used by such a holder;
- (2) any other significant risks arising from the acquisition, use or holding of the *e-money*;
- (3) the fact that the *compensation scheme* does not cover claims made in connection with *issuing e-money*;
- (4) details about any scheme that compensates holders of *e-money* issued by the *firm* in cases where the *firm* is unable to satisfy claims against it in relation to *e-money* or the fact that there is no such scheme;
- (5) details about:
 - (a) the *Financial Ombudsman Service* and its application to the *e-money* scheme in question;
 - (b) any other complaints and redress procedures available to the holder; and
 - (c) how the holder may initiate those procedures; and
- (6) a geographical address at which the *firm* may be contacted.

6.8.6



27.04.02/001

In the case of *e-money* schemes that use *consumer e-money cards* and under which the *risk* of theft or loss is on the holder of the *e-money*, the information in ■ ELM 6.8.2 R should warn a holder of *e-money* that he should treat his *consumer e-money card* like cash in a wallet. The warning should say that if he loses his *consumer e-money card* or it is stolen, he will lose any money in it, in just the same way as if he lost his wallet.

6.8.7



27.04.02/001

Firms are reminded that ■ GEN 2.2.14 R says that a provision in the *Handbook* that refers to a document "in writing" means a document in legible form and capable of being reproduced on paper, irrespective of the medium used. Thus the information that ■ ELM 6.8.3 R says must be produced in writing does not have to be produced in the form of a physical document.



6.9 Purse limits and warnings on cards

Purse limits

6.9.1

R

27.04.02/001

- (1) A *firm* must ensure that:
 - (a) *e-money* issued by it cannot be stored on a *consumer e-money device* with a capacity that exceeds the sum in (2); and
 - (b) a *consumer e-money holder* is not able to hold, as part of the same balance or otherwise under the same arrangements, *e-money* issued by the *firm* of an amount that exceeds, at any time, the sum in (2).
- (2) The sum referred to in (1) is:
 - (a) (in a case in which the *e-money* is denominated in sterling) £1000;
 - (b) (in a case in which the *e-money* is denominated in another currency) the equivalent of £1000 in that currency.

Exception to the purse limit

6.9.2

R

27.04.02/001

- ELM 6.9.1 R does not apply in a particular case if:
 - (1) the *firm* has (in accordance with ■ ELM 6.9.4 R) first given a warning of the matters in ■ ELM 6.9.3 R to the *consumer e-money holder* referred to in ■ ELM 6.9.1 R(1)(b) and the owner for the time being of the *e-money* stored on the *consumer e-money device* referred to in ■ ELM 6.9.1 R(1)(a) (that *consumer e-money holder* being referred to as the "holder" in ■ ELM 6.9);
 - (2) the *firm* has received an acknowledgement from the holder in accordance with ■ ELM 6.9.5 R; and
 - (3) the requirements of ■ ELM 6.9.7 R are met as respects the *consumer e-money device* referred to in ■ ELM 6.9.1 R(1)(a) or which the holder uses to spend or otherwise use his *e-money* and as respects the scheme under which the *firm* issues the *e-money*.

- 6.9.3 **R** 27.04.02/001 The warning referred to in ■ ELM 6.9.2 R(1) is a warning that:
- (1) the *compensation scheme* does not apply to *e-money* issued by the *firm*;
 - (2) if the *firm* becomes insolvent the *e-money* in question may become valueless and unusable; and
 - (3) accordingly if the *firm* becomes insolvent the holder may lose his *e-money*.

- 6.9.4 **R** 27.04.02/001 The warning referred to in ■ ELM 6.9.2 R(1) must:
- (1) be in writing;
 - (2) be presented in a way that can be easily understood; and
 - (3) be presented in such manner as, depending on the means by which the warning is given, is best calculated to bring it to the attention of the holder and to allow him to consider it.

- 6.9.5 **R** 27.04.02/001 The acknowledgement referred to in ■ ELM 6.9.2 R(2) is an acknowledgement from the holder to the *firm* that the holder has read and understood the warning given to him under ■ ELM 6.9.2 R(1) and that he accepts those risks.

- 6.9.6 **R** 27.04.02/001 The acknowledgement referred to in ■ ELM 6.9.2 R(2) must:
- (1) be in writing; and
 - (2) relate to the warning referred to in ■ ELM 6.9.2 R(1) only.

- 6.9.7 **R** 27.04.02/001 The requirements of this *rule* are only met in a particular case if:
- (1) the scheme under which the *e-money* is issued is organised in such a way that the loss, malfunction, theft or damage to or of the *consumer e-money device* referred to in ■ ELM 6.9.2 R(3) will not result in the holder losing any *e-money* or in any substantial prejudice to his *redemption right* or his ability to exercise it;
 - (2) (in the case of any scheme under which a *firm* issues *e-money*) the *firm* is able to prevent the use or spending of any *e-money* it issues under that scheme; and
 - (3) the identity of the *person* who is entitled to *e-money* issued by the *firm* under the scheme in question, the amount of such *e-money* to which he is entitled, the identity of the *person* who at any time has a *redemption right* against the *firm* under that scheme and the amount that he is entitled to have redeemed are determined by records maintained by or on behalf of the *firm* and are not affected by the matters in (1).

6.9.8 **R** 27.04.02/001 The requirements of ■ ELM 6.9.7 R may still be met if the holder is responsible for any unauthorised use of his *consumer e-money device* that occurs between its loss or theft and the *consumer e-money holder* notifying the *firm* of its loss or theft.

6.9.9 **G** 27.04.02/001 The acknowledgement in ■ ELM 6.9.2 R(2) may be contained in a written contract in physical form between the *firm* and the *consumer e-money holder*. If it is, the *firm* should ensure that the signature of the *consumer e-money holder* acknowledging the matters in ■ ELM 6.9.5 R is in addition to the signature by which the *consumer e-money holder* consents to the terms of the contract. If the *firm* contracts electronically with the *consumer e-money holder*, the *firm* should ensure that the *consumer e-money holder's* electronic acknowledgement of the matters in ■ ELM 6.9.5 R is separate from his electronic agreement to the terms of the contract.

6.9.10 **G** 27.04.02/001 The requirements in ■ ELM 6.9.7 R cover a scheme in which the *firm* maintains the record of who owns *e-money* it issues. A holder of *e-money* issued by the *firm* should not be at risk from the theft, malfunction, loss or damage to his *consumer e-money device* as the *firm* has a record of how much he owns. This is in contrast to a scheme in which the *e-money* is stored on a *consumer e-money card* where the loss of the device means that the holder loses the *e-money* on it.

6.9.11 **G** 27.04.02/001 ■ ELM 6.9.4 R(2) means that, in a card-based *e-money* scheme, the *firm* should be able to freeze a stolen *consumer e-money card* once the owner tells the *firm* that it has been stolen. If an *e-money* scheme does not have the records referred to in ■ ELM 6.9.7 R(3) or is unable to freeze the use of *consumer e-money devices* in accordance with ■ ELM 6.9.7 R(2), but the *firm* accepts the risk of loss of the device, the purse limits in ■ ELM 6.9.1 R still apply.

Warnings on cards

6.9.12 **R** 27.04.02/001 A *firm* must ensure that any *consumer e-money card* on which *e-money* issued by it can be stored or which can be used to spend or use *e-money* issued by it has the following information physically printed on it or on the packaging in which it is made available to the public:

- (1) a geographical address at which the *firm* may be contacted; and
- (2) a brief summary of the risks if the *consumer e-money card* is lost or stolen.

6.10 Establishing to what e-money applies

6.10.1 **R** 27.04.02/001 If (with respect to any obligation of a *firm* about *e-money* in **ELM 6** and a scheme under which that *firm* issues that *e-money*) that scheme falls into **ELM 6.10.3 R**, that obligation extends to all *e-money* issued under that scheme, unless **ELM 6.10.2 R** provides otherwise.

6.10.2 **R** 27.04.02/001 **ELM 6.10.1 R** does not:

- (1) cover a case in which the design referred to in **ELM 6.10.3 R** does not materially contribute to the *firm's* inability to make the distinction referred to in **ELM 6.10.3 R**; or
- (2) cover *e-money* in respect of which the *firm* can establish it is not subject to that obligation; or
- (3) require a *firm* to extend any rights to a *person* whose holding the *e-money* in question is contrary to the *e-money scheme rules*.

6.10.3 **R** 27.04.02/001 An *e-money* scheme falls into this *rule* if it is designed in such a way that generally the *firm* is unable to distinguish between *e-money* that comes within the scope of the obligation referred to in **ELM 6.10.1 R** and *e-money* that would otherwise not.

6.10.4 **G** 27.04.02/001 The *rules* in this chapter make various distinctions about *e-money*. For example, they distinguish between *e-money* issued by the *firm* and *e-money* issued by other *e-money issuers*. With some *e-money* schemes it may not be possible for a *firm* to make those distinctions. If this is the case, **ELM 6.10.1 R** ensures that the *rules* in this chapter still apply.

6.10.5 **G** 27.04.02/001 Thus, for example, if a *firm* is unable to distinguish between:

- (1) *e-money* issued by the *firm* and *e-money* issued by other issuers under the *e-money* scheme in question, it should offer the *redemption right* to holders of all *e-money* issued under that scheme;
- (2) *e-money* issued by the *firm* within the territorial scope of this chapter and other *e-money* issued by the *firm*, it should offer the *redemption right* to holders of all *e-money* issued by it.

Electronic money

Chapter 7

Consolidated financial supervision

7

PAGE
1



7.1 Application

7.1.1

G

27.04.02/001

The effect of ■ ELM 1.1.1 R to ■ ELM 1.1.3 R is that this chapter:

- (1) applies to an *ELMI* that is a member of a *group*;
- (2) does not apply to:
 - (a) a *lead regulated firm*; or
 - (b) an *incoming EEA firm*; or
 - (c) an *incoming Treaty firm*.



7.2 Purpose

7.2.1



27.04.02/001

The requirements of this chapter address three main areas of supervisory concern arising from *group* membership:

- (1) losses in another *group* entity lead to financial pressure on a *firm*, because of financial or reputational linkages, or both;
- (2) capital is subject to double gearing or leveraging: that is, a solo assessment of a *firm* over-estimates the quantity or quality of capital, or both, that is available to support that *firm's* risks, because of the way its capital has been raised or accounted for by the *group*;
- (3) business is booked in an unauthorised *group* entity to avoid regulatory requirements.

7.2.2



27.04.02/001

This chapter implements the consolidation requirements of the *Banking Consolidation Directive* as applied by article 2 of the *E-Money Directive*.

7.3 Consolidated capital adequacy

7.3.1

R

27.04.02/001

If:

- (1) a *firm* (firm A) is a member of a *group*;
- (2) another member of that *group* (firm B) is a *firm* that is subject to an *FSA consolidation rule*;
- (3) firm B is in firm A's *immediate group*; and
- (4) firm A is included in the scope of the consolidation under the *FSA consolidation rule* as it applies to firm B;

firm A must, at all times, maintain capital resources (calculated in accordance with the relevant *rules*) at a level that ensures that, taking into account (in the manner and to the extent provided for in those *rules*) the capital resources of other members of the *group*, firm B complies with the *FSA consolidation rules* applicable to it. If there is more than one *firm* in the *group* that fits the description of firm B, the obligation in this *rule* applies in relation to all of them.

7.3.2

R

27.04.02/001

If:

- (1) ■ ELM 7.3.1 R does not apply to a *firm*;
- (2) the *firm* is a member of an *EEA consolidated group* or *UK consolidated group*;
- (3) there is a *full credit institution* or an *investment firm* in that *EEA consolidated group* or *UK consolidated group*; and
- (4) the *undertaking* in (3) is in the *firm's immediate group*;

the *firm* must, at all times, maintain capital resources (calculated in accordance with the relevant *rule*) at a level which ensures that, taking into account (in the manner and to the extent provided for in that *rule*) the capital resources of other members of the *firm's group*, the *firm* would comply with the *bank consolidation rule* if it applied to the *firm*.

7.3.3

R

27.04.02/001

If:

- (1) ■ ELM 7.3.1 R and ■ ELM 7.3.2 R do not apply to a *firm*;
- (2) the *firm* is a member of an *EEA consolidated group*; and
- (3) that *EEA consolidated group* is not subject to supervision on a consolidated basis by a competent authority of another *EEA State* under the *Banking Consolidation Directive*, the *E-Money Directive* or the *Capital Adequacy Directive*;

the *firm* must ensure that at all times its *own funds* are of such an amount that its *EEA group risk own funds* are equal to or exceed its *EEA group risk own funds requirement*.

7.3.4

R

27.04.02/001

If:

- (1) ■ ELM 7.3.1, ■ ELM 7.3.2 and ■ ELM 7.3.3 R do not apply to a *firm*; and
- (2) the *firm* is a member of a *UK consolidated group*;

the *firm* must ensure that at all times its *own funds* are of such an amount that its *UK group risk own funds* are equal to or exceed its *UK group risk own funds requirement*.

7.4 Scope of consolidation

- 7.4.1** **R** *A firm's EEA consolidated group is the consolidated sub-group of the firm's EEA financial parent undertaking.*
27.04.02/001
- 7.4.2** **R** *A firm has no EEA consolidated group if the firm would be its only member or if it has no EEA financial parent undertaking.*
27.04.02/001
- 7.4.3** **R** *A firm's UK consolidated group is the consolidated sub-group of:*
27.04.02/001
- (1) *the firm's UK financial parent undertaking; or*
 - (2) *(if the firm has no UK financial parent undertaking and the firm is a UK domestic firm) the firm.*
- 7.4.4** **R** *A firm has no UK consolidated group if the firm would be its only member.*
27.04.02/001
- 7.4.5** **R** *A firm, having given prior notice to the FSA, may exclude from its EEA consolidated group or UK consolidated group for the purposes of this chapter:*
27.04.02/001
- (1) *an undertaking, the total assets of which; or*
 - (2) *two or more undertakings, the total of whose assets added together;*
- are less than the smaller of 10 million euro and 1% of the total assets of the firm.*



7.5 Calculation of capital adequacy on a consolidated basis

EEA group risk own funds

7.5.1

R

27.04.02/001

A firm's EEA group risk own funds are calculated as follows:

- (1) the *own funds* of members of the *EEA consolidated group* are consolidated using the principles that apply to preparing consolidated accounts under the Companies Act 1985 and in accordance with accounting principles generally accepted in the *United Kingdom*;
- (2) for these purposes the *own funds* of a *person* to whom ■ ELM 2.4.2 R does not apply are calculated as if it did apply;
- (3) the adjustments provided for in article 37 of the *Banking Consolidation Directive* apply (if required by the *Banking Consolidation Directive*), in accordance with (1);
- (4) the deductions specified in ■ ELM 2.4.2 R must be recalculated at the level of the *EEA consolidated group*;
- (5) the deduction at stage (F) of the calculation in ■ ELM 2.4.2 R does not apply to *material holdings* held by members of the *EEA consolidated group* in another member;
- (6) the limits in ■ ELM 2.4.18 R and ■ ELM 2.4.19 R (Limits on components of own funds) must be applied;
- (7) minority interests are not included; and
- (8) *own funds* of members of the *EEA consolidated group* other than the *person* at its head are only included if they represent capital that is freely transferable to other members of the *EEA consolidated group*.

EEA group risk own funds requirement

7.5.2

R

27.04.02/001

A *firm's EEA group risk own funds requirement* is calculated by way of consolidation using the principles that apply to preparing consolidated accounts under the Companies Act 1985 as follows:

- (1) the *rules* for calculating a *firm's own funds requirement* must be applied to the *firm's EEA consolidated group* as if it were a single *firm* subject to the *ELM financial rules*;
- (2) the consolidation must be in accordance with accounting principles generally accepted in the *United Kingdom*.

Proportional consolidation

7.5.3

R

27.04.02/001

All items included in the calculation of a *firm's EEA group risk own funds* and *EEA group risk own funds requirement* must be included in full, even though the member of the *EEA consolidated group* concerned is not a wholly owned *subsidiary undertaking* of the *undertaking* at the head of the *EEA consolidated group*.

The Banking Consolidation Directive

7.5.4

R

27.04.02/001

A *firm's EEA group risk own funds* and *EEA group risk own funds requirement* must be calculated in a way that is not contrary to the *Banking Consolidation Directive* as applied by the *E-Money Directive*. The other *rules* in ■ ELM 7.5 are subject to this *rule*.

UK group risk own funds and UK group risk own funds requirement

7.5.5

R

27.04.02/001

A *firm's UK group risk own funds* and *UK group risk own funds requirement* are calculated in the same way as its *EEA group risk own funds* and *EEA group risk own funds requirement* except that references to its *UK consolidated group* are substituted for references to its *EEA consolidated group*.



7.6 Large exposures

The EEA group

7.6.1

R

27.04.02/001

If **ELM 7.3.3 R** applies to a *firm*, the *firm* must ensure that at all times its *own funds* are of such an amount that:

- (1) no *EEA group large exposure* exceeds 25% of its *EEA group risk own funds*;
- (2) the total of its *EEA group large exposures* does not exceed 800% of its *EEA group risk own funds*.

7.6.2

R

27.04.02/001

A *firm's EEA group large exposures* must be calculated as follows:

- (1) the *rules* for calculating a *firm's large e-money float exposures* must be applied to the *firm's EEA consolidated group* as if it were a single *firm* subject to the *ELM financial rules*;
- (2) the *exclusions* in **ELM 3.5.6 R** are applied at the level of the *firm's EEA consolidated group*; and
- (3) the consolidation must be in accordance with accounting principles generally accepted in the *United Kingdom*.

The UK group

7.6.3

R

27.04.02/001

If **ELM 7.3.4 R** applies to a *firm*, the *firm* must ensure that at all times its *own funds* are of such an amount that:

- (1) no *UK group large exposure* exceeds 25% of its *UK group risk own funds*;
- (2) the total of its *UK group large exposures* does not exceed 800% of its *UK group risk own funds*.

7.6.4

R

27.04.02/001

A *firm's UK group large exposure* means the same thing as its *EEA group large exposure* except that references to members of its *EEA consolidated group* are replaced with references to its *UK consolidated group*.

7.7 Waiver

7.7.1

G

27.04.02/001

Article 52(3) of the *Banking Consolidation Directive* says that competent authorities responsible for exercising supervision on a consolidated basis may decide that a *credit institution, financial institution or auxiliary banking services undertaking* which is a subsidiary or in which a *participation* is held need not be included in the consolidation in certain cases. These include the following:

- (1) if the *undertaking* that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information;
- (2) if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the *undertaking* that should be included would be inappropriate or misleading as far as the objectives of the supervision of *credit institutions* are concerned.

7.7.2

G

27.04.02/001

It is generally the FSA's policy to agree to a *firm's* request to modify the *rules* in ■ ELM 7 so as to exclude *undertakings* from the consolidation in the cases listed in ■ ELM 7.7.1 G if section 148 of the *Act* allows this. See ■ SUP 8 (waiver and modification of *rules*) for information on how to apply for such a modification.

7.8 Summary of consolidation rules

7.8.1 G The *rules* in this chapter are in addition to the other *rules* about *own funds* in *ELM*.

27.04.02/001

7.8.2 G If a *firm* is not part of a *group*, ■ *ELM 7* does not apply.

27.04.02/001

7.8.3 G ■ *ELM 7.3.1 R* says that if the *firm* is part of a *group* that is subject to consolidated supervision under *IPRU(BANK)*, *IPRU(BSOC)* or *IPRU(INV)*, consolidated supervision of the *firm* will also be carried out under those *rules*.

27.04.02/001

7.8.4 G ■ *ELM 7.3.2 R* says, broadly, that if ■ *ELM 7.3.1 R* does not apply but the *firm* is part of a *group* with a *full credit institution* or *investment firm* as a member, the *bank consolidation rule* applies. This means that the *firm* will be subject to the consolidation requirements for *banks*. These can be found in chapter CS of *IPRU(BANK)* (consolidated supervision).

27.04.02/001

7.8.5 G Generally, the guidance in *IPRU(BANK)* says that if a *firm* is part of a *group* subject to lead supervision under the EU banking or investment services Directives by a competent authority in another *EEA State*, consolidated supervision in accordance with the detailed quantitative *guidance* in *IPRU(BANK)* does not apply at the level of the *EEA group*. Instead it applies at the level of the *UK sub-group*.

27.04.02/001

7.8.6 G ■ *ELM 7.3.3 R* or ■ *ELM 7.3.4 R* applies if there are no *full credit institutions* or *investment firms* in the *EEA group*. ■ *ELM 7* sets out a special regime for *firms* in such *groups*. This assesses capital adequacy by applying the ongoing *own funds* requirement in ■ *ELM 2.5.1 R* at the level of the *group*. If one of those *rules* apply, the *large exposure* requirements in ■ *ELM 3.5* are also applied at the level of the *UK consolidated group* or *EEA consolidated group*.

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7.8.7 G If the *ELM financial rules* do not capture adequately the risks that arise because of a *firm's* membership of its *group*, of the effect which membership may have on the *firm* or of the risks that may arise because of the *firm's* connection with any *person*, the *FSA* may impose a *requirement* that has the effect of taking those other *persons* into account for the purpose of the prudential supervision of the *firm*. For example, ■ *ELM 7.3.3 R* or ■ *ELM 7.3.4 R* (and the corresponding provisions of ■ *ELM 7.6*) could be extended beyond the *UK consolidated group* or *EEA consolidated group*.

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7.8.8 G The definitions of *EEA financial parent undertaking* and *UK financial parent undertaking* require that the *parent undertaking* concerned should be the highest relevant *parent undertaking* in the *firm's group*. In some cases there may be more than one *person* who could be such a *parent undertaking* but for that provision but it is not possible to say that one of them is the highest. The result may be that the *firm* does not have an *EEA financial parent undertaking* or *UK financial parent undertaking*. In such a case, the *FSA* will generally seek to add a *requirement* to the *firm's permission* that will apply the relevant provisions in ■ *ELM 7* in a suitably adapted form.

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Electronic money

Chapter 8

Small e-money issuers

8

PAGE
1





8.1 Application

8.1.1



27.04.02/001

The effect of ■ ELM 1.1.1 R and ■ ELM 1.1.2 R is that this chapter applies to:

- (1) an applicant for a *small e-money issuer certificate*; and
- (2) a *small e-money issuer*.

8.1.2



27.04.02/001

The provisions of ■ ELM 8.3.11 G and ■ ELM 8.3.12 G (Criminal offences relating to status) are relevant to a *person* who is not a *small e-money issuer*.



8.2 Purpose

8.2.1

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27.04.02/001

This chapter, together with articles 9C to 9G of the *Regulated Activities Order* (Exclusions), implements the provisions of article 8 (Waiver) of the *E-Money Directive* by setting out the procedure for applying for, and revoking, a certificate (a *small e-money issuer certificate*).

8.2.2

G
27.04.02/001

This chapter also contains provisions relating to the obtaining of information by the FSA from a *small e-money issuer* to ensure the exclusion provisions referred to in ■ ELM 8.2.1 G are not abused.

8.3 Introduction

The small e-money issuer certificate

8.3.1  The holder of a *small e-money issuer certificate* (a *small e-money issuer*) is excluded from the *regulated activity* of *issuing e-money*.

27.04.02/001

8.3.2  A *small e-money issuer* is not an *exempt person* within the meaning of the *Act*, that is a *person* who is carrying on a *regulated activity* but exempt from the need to be *authorised*. The *small e-money issuer* is not, as such, carrying on a *regulated activity*. This means, in particular, that:

27.04.02/001

- (1) an *authorised person* can be a *small money issuer* (unless it is a *full credit institution* (see ■ ELM 8.4.2 G); and
- (2) a *small e-money issuer* does not benefit from the exclusion in article 16 of the *Financial Promotion Order* (Exempt persons).

8.3.3  ■ AUTH App 3.4 gives *guidance* on the restrictions on financial promotion in section 21 of the *Act* (Restrictions on financial promotion) in relation to *e-money*.

27.04.02/001

8.3.4  A *person* who issues *e-money* on a limited scale may apply to the FSA for a *small e-money issuer certificate*. This chapter contains the provisions relating to the certificate in the following sections:

27.04.02/001

- (1) ■ ELM 8.4 gives *guidance* on the three conditions under which a certificate may be given;
- (2) ■ ELM 8.5 contains the direction on how to apply for a certificate and gives *guidance* on the application procedure;
- (3) ■ ELM 8.6 contains the direction on how to apply for a revocation of a certificate and gives *guidance* on how the FSA may revoke a certificate on its own initiative; and
- (4) ■ ELM 8.7 contains *rules* and *guidance* about the provision of information to the FSA, including the *rules* which require a *small e-money issuer* to give periodic reports and change reports to the FSA on Form ELM-SI (which is set out in ■ ELM 8 Annex 2 R).

8.3.5  The legislative provisions in respect of a *small e-money issuer certificate* are primarily contained in articles 9C to 9G of the *Regulated Activities Order*. The *rules* and *guidance* in this chapter are based on those provisions.

27.04.02/001

Procedural provisions

- 8.3.6** G
27.04.02/001 Certain procedural provisions apply to an application for a *small e-money issuer certificate* as they apply to an application for a *Part IV permission*.
- 8.3.7** G
27.04.02/001 The application must give the address of a place in the *United Kingdom* for service on the applicant of any notice or other document which is required or authorised to be served on him under the *Act*.
- 8.3.8** G
27.04.02/001 The application must be made in the manner directed by the *FSA* (see ■ ELM 8.5.1 D) and contain any information which the *FSA* reasonably requires. The *FSA* may require further information to enable it to determine the application.
- 8.3.9** G
27.04.02/001 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 ■ AUTH 8 (Determining applications) and ■ DEC 2 (Statutory notice procedure: warning notice and decision notice procedure).
- 8.3.10** G
27.04.02/001 An applicant who is aggrieved by the determination of the application may refer the matter to the *Tribunal* (see ■ DEC 5.1 (The Tribunal)).

Criminal offences relating to status

- 8.3.11** G
27.04.02/001 Article 9I of the *Regulated Activities Order* (False claims to be a certified person) provides that a *person* who is not a *small e-money issuer* is to be treated as guilty of an offence under section 24 of the *Act* (False claims to be authorised or exempt) if he describes himself (in whatever terms) as a *small e-money issuer*. It is also an offence for such a *person* to behave, or otherwise hold himself out, in a manner which indicates that he is a *small e-money issuer*.
- 8.3.12** G
27.04.02/001 ■ ENF 15 (Prosecution of criminal offences) and ■ DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences) contain *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*.
- 8.3.13** G
27.04.02/001 See also ■ ELM 8.7.18 G to ■ ELM 8.7.20 G (Criminal offences relating to the provision of information).

The Financial Services Compensation Scheme

- 8.3.14** G
27.04.02/001 No claim under the *compensation scheme* may be made against a *small e-money issuer* since the scheme pays compensation only in respect of claims made in connection with *regulated activities* (section 213 of the *Act* (The compensation scheme)).

The FSA's public register

8.3.15

G

27.04.02/001

The FSA's public register maintained under section 347 of the *Act* (The record of authorised persons etc.) includes every *small e-money issuer*.



8.4 The conditions for giving a small e-money issuer certificate

Who may apply?

8.4.1

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27.04.02/001

Only a *body corporate*, or a *partnership*, which has its head office in the *United Kingdom* may make an application for a *small e-money issuer certificate*. A sole trader may not apply.

8.4.2

G

27.04.02/001

A *full credit institution* may not apply for a *small e-money issuer certificate*. If a *bank* or *building society* wishes to carry on the *regulated activity* of *issuing e-money* within the territorial scope of the *Act*, it will have to apply for *permission* to do so.

The conditions

8.4.3

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27.04.02/001

The *FSA* must give a *small e-money issuer certificate* to a *person* eligible to apply (see ■ ELM 8.4.1 G and ■ ELM 8.4.2 G) if it appears to it that any one or more of three paragraphs, set out in article 9C of the *Regulated Activities Order* (Persons certified as small issuers etc.), apply. This section gives *guidance* on those paragraphs but refers to them as “conditions”. Similarly, where the *Regulated Activities Order* refers to a *person* to which a *small e-money issuer certificate* is given as a “certified person”, *ELM* refers to “*small e-money issuer*”.

8.4.4

G

27.04.02/001

The three conditions in article 9C of the *Regulated Activities Order* (Persons certified as small issuers etc.) are designed to restrict the certificate to small or local schemes. The first and second conditions follow, almost exactly, the corresponding provisions of the *E-Money Directive*. The third condition follows the *E-Money Directive*, but also adds some guidelines.

8.4.5

G

27.04.02/001

In each of the conditions, references to amounts in euro include references to equivalent amounts in sterling.

The first condition

8.4.6

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27.04.02/001

The first condition applies if:

- (1) the applicant does not issue *e-money* except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and

- (2) the applicant's total liabilities with respect to *issuing e-money* do not (or will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.

8.4.7



27.04.02/001

As “usually” is not defined, the application of this condition will depend on the exact facts of each case. In the FSA's view, the total liabilities should be measured over several different periods. Thus, where the total liabilities exceed 5 million euro on several occasions over a short period, the scheme is more likely to fail to meet this condition than where those occasions are spread evenly over a longer period.

8.4.8



27.04.02/001

While rigid guidelines on what “usually” means are not possible, in the FSA's view, a scheme that exceeds the limit no more than *5 days a month* and *20 days a year* will not necessarily breach this condition. But if the scheme exceeds either or both of those frequencies, that would call into question whether the scheme meets this condition. For this reason, the FSA will require a ‘change report’ if the total liabilities with respect to *issuing e-money* exceed 5 million euro (see ■ ELM 8.7.3 R).

The second condition

8.4.9



27.04.02/001

The second condition applies if:

- (1) the condition in ■ ELM 8.4.6 G (1) is met;
- (2) the applicant's total liabilities with respect to the issuing of *e-money* do not (or will not) exceed 10 million euro; and
- (3) *e-money* issued by the applicant is accepted as a means of payment only by:
 - (a) *subsidiaries* of the applicant which perform operational or other ancillary functions related to *e-money* issued or distributed by the applicant; or
 - (b) other members of the same *group* as the applicant (other than its *subsidiaries*).

The third condition

8.4.10



27.04.02/001

The third condition applies if:

- (1) the conditions referred to in ■ ELM 8.4.6 G (1) and ■ ELM 8.4.9 G (2) are met; and
- (2) *e-money* issued by the applicant is accepted as a means of payment, in the course of business, by not more than one hundred *persons* where:
 - (a) those *persons* accept such *e-money* only at locations within the same premises or limited local area; or
 - (b) those *persons* have a close financial or business relationship with the applicant, such as a common marketing or distribution scheme.

The third condition: locations**8.4.11****G**

27.04.02/001

For the purposes of ■ ELM 8.4.10 G (2)(a), locations are situated within the same premises or limited local area if they are situated within:

- (1) a shopping centre, airport, railway station, bus station or campus of a university, polytechnic, college, school or similar educational establishment; or
- (2) an area which does not exceed four square kilometres.

8.4.12**G**

27.04.02/001

■ ELM 8.4.11 G (1) and (2) are illustrative only and are not to be treated as limiting the scope of ■ ELM 8.4.10 G (2)(a).

8.4.13**G**

27.04.02/001

If the *e-money* issued under a scheme is only accepted by businesses within the same four square kilometre area, the third condition will be met. However, if the scheme operates in two areas, each of one square kilometre, but the two areas are 100 kilometres apart, the scheme will not come within the illustrative provision referred to in ■ ELM 8.4.11 G (2).

8.4.14**G**

27.04.02/001

If a scheme operates in an area that exceeds four square kilometres, the scheme can still meet ■ ELM 8.4.10 G (2)(a). However, it will only do so if the area can be described as a limited local area for some reason in addition to the size of the area.

8.4.15**G**

27.04.02/001

The fact that a scheme is confined within the boundaries of a local authority is not, in the FSA's view, enough to bring it within ■ ELM 8.4.10 G (2)(a) by itself. However, if the area covered by the scheme is defined by a local authority's boundaries, and the area's size is close to, but exceeds, four square kilometres, the combination of the size of the area and the fact that it only covers a particular local authority area may still be enough to meet ■ ELM 8.4.10 G (2)(a).

8.4.16**G**

27.04.02/001

"Premises" includes a single building. It also includes a number of buildings on the same campus or site. It does not include premises of one institution split over several sites.

The third condition: close financial or business relationship**8.4.17****G**

27.04.02/001

If a scheme does not meet ■ ELM 8.4.10 G (2)(a), it will still meet the third condition if the *e-money issuer* and the merchants who accept the *e-money* have a close financial or business relationship.

8.4.18**G**

27.04.02/001

Persons are not to be treated as having a close financial or business relationship with the applicant merely because they participate in arrangements for the acceptance of *e-money* issued by the applicant.

8.4.19**G**

27.04.02/001

If an *e-money* scheme that allows citizens to pay for bus or metro tickets together with a range of other things meets the third condition, it is likely to be because of the provisions referred to in ■ ELM 8.4.10 G (2)(b) rather than ■ ELM 8.4.10 G (2)(a).

8.5 Application for a small e-money issuer certificate

8.5.1



27.04.02/001

- (1) An applicant for a *small e-money issuer certificate*, except in so far as the *FSA* may direct in an individual case, must apply in writing in the manner directed, and with the information required, on the form provided by the *FSA*.
- (2) The application for a *small e-money issuer certificate* must be:
 - (a) given to a member of, or addressed for the attention of, the Authorisation Enquiries department of the *FSA*; and
 - (b) delivered to the *FSA* by one of the methods in (3).
- (3) The application may be delivered by:
 - (a) post to the address in (4); or
 - (b) leaving the application at the address in (4) and obtaining a date-stamped receipt; or
 - (c) hand delivery to a member of the Authorisation Enquiries department.
- (4) The address for applications is: The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
- (5) Until the application has been determined, an applicant which submits an application for a *small e-money issuer certificate* must inform the *FSA* of any significant change to the information given in the application immediately it becomes aware of the change.

8.5.2



27.04.02/001

There is no application fee, or subsequent fee, for a *small e-money issuer certificate*.

8.5.3



27.04.02/001

The application form is available on www.fsa.gov.uk or from the Authorisation Enquiries department of the *FSA*. To contact the department:

- (1) telephone on 020 7676 1000; or
- (2) write to the Authorisation Enquiries department at the address in ■ ELM 8.5.1 D (4); or
- (3) email to AuthorisationEnquiries@fsa.gov.uk.

8.5.4



27.04.02/001

If the application is granted, the applicant will be given a certificate in the form of the one shown in ■ ELM 8 Annex 1 G.



8.6 Revocation of a small e-money issuer certificate

Revocation on the FSA's own initiative

8.6.1

G

27.04.02/001

The *FSA* may revoke a *small e-money issuer certificate* if:

- (1) it appears to it that the *small e-money issuer* does not meet the relevant conditions, or has failed to meet the relevant conditions at any time since the *small e-money issuer certificate* was given; or
- (2) the *small e-money issuer* has contravened any *rule* or requirement to which he is subject as a result of the provisions in *ELM 8.7* (Provision of information).

8.6.2

G

27.04.02/001

For the purposes of ■ *ELM 8.6.1 G* (1), the *small e-money issuer* meets 'the relevant conditions' at any time if, at that time, the conditions referred to in ■ *ELM 8.4.6 G*, ■ *ELM 8.4.9 G* or ■ *ELM 8.4.10 G* apply. In this chapter, the relevant conditions (the phrase used in the *Regulated Activities Order*) are referred to as 'the conditions referred to in ■ *ELM 8.4*'.

Revocation for failure to meet the conditions referred to in *ELM 8.4*

8.6.3

G

27.04.02/001

When determining whether it is appropriate to use the power referred to in ■ *ELM 8.6.1 G* (1), the *FSA* will take account of all the relevant circumstances of the case. The *FSA* may consider that it is not appropriate to revoke where, for example, the failure to meet the conditions:

- (1) was inadvertent;
- (2) lasted for a short period only; and
- (3) was not serious in nature.

Revocation for contravention of a rule or requirement

8.6.4

G

27.04.02/001

In determining whether to revoke a *small e-money issuer certificate* under the power referred to in ■ *ELM 8.6.1 G* (2), the *FSA* will consider all the relevant circumstances, including the nature and seriousness of the contravention or failure to provide information or produce documents. Amongst other factors, the *FSA* may consider:

- (1) whether there is information which suggests the contravention or failure was deliberate or reckless;

- (2) the length of any delay in providing a report, document or other required information;
- (3) the seriousness of any factual inaccuracies or other deficiencies in the information provided to the *FSA*;
- (4) whether the *small e-money issuer* has previously failed to comply with a *rule* or requirement;
- (5) the record of its compliance with the conditions referred to in ■ ELM 8.4.

Procedure

8.6.5

G
27.04.02/001

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)).

8.6.6

G
27.04.02/001

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 ■ DEC 5.1 (The Tribunal)).

Revocation on request

8.6.7

G
27.04.02/001

A *small e-money issuer* may apply to the *FSA* for his certificate to be revoked. The *FSA* must then revoke it and give the *small e-money issuer* written notice that it has done so.

8.6.8

D
27.04.02/001

An application for a *small e-money issuer certificate* to be revoked must be made on the form for this purpose (which may be obtained from the Authorisation Enquiries department of the *FSA*) in the manner directed in ■ ELM 8.5.1 D.

8.6.9

G
27.04.02/001

An application for revocation may be associated with an application for a *Part IV permission* to carry on the *regulated activity* of *issuing e-money* (or for a variation of an existing *permission* to add that activity). If so, the revocation will, if the *small e-money issuer* requests it on making the application, be conditional on the granting of the application.

8.7 Provision of information

Periodic reports

8.7.1

R

27.04.02/001

A *small e-money issuer* must:

- (1) complete a Form ELM-SI (see ■ ELM 8 Annex 2 R) as at the end of each financial year and half financial year; and
- (2) within 10 *business days* of that date, deliver it to the *FSA* in the manner indicated in the form.

Change reports

8.7.2

R

27.04.02/001

If none of the conditions referred to in ■ ELM 8.4 continue to apply to a *small e-money issuer*, it must, within two *business days* of the change occurring:

- (1) complete a Form ELM-SI; and
- (2) deliver it to the *FSA* in the manner indicated in the form.

8.7.3

R

27.04.02/001

(1) If the total liabilities of a *small e-money issuer* with respect to *issuing e-money* exceed 5 million euro, it must, within two *business days* of the excess occurring:

- (a) complete a Form ELM-SI; and
 - (b) deliver it to the *FSA* in the manner indicated in the form.
- (2) ■ ELM 8.7.3 R (1) applies only if neither of the conditions referred to ■ ELM 8.4.9 G and ■ ELM 8.4.10 G (that is the second and third conditions) apply to the *small e-money issuer*.

FORM ELM-SI

8.7.4

G

27.04.02/001

Form ELM-SI may be obtained from the Authorisation Enquiries department of the *FSA*. For details on how to contact the department, see ■ ELM 8.5 (Application for a small e-money issuer).

8.7.5

G

27.04.02/001

Form ELM-SI is set out at ■ ELM 8 Annex 2 R.

Other powers

8.7.6

G

27.04.02/001

The *FSA* may also, by notice in writing given to a *small e-money issuer*, require him to provide specified information (or information of a specified description) or produce specified documents (or documents of a specified description).

8.7.7

G

27.04.02/001

The information or documents referred to in ■ ELM 8.7.6 G must be reasonably required by the *FSA* for the purpose of determining whether the *small e-money issuer* meets, or has met, any one or more of the conditions referred to in ■ ELM 8.4.

8.7.8

G

27.04.02/001

The following sections in the *Act* apply to a requirement referred to in ■ ELM 8.7.6 G (see article 9G(9) of the *Regulated Activities Order*) (Obtaining information from certified persons etc.):

- (1) section 175 (Information and documents: supplemental provisions);
- (2) section 176 (Entry of premises under warrant), the reference in section 176(3)(a) to an *authorised person* being read as a reference to a *small e-money issuer*; and
- (3) section 177 (Offences).

8.7.9

G

27.04.02/001

The information or documents referred to in ■ ELM 8.7.6 G must be provided or produced before the end of the reasonable period, and at the place, specified by the *FSA*. The *FSA* may require the information to be provided in such form as it may reasonably require. The *FSA* may require the information to be verified, and the document authenticated, in such manner as it may reasonably require (see article 9G(6) of the *Regulated Activities Order* and section 165 of the *Act*) (Obtaining information from certified persons etc.). The *FSA* may use the power to require information and documents from *small e-money issuers* in support of its enforcement functions.

8.7.10

G

27.04.02/001

The *FSA* may by notice in writing to a *small e-money issuer* require him to provide a report by a *skilled person* on any matter about which the *FSA* has required or could require the provision of information or production of documents under the powers referred to in ■ ELM 8.7.8 G and ■ ELM 8.7.9 G.

8.7.11

G

27.04.02/001

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 (Information gathering and investigation powers) contains *guidance* on the *FSA*'s policies relating to the use of its investigation powers.

Accurate and complete reports

8.7.12

R

27.04.02/001

A *small e-money issuer* must take reasonable steps to ensure that all information it gives to the *FSA* on its activities relating to *e-money* is:

- (1) factually accurate or, in the case of estimates and judgements, fairly and properly based after appropriate enquiries have been made by the *small e-money issuer*; and
- (2) complete, in that it should include anything of which the *FSA* would reasonably expect notice.

Correcting information which has been provided

8.7.13

R

27.04.02/001

- (1) If a *small e-money issuer* becomes aware, or has information that reasonably suggests that it has or may have provided the *FSA* with information which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed in a material particular, it must notify the *FSA* immediately.
- (2) The notification must include:
 - (a) details of the information which is or may be false, misleading, incomplete or inaccurate, or has or may have changed;
 - (b) an explanation why such information was or may have been provided; and
 - (c) the correct information;

unless ■ ELM 8.7.14 R applies.

Availability of information

8.7.14

R

27.04.02/001

If the information in ■ ELM 8.7.13 R (2) cannot be submitted with the notification (because it is not immediately available), it must be submitted as soon as possible afterwards.

8.7.15

G

27.04.02/001

The *FSA* may request the *small e-money issuer* to provide revised documentation containing the correct information, if appropriate.

Unobtainable information

8.7.16

G

27.04.02/001

If a *small e-money issuer* is unable to obtain the information required by the *FSA*, it should inform the *FSA* that the scope of the information provided is, or may be, limited.

Administrative and civil enforcement powers

8.7.17

G

27.04.02/001

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 (Injunctions));
- (2) apply to the courts for a restitution order (see ■ ENF 9 (Restitution and redress)); and
- (3) revoke the *small e-money issuer certificate* (see ■ ELM 8.6).

Criminal offences relating to the provision of information

8.7.18

G
27.04.02/001

A *person* who knowingly or recklessly provides the *FSA* with information which is false or misleading in a material particular, in purported compliance with a requirement imposed by or under the *Act*, commits an offence (section 398 of the *Act* (Misleading the Authority: residual cases)).

8.7.19

G
27.04.02/001

An offence by a *body corporate* or *partnership* may be attributed to an officer or certain other *persons* (section 400 of the *Act* (Offences by bodies corporate etc)).

8.7.20

G
27.04.02/001

■ ENF 15 (Prosecution of criminal offences) and ■ DEC 4.6 (Decisions to apply to the civil courts and to prosecute criminal offences) contain *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*.

8.7.21

G
27.04.02/001

See also ■ ELM 8.3.11 G and ■ ELM 8.3.12 G (Criminal offences relating to status).

Financial Services Authority

SMALL E-MONEY ISSUER CERTIFICATE

**Issued under article 9C of the Financial Services and Markets Act 2000
(Regulated Activities) Order 2001**

TO: (“the small e-money issuer”)

The Financial Services Authority (FSA) is issuing this certificate to the small e-money issuer because it appears to the FSA that it meets any one or more of the conditions set out below.

Unless this certificate is revoked, the issue of electronic money by the small e-money issuer is excluded from the regulated activity of issuing e-money.

1. The first condition applies if:
 - (1) the small e-money issuer does not issue e-money except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and
 - (2) the small e-money issuer’s total liabilities with respect to issuing e-money do not (or will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.

 2. The second condition applies if:
 - (1) paragraph (1) of the first condition is met;
 - (2) the small e-money issuer’s total liabilities with respect to the issuing of e-money do not (or will not) exceed 10 million euro; and
 - (3) e-money issued by the small e-money issuer is accepted as a means of payment only by:
 - (a) subsidiaries of the small e-money issuer which perform operational or other ancillary functions related to e-money issued or distributed by the small e-money issuer; or
 - (b) other members of the same group as the small e-money issuer (other than subsidiaries of that small e-money issuer).
-

3. The third condition applies if:
 - (1) paragraph (1) of the first condition and paragraph (2) of the second condition are met; and
 - (2) e-money issued by the small e-money issuer is accepted as a means of payment, in the course of business, by not more than one hundred persons where:
 - (a) those persons accept such e-money only at locations within the same premises or local area;
or
 - (b) those persons have a close financial or business relationship with the small e-money issuer, such as a common marketing or distribution scheme.
4. In this Certificate, references to amounts in euro include references to equivalent amounts in sterling and terms have the meaning given in the FSA Glossary.
5. This Certificate continues in force until revoked by the FSA on its own initiative, or at the request of the small e-money issuer, as described in ELM 8.6 (Revocation of a small e-money issuer certificate) of the FSA's Handbook of rules and guidance.
6. The FSA may revoke a small e-money issuer certificate on its own initiative if:
 - (1) it appears to it that the small e-money issuer does not meet any of the conditions referred to in paragraphs 1, 2 and 3 above and in ELM 8.4 (The conditions for giving a small e-money issuer certificate), or has failed to meet any of those conditions at any time since it was given; or
 - (2) the small e-money issuer has contravened any rule or requirement to which he is subject as a result of the provisions in ELM 8.7 (Provision of information).
7. Until this Certificate is revoked, the small e-money issuer is subject to the obligation to submit reports to the FSA in accordance with ELM 8.7 (Provision of information).

for the Financial Services Authority

Date

Financial Services Authority



FORM ELM-SI

Provision of information from a small electronic money issuer

Reporting body corporate or partnership

 as at

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 (eg 31 12 2001)

 Application number

--	--	--	--	--	--	--

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). *ELM 8.7.12R* and *ELM 8.7.13R* require a *small electronic money issuer* 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 there is any doubt about the relevance of information, it should be included.

I confirm the information in this form is accurate and complete to the best of my knowledge and belief.

Signature of authorised signatory: _____ Date: _____

Name: _____ Position held: _____

In the event of a question, the *FSA* may, in the first instance, contact (Block letter please)

Name: _____ Tel No: _____ Ext: _____

Notes on completion of this form

- 1 This form is to be used for making periodic reports under *ELM 8.7.1R* and change reports under *ELM 8.7.2R* and *ELM 8.7.3R*.
- 2 Please complete and deliver the form to the *FSA* in the manner indicated in these notes. For methods of submission, see the end of this form.
- 3 If you have any difficulty in completing this form, please telephone your *FSA* contact for guidance.
- 4 Terms have the meaning given in the *FSA Glossary*.
- 5 You must complete this form:
 - (a) if used as a periodic report, as at the end of each financial year and half financial year; and
 - (b) if used as a change report, as at the close of business of the *day* of the change or excess.
- 6 You must deliver this form to the *FSA*:
 - (a) if used as a periodic report, within ten *business days* of the date as at which it is completed; and
 - (b) If used as a change report, within two *business days* of the change or excess occurring.
- 7 References to amounts in euro include references to equivalent amounts in sterling.
- 8 Enter amounts to the nearest thousand, omitting 000s.
- 9 Enter all data neatly within the relevant boxes.

FSA use only	Logged in	Data entered

A. APPLICATION OF CONDITIONS**ELM-SI**Item
No

Please tick each condition which applies:

- A10 The first condition applies if:
- (1) the small e-money issuer does not issue e-money except on terms that the electronic device on which the monetary value is stored is subject to a maximum storage amount of not more than 150 euro; and
- (2) the small e-money issuer's total liabilities with respect to issuing e-money do not (and will not) usually exceed 5 million euro and do not (or will not) ever exceed 6 million euro.
- A20 The second condition applies if:
- (1) paragraph (1) of the first condition is met;
- (2) the small e-money issuer's total liabilities with respect to the issuing of e-money do not (or will not) exceed 10 million euro; and
- (3) e-money issued by the small e-money issuer is accepted as a means of payment only by:
- (a) subsidiaries of the small e-money issuer which perform operational or other ancillary functions related to e-money issued or distributed by that small e-money issuer; or
- (b) other members of the same group as the small e-money issuer (other than subsidiaries of that small e-money issuer).
- A30 The third condition applies if:
- (1) paragraph (1) of the first condition and (2) of the second condition are met; and
- (2) e-money issued by the small e-money issuer is accepted as a means of payment, in the course of business, by not more than one hundred persons where:
- (a) subsidiaries of the small e-money issuer which perform operational or other ancillary functions related to e-money issued or distributed by that small e-money issuer; or
- (b) those persons have a close financial or business relationship with the small e-money issuer such as a common marketing or distribution scheme.
- A40 Have the relevant provisions referred to in A10 to A30 been met throughout the reporting period? (please tick appropriate box) YES NO
-

If no, please give details.

B. E-MONEY OUTSTANDINGS**ELM-SI**

Item No	Item	Amount
B10	Period end	<input type="text"/>
B20	Peak <i>e-money outstandings</i> during period	<input type="text"/>

If the first condition (A10) applies, indicate the dates on which *e-money outstandings* exceeded 5 or 6 million euro, and the amount of *e-money outstandings* on these dates, in the table below.

If the second (A20) or the third condition (A30) applies, indicate the dates on which *e-money outstandings* exceeded 10 million euro, and the amount of *e-money outstandings* on these dates, in the table below.

B30	Date on which <i>electronic money outstandings</i>			Amount of <i>e-money outstandings</i>
	exceeded 5 million euro	exceeded 6 million euro	Exceeded 10 Million euro	
A	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
B	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
C	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
D	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
F	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
G	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
H	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
J	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
K	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

C. METHODS OF DELIVERY**ELM-SI**

C10 This form must be given to a member of, or addressed for the attention of, the Authorisation Enquiries department of the *FSA* and delivered to the address in C20 or C30 using one of the following methods of delivery:

- *post* to the address in C20; or
- leaving the report at the address in C30 and obtaining a date-stamped receipt; or
- electronic mail to an address for the *firm's* usual *FSA* contact and obtaining an electronic confirmation of receipt; or
- hand delivery to the *firm's* usual *FSA* contact; or
- fax to the number notified by the *firm's* usual *FSA* contact, followed by submission by one of the four methods above within five *business days* after the date of the faxed submission.

C20 The address for postal submission of reports is:

The Financial Services Authority
PO Box 35747
London E14 5WP

C30 The address for hand-delivery of reports is:

The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Schedules



Electronic money

Schedule1 Record keeping requirements

G

1 Table

- 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.

2 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>ELM</i> 3.5.11R	Closely related <i>persons</i>	Record of steps taken to prove <i>persons</i> not closely related	In anticipation of taking and while <i>firm</i> takes advantage of <i>ELM</i> 3.5.10R	Three years after the <i>firm</i> ceases to take advantage of <i>ELM</i> 3.5.10R
<i>ELM</i> 6.9.7R	Systems requirements that have to be fulfilled in order to be allowed to have customer e-money balances in excess of the purse limits	Identity of <i>person</i> entitled to <i>e-money</i> , the amount to which entitled, identity of <i>person</i> with <i>redemption right</i> and redemption amount	On-going as a condition of issuing <i>e-money</i> outside the purse limits	Not specified

Electronic money

Schedule2 Notification requirements

G

1 Table

1. The aim of the *guidance* in the following table is to give the reader a quick over-all view of the relevant requirements for notification and reporting.
2. It is not a complete statement of those requirements and should not be relied on as if it were.

2 Table Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>ELM 2.5.5R</i>	Projected amounts of <i>e-money outstandings</i>	Revised projections under <i>ELM 2.5.4R</i>	Original projections significantly incorrect	Within ten <i>business days</i> of need for revised projections having been established
<i>ELM 3.5.21R</i>	Reportable large exposure	Pending or existing reportable large exposure not already notified	A proposal to enter into a transaction or transactions that would result in a reportable large exposure or, if not notified at the proposal stage, once a reportable large exposure exists	Immediate
<i>ELM 4.4.5G</i>	Intention to launch a promotion under which the price paid by purchasers of e-money is less than its monetary value	Intention and details about the promotion	Decision to launch such a promotion	Immediate

<i>ELM 4.4.6G</i>	As above	Changes in expectations and any substantial difference between expectations and actual outcome	Fact of change or difference in outcome	Immediate
<i>ELM 8.7.1R</i>	Periodic reports	Form ELM-SI	End of each half financial year	Within ten <i>business days</i> of the end of each half financial year
<i>ELM 8.7.2R</i>	Change reports	Change in conditions in <i>ELM 8.4</i>	Fact of change	Within two <i>business days</i> of the change occurring
<i>ELM 8.7.3R</i>	Where <i>small e-money issuer's</i> total liabilities exceed 5million euro	Form ELM-SI	Fact of excess	Within two <i>business days</i> of the excess occurring
<i>ELM 8.7.13R</i>	Corrections to information provided	Full details, an explanation for the error and the correct information.	On <i>small e-money issuer</i> becoming aware of the need to correct the information	Immediately

Electronic money

Schedule3 Fees and other required payments

G

- 1 There are no requirements for fees or other payments in ELM.

Electronic money

Schedule4 Powers exercised

G

1 Table Powers exercised

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the rules in *ELM*:

- (1) Section 138 (General rule-making power)
- (2) Section 150(2) (Actions for damages)
- (3) Section 156 (General supplementary powers)
- (4) Article 9G(1) (Obtaining information from certified persons etc) of the *Regulated Activities Order*
- (5) Article 9H(1) (Rules prohibiting the issue of electronic money at a discount) of the *Regulated Activities Order*

2 Table

The following power in the *Act* has been exercised by the *FSA* to give *guidance* in *ELM*:

- Section 157(1) (Guidance)

3 Table

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* in *ELM* to direct or require:

- (1) Section 51 (Applications under this Part)
- (2) Article 9D(a) (Applications for certificates) of the *Regulated Activities Order*
- (3) Article 9F(2) (Revocation of certificate on request) of the *Regulated Activities Order*

Electronic money

Schedule5 Rights of action for damages

G

1 Table

1	The table below sets out the <i>rules</i> in <i>ELM</i> contravention of which by an <i>authorised person</i> may be actionable under section 150 of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.
2	If a “Yes” appears in the column headed “For private person?”, the <i>rule</i> may be actionable by a “ <i>private person</i> ” under section 150 (or, in certain circumstances, his fiduciary or representative). A “Yes” in the column headed “Removed?” indicates that the <i>FSA</i> has removed the right of action under section 150(2) of the <i>Act</i> . If so, a reference to the <i>rule</i> in which it is removed is also given.
3	The column headed “For other person?” indicates whether the <i>rule</i> is actionable by a <i>person</i> other than a <i>private person</i> (or his fiduciary or representative). If so, an indication of the type of <i>person</i> by whom the <i>rule</i> is actionable is given.

2 Table Actions for damages: Electronic money sourcebook

Chapter/ Appendix	Section/ Annex	Paragraph	Rights of action under section 150		
			For private person?	Removed?	For other person
All rules in <i>ELM</i> 6			Yes	No	No
All rules in <i>ELM</i> 8			Yes (note)	No	No
All other rules in <i>ELM</i>			No	Yes, <i>ELM</i> 1.6.1R	No

			For private person?	Removed?	For other person
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Note: the effect of article 9G(3) of the *Regulated Activities Order* is that the *rules* in *ELM* 8.7 are also actionable against a *small e-money issuer* (which is not an *authorised person*).

Electronic money

Schedule6 Rules that can be waived

G

1 Table

1. The rules in *ELM* may be waived by the *FSA* under section 148 of the *Act* (Modification or waiver of rules).
2. Article 9G(2) of the *Regulated Activities Order* provides that section 148 of the *Act* applies in relation to *rules* made under article 9G(1) (Obtaining information from certified persons etc.) as if references in that section to an *authorised person* were references to a certified person (referred to in *ELM* as a *small e-money issuer*).
3. Article 9H(2) of the *Regulated Activities Order* provides that section 148 of the *Act* applies in relation to *rules* made under article 9H(1) (Rules prohibiting the issue of electronic money at a discount).

**ELECTRONIC MONEY SOURCEBOOK
(CONSEQUENTIAL AMENDMENTS TO HANDBOOK) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority (the “FSA”) amends the Handbook as set out in the Annexes to 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 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 340 (Appointment);
 - (5) section 395(5) (The Authority’s procedures);
 - (6) article 9D(a) (Applications for certificates) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (the “Regulated Activities Order”);
 - (7) article 9F(2) (Revocation of the certificate on request) of the Regulated Activities Order;
 - (8) article 9(G)(1) (Obtaining information from certified persons) of the Regulated Activities Order; and
 - (9) article 9H(1) (Rules prohibiting the issue of electronic money at a discount) of the Regulated Activities Order.
- 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 27 April 2002.

Amendments to the Handbook

- D.
- (1) AUTH is amended by inserting, after Appendix 2, the provisions in Annex A to this instrument.
 - (2) SUP is amended by inserting, into SUP16 Annex 1R, the provisions in Annex B to this instrument.
 - (3) The Glossary is amended in accordance with Annex C to this instrument.
 - (4) The Reader’s Guide, PRIN, COND, GEN, IPRU (BANK), IPRU (BSOC), IPRU (INV), AUTH, SUP, ENF, DEC and PROF are amended in accordance with Annex D to this instrument.

Remaking of the General provisions and the Glossary

- E. GEN 1.3.1R (Emergency), the rules and directions in GEN 2 (other than GEN 2.1.8R) and the Glossary are made under the following powers in the Regulated Activities Order (in addition to the powers under which they are already made):
- (1) article 9D(a) (Applications for certificates);
 - (2) article 9F(2) (Revocation of the certificate on request);
 - (3) article 9G(1) (Obtaining information from certified persons); and
 - (4) article 9H(1) (Rules prohibiting the issue of electronic money at a discount).

Citation

- F. This instrument may be cited as the Electronic Money Sourcebook (Consequential Amendments to Handbook) Instrument 2002.

By order of the Board
18 April 2002

Annex A

Appendices



Appendix 3

Guidance on the scope of the regulatory activity of issuing e-money

3.1 Application and purpose

Application

- 3.1.1** **G**_{/1} This appendix applies to a *person* who needs to know whether a particular electronic payment product is *e-money* and whether the *person* issuing it needs to be authorised under the *Act*.
- 3.1.2** **G**_{/1} This appendix also applies to a *person* who needs to know the extent to which section 21 of the *Act* (Restrictions on financial promotion) and **COB 3** (Financial promotion) apply to *e-money*.

Purpose

- 3.1.3** **G**_{/1} There are two main purposes of this *guidance* on the definition of *e-money*. These are:
- (1) to outline the main features of the *regulated activity of issuing e-money*;
 - (2) to explain the application of the restriction on *financial promotion* under section 21 of the *Act* so far as it concerns *issuing e-money*.
- 3.1.4** **G**_{/1} This *guidance* is issued under section 157 of the *Act*. It represents the *FSA*'s views and does not bind the courts. For example, it would not bind the courts in an action for damages brought by a *private person* for breach of a *rule* (see section 150 of the *Act* (Action for damages)), or in relation to the enforceability of a contract where there has been a breach of section 19 (The general prohibition) or 21 (Restriction on financial promotion) of the *Act* (see sections 26 to 30 of the *Act* (Enforceability of agreements)).
- 3.1.5** **G**_{/1} Although the *guidance* does not bind the courts, it may be of persuasive effect for a court considering whether it would be just and equitable to allow a contract to be enforced (see sections 28(3) and 30(4) of the *Act*). Anyone reading this *guidance* should refer to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (as amended) (the *Regulated Activities Order*), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (SI 2002/682) and to the Financial Services and Markets Act 2000 (Financial

3.2 The regulated activity of issuing e-money

Promotion) Order 2001 (SI 2001/1335) (as amended) (the *Financial Promotion Order*). These should be used to find out the precise scope and effect of any particular provision referred to in this *guidance*, and any reader should consider seeking legal advice if doubt remains. If a *person* acts in line with the *guidance* in the circumstances mentioned by it, then the *FSA* will proceed on the footing that the *person* has complied with the aspects of the requirement to which the *guidance* relates.

The Regulated Activities Order

- 3.2.1** **G**_{/1} Under section 19 of the *Act* (The general prohibition), no person may carry on a *regulated activity* in the *United Kingdom*, or purport to do so, unless he is *authorised* or exempt under the *Act*.
- 3.2.2** **G**_{/1} A *regulated activity* means an activity of a kind specified in the *Regulated Activities Order* which is carried on by way of business and which (generally) relates to an *investment* of a kind specified in the *Regulated Activities Order*.
- 3.2.3** **G**_{/1} Further *guidance* on section 19 and *regulated activities* can be found in ■ AUTH 2.
- 3.2.4** **G**_{/1} Article 9B of the *Regulated Activities Order* says that *issuing e-money* is a specified activity of the kind described in ■ AUTH App 3.2.2 G. Article 74A of the *Regulated Activities Order* says that *e-money* is a *specified investment* for that purpose.
- 3.2.5** **G**_{/1} *E-money* is defined in Article 3(1) of the *Regulated Activities Order*. It says that *e-money* means monetary value, as represented by a claim on the issuer, which is:
- (1) stored on an electronic device;
 - (2) issued on receipt of funds; and
 - (3) accepted as a means of payment by *persons* other than the issuer.

The E-Money Directive

- 3.2.6** **G**_{/1} The *E-Money Directive* introduces a framework for the regulation of *e-money* at a European level.
- 3.2.7** **G**_{/1} The *Regulated Activities Order* copies out the definition of *electronic money* in the *E-Money Directive*, with one exception.
- 3.2.8** **G**_{/1} The exception is that the words “of an amount not less in value than the monetary value issued” in article 1(3)(b)(ii) of the *E-Money Directive* are not reproduced in the *Regulated Activities Order*.

3.2.9 ^{/1} **G** The words in article 1(3)(b)(ii) omitted from the definition in the *Regulated Activities Order* are aimed at stopping *e-money issuers* from *issuing e-money* at a discount. They were omitted from the *Regulated Activities Order* to make it clear that issuing electronic monetary value at a discount is not an *unregulated activity*. Instead, the prohibition on *issuing e-money* at a discount is left to *FSA rules*. The *FSA rules* on this are in ■ ELM 4 (Limitations on activities).

3.2.10 ^{/1} **G** On this basis, the *FSA* believes that the definition of *e-money* in the *Regulated Activities Order* should be interpreted consistently with the *E-Money Directive*.

Exclusions

3.2.11 ^{/1} **G** Article 9C of the *Regulated Activities Order* says that the issuing of *e-money* by a person to whom the *FSA* has given a certificate under that article is not a *regulated activity* provided that the certificate has not been revoked. The *FSA* may only issue such certificates to small or local *e-money* schemes. Further *guidance* on this topic can be found in ■ ELM 8 (Small e-money issuers).

The issuer of e-money

3.2.12 ^{/1} **G** As explained in ■ AUTH App 3.2.4 G, the *regulated activity* relating to *e-money* is *issuing e-money*.

3.2.13 ^{/1} **G** In some *e-money* schemes an originator creates *e-money* and then sells it to *banks* and other distributors. The latter then sell the *e-money* to the public. In the *FSA's* view, references to the issuer of *e-money* in the *Regulated Activities Order* are to the originator and not the distributors.

3.2.14 ^{/1} **G** The issuer is the issuer of the *e-money* rather than the issuer of the electronic device on which it is stored, if they are different.

Exclusion from the definition of deposit

3.2.15 ^{/1} **G** Article 9A of the *Regulated Activities Order* says that a sum is not a *deposit* if it is immediately exchanged for *e-money*.

3.2.16 ^{/1} **G** Thus if a customer pays for *e-money* but the *e-money* is not issued until later, that initial payment will be a *deposit*, as long as the payment comes within the definition of *deposit* in the *Regulated Activities Order*.

3.2.17 ^{/1} **G** ■ AUTH 2.6.2 G to ■ AUTH 2.6.4 G has *guidance* on the meaning of *deposit*.

3.2.18 ^{/1} **G** Some *e-money* products may be charged up by means of scratch cards that can be purchased from shops. The price paid for the card is the monetary value of the *e-money*. The card contains a number. The purchaser then enters the number on a web site to activate the *e-money* account. There is thus a delay between the payment for the *e-money* and its use by the holder. Such a delay does not make the payment for the *e-money* a *deposit*. This is because the means of spending the *e-money* is put into the hands of the purchaser when he purchases the card.

3.2.19 ^{/1} **G** A person may also pay for *e-money* by cheque. The *e-money issuer* will not receive the value until the cheque has cleared. This delay does not make the payment for

the *e-money* into a *deposit*. The purchaser has paid for the *e-money*, even though his payment obligation has only been satisfied conditionally.

Transitionals

- 3.2.20** **G**_{/1} Article 9 of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 has transitional provisions relating to those who were issuing *e-money* on 27 April 2002.
- 3.2.21** **G**_{/1} Where, immediately before 27 April 2002, a *full credit institution* with *Part IV permission to accept deposits* was carrying on by way of business in the *United Kingdom* the activity of *issuing e-money*, its *permission* is to be treated as including, for a period of six months beginning at 27 April 2002, *permission* to carry on the activity of *issuing e-money*.
- 3.2.22** **G**_{/1} Where, immediately before 27 April 2002:
- a) an *EEA firm* of the kind mentioned in paragraph 5(b) or (c) of Schedule 3 to the *Act* qualified for *authorisation* under that Schedule; and
 - b) the activities which were treated as *permitted activities* for the purposes of paragraph 13 or 14 of that Schedule as it applied to that *person* included issuing *e-money*;
- the *firm's permission* under paragraph 15 of that Schedule is to be treated as including *permission* to carry on that activity.
- 3.2.23** **G**_{/1} The transitional provisions also apply to a *body corporate* or *partnership* which, immediately before 27 April 2002:
- (1) has its head office in the *United Kingdom*, and is carrying on by way of business in the *United Kingdom* the activity of *issuing e-money*; or
 - (2) has its head office in an *EEA State* other than the *United Kingdom*, and is carrying on such an activity by way of business in the *United Kingdom* without contravening the law of that other *EEA State*.
- 3.2.24** **G**_{/1} ■ AUTH App 3.2.23 G does not include a *person* within ■ AUTH App 3.2.21 G or ■ AUTH App 3.2.22 G.
- 3.2.25** **G**_{/1} A *person* described in ■ AUTH App 3.2.23 G is not to be treated as carrying on the *regulated activity* of *issuing e-money* until the beginning of 27 October 2002, unless it receives *permission* to carry on that activity before then.
- 3.2.26** **G**_{/1} On and after 27 October 2002, an *e-money issuer* with its head office in the *United Kingdom* will not be able to continue *issuing e-money* in the *UK* (or other *EEA States*) unless it has been granted *permission* under Part IV of the *Act* (or its existing *permission* has been varied to include the activity of *issuing e-money*). Similarly, an *e-money issuer* whose head office is in another *EEA State* will not have *permission* to carry on that activity on or after 27 October unless it has been duly authorised in its *Home State*.
- 3.2.27** **G**_{/1} However, if an *e-money issuer* falling under ■ AUTH App 3.2.23 G(1) that was issuing *e-money* as at 27 April 2002 continues to issue *e-money* after the beginning of 27th October 2002, its carrying on that activity after that date will continue to be excluded from the *regulated activity* of *issuing e-money*, provided that he has made

an application before 27th June 2002 under section 40 of the Act (Application for permission) for *permission* to carry on that activity, and has not withdrawn it. That exclusion ends when the application has been finally determined.

- 3.2.28** G For these purposes an application is to be treated as finally determined:
/1
- (1) In a case where the FSA gives *permission* to carry on the activity and does not exercise its power under section 42(7)(a) or (b) (Permission) or section 43(1) (Imposition of requirements) of the Act, on the date on which the *permission* takes effect;
 - (2) In a case where the FSA refuses *permission*, or gives *permission* but exercises its power under section 42(7)(a) or (b) or section 43 of the Act, at the time when the matter ceases to be open to review (within the meaning of section 391(8) of the Act) (Publication).
- 3.2.29** G The transitional exclusions described in ■ AUTH App 3.2.23 G to ■ AUTH App 3.2.28 G do not cover an *e-money issuer* whose head office is outside the EEA.
/1

3.3 Elements of the definition of e-money

Monetary value

- 3.3.1** G The definition of *e-money* says that for a product to be *e-money*, it must be monetary value as represented by a claim on the issuer. Guidance on the meaning of issuer can be found at ■ AUTH App 3.2.12 G to ■ AUTH App 3.2.14 G
/1

Storage on an electronic device

- 3.3.2** G The definition of *e-money* says that for a product to be *e-money*, it must be stored on an electronic device.
/1
- 3.3.3** G *E-money* is an electronic payment product. The value is held electronically and payments using the value are made electronically.
/1
- 3.3.4** G The fact that the device may be magnetic does not stop it being an electronic device for the purpose of the definition of *e-money*. Thus for example value stored on a personal computer does not fall outside the definition merely because it is stored on the computer's magnetic hard disk. Similarly, value stored on a *plastic card* that uses magnetic stripe technology may also fall within the definition if the value is transferred for spending using electronic technology.
/1

Prepayment

- 3.3.5** G The definition of *e-money* says that for a product to be *e-money*, it must be issued on receipt of funds.
/1

- 3.3.6** G_{/1} This part of the definition means that *e-money* is a prepaid product. That is, unlike credit provided through a credit card, the customer pays for the spending power in advance. This is why credit cards are excluded from the definition of *e-money*.
- 3.3.7** G_{/1} This does not mean that *e-money* paid for with a credit card falls outside the definition. The purchase of the *e-money* represents the purchase of monetary value. The fact that the purchaser is lent the funds to buy the *e-money* does not affect this. There are two contracts, one for the sale of *e-money* and one for credit.
- 3.3.8** G_{/1} Value on a debit card may be *e-money* or a *deposit*. *Guidance* on this is given in ■ AUTH App 3.3.14 G to ■ AUTH App 3.3.20 G.
- 3.3.9** G_{/1} The fact that the device on which monetary value is stored is made available on a *plastic card* that also functions as a debit or credit card does not stop that monetary value from being *e-money*.

Multipurpose

- 3.3.10** G_{/1} For a product to be *e-money*, *persons* other than the issuer must accept it as a means of payment.
- 3.3.11** G_{/1} ■ AUTH App 3.3.10 G means that the *e-money* holder must be able to use it to buy goods and services from *persons* other than the issuer.
- 3.3.12** G_{/1} Thus, for example, electronic value issued by an employer to its employees that can only be used to buy food and drink from the employer in its canteen is not *e-money*.
- 3.3.13** G_{/1} If monetary value can be spent with third parties, it does not stop being *e-money* just because the *e-money* can also be spent with the issuer.

Accounted e-money schemes

- 3.3.14** G_{/1} An electronic payment scheme that involves prepaid monetary value that can be spent without the involvement of the issuer is likely to be *e-money*. However, a product does not cease to be *e-money* merely because the scheme is account based.
- 3.3.15** G_{/1} The document published by HM Treasury in March 2002 called "Implementation of the *Electronic Money Directive: A Response to Consultation*" says:

"An important issue that respondents [to HM Treasury's consultation on the implementation of the *E-Money Directive*] requested clarification on was whether the Directive's definition should catch account-based schemes (i.e. *e-money* held remote from the owner and spent at the owner's direction) as well as, for example, card-based schemes (i.e. *e-money* in the possession of the owner, whether stored on a personal computer or a smart card, and directly spent by them). The Treasury believes that the Directive's definition does allow for the possibility of account-based schemes being *e-money*. Not allowing account-based *e-money* schemes would effectively create a regulatory gap between the *e-money* and deposit-taking regimes – and a difference of treatment between schemes that pose similar regulatory risks. Rather than attempting to amend the definition in the Order (which is already expressed suitably widely), the Treasury has clarified in the accompanying Explanatory Memorandum that the definition of *e-money* is to be interpreted as covering account-based schemes (so long as they remain distinct from deposit-taking)."

- 3.3.16** G That explanatory memorandum says:
/1
"The Treasury believes the Directive's definition includes both e-money schemes in which value is stored on a card that is used by the bearer to make purchases, and account-based e-money schemes where value is stored in an electronic account that the user can access remotely."
- 3.3.17** G Thus monetary value issued under an account-based scheme can be *e-money*. On the other hand, not all monetary value recorded electronically on an account will be *e-money*. If all such monetary value were *e-money*, any *deposit* recorded in records maintained electronically could be *e-money*, thereby turning most conventional bank accounts into *e-money*. Thus it is necessary to distinguish between an account-based *e-money* scheme and a conventional bank deposit.
- 3.3.18** G Recital (3) to the *E-Money Directive* says that "electronic money can be considered an electronic surrogate for coins and banknotes, which is stored on an electronic device such as a chip card or computer memory and which is generally intended for the purpose of effecting electronic payments of limited amounts."
- 3.3.19** G The European Commission published an explanatory memorandum along with its proposal for a Directive about *e-money*. It said that it is appropriate to emphasise that *e-money* does not represent a *deposit*. Unlike a depositor, a user does not advance funds to an issuer in order to ensure their safe keeping and handling. Neither the issuer nor the customer pursues this objective. The Commission said that the underlying contract between the customer and the issuer is that the user will get value for the *e-money* from those merchants that accept it and that the issuer will honour his commitment to give value.
- 3.3.20** G In distinguishing *e-money* and *deposits*, relevant factors include the following.
/1
- (1) As explained in ■ AUTH App 3.3.3 G, *e-money* is a purely electronic product. If the monetary value is kept on an account that can be used by non-electronic means, that points towards it being a *deposit*. For example, an account on which cheques can be drawn is unlikely to be *e-money*.
 - (2) If a product is designed in such a way that it is only likely to be used for making payments of limited amounts and not as a means of saving, that feature points towards it being *e-money*. Relevant features might include how long value is allowed to remain on the account, disincentives to keeping value on the account and the payment of interest on it.
 - (3) If an account has features on it in addition to those necessary for a pure payment facility, such as an overdraft or direct debit facility, that points towards it not being *e-money*.
 - (4) One should have regard to whether the product is sold as *e-money* or as a *deposit*.
- 3.3.21** G In other words, a *deposit* involves the creation of a debtor-creditor relationship under which the *person* who accepts the *deposit* stores value for eventual return. *E-money*, in contrast, involves the purchase of a means of payment.

3.4 Financial promotion

- 3.4.1** **G**_{/1} *Guidance* on the restrictions on financial promotion under section 21 of the *Act* (Restrictions on financial promotion) can be found in AUTH App [to be added to the Handbook at a later date]. ■ AUTH App 3.4 gives further *guidance* on its application to *e-money*.
- 3.4.2** **G**_{/1} As explained in AUTH App [], section 21 of the *Act* applies to the *communication* of an invitation or inducement to *engage in investment activity*. Section 21(8) defines *engaging in investment activity* as:
- (1) entering or offering to enter into an agreement the making or performance of which by either party constitutes a *controlled activity*; or
 - (2) exercising any rights conferred by a *controlled investment* to acquire, dispose of, underwrite or convert a *controlled investment*.
- 3.4.3** **G**_{/1} *Controlled activity* and *controlled investment* are both defined by reference to Schedule 1 to the *Financial Promotion Order*. *Issuing e-money* is not included as a *controlled activity* and *e-money* is not included as a *controlled investment*.
- 3.4.4** **G**_{/1} *Accepting deposits* is however a *controlled activity* and a *deposit* is a *controlled investment*. As explained in ■ AUTH App 3.2.15 G, the definition of *deposit* under the *Regulated Activities Order* says that a sum is not a *deposit* for the purposes of the *Regulated Activities Order* if it is immediately exchanged for *e-money*.
- 3.4.5** **G**_{/1} The definition of *deposit* in the *Financial Promotion Order* follows the definition of *deposit* in the *Regulated Activities Order*. Therefore the purchase price paid for *e-money* is not a *deposit* for the purposes of the *Financial Promotion Order*.
- 3.4.6** **G**_{/1} Hence the provisions in the *Act* and the *Handbook* about *financial promotions* do not apply to *e-money*.
- 3.4.7** **G**_{/1} However, if the purchase price for *e-money* is not immediately exchanged for *e-money*, the purchase price may be a *deposit* if the payment comes within the definition of *deposit* in the *Regulated Activities Order*. ■ AUTH 2.6.2 G to ■ AUTH 2.6.4 G has *guidance* on the meaning of *deposit*. In such a case, the provisions in the *Act* and the *Handbook* about *financial promotions* relating to *deposits* apply.

Annex B



FORM ELM-CA/LE – Half-Yearly Financial Return

Reporting firm _____

as at

--	--	--

(eg 31 12 2001)

FSA number*

--	--	--	--	--	--	--	--

Unconsolidated/consolidated - tick as appropriate

Unconsolidated

Consolidated

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 15.6.1R* and *SUP 15.6.4R* require 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. *SUP 16.3.11R* requires an *authorised person* to submit reports containing all the information required. *APER 4.4.6E* provides that, where an *approved person* is responsible for reporting matters to the *FSA*, failure to inform the *FSA* of materially significant information of which he is aware is a breach of *Statement of Principle 4*. 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. Any additional information of relevance should be provided by letter direct to the *FSA*. If there is any doubt about the relevance of information, it should be included.

I confirm the information in this form is accurate and complete to the best of my knowledge and belief.

Signature of authorised signatory: _____ Date: _____

Name: _____ Position held: _____

In the event of a query, the *FSA* may, in the first instance, contact (block letters please)

Name: _____ Tel No: _____

_____ Ext: _____

*For unconsolidated reports, this must be the *FSA* firm reference number. For consolidated reports, this must be the *FSA* firm reference number of the *firm* on whom the requirement to report has been placed.

Notes on Completion

- 1 If you have any difficulty in completing this return, please telephone your normal supervisory contact at the *FSA* for *guidance*.
- 2 Complete the return half-yearly on an unconsolidated and, where required, on a consolidated basis as at end of June and December. Institutions wishing to report at dates, which coincide with the financial year-end, should apply to the *FSA* for a *waiver* (see *SUP 8*).
- 3 Enter amounts to the nearest thousand omitting £000s.
- 4 To assist with the scanning process, please enter all data neatly within the relevant boxes and do not enter the % symbol in any boxes on this return.
- 5 This form must be submitted the *FSA* within 20 *business days*. For methods of submission, see *SUP 16.3*.
- 6 An expression in this form in italics has the meaning given in the Glossary to the *FSA's Handbook of rules and guidance*.

FSA use only	Logged in	Data entered

SEMI-ANNUAL PROFIT AND LOSS

ELM-CA/LE

Item No	Item	Amount (£000)
A10	Revenue	<input type="text"/>
A20	Expenditure	<input type="text"/>
A30	Profit or (loss) before taxation	<input type="text"/>
A40	Taxation	<input type="text"/>
A50	Profit or (loss) after taxation	<input type="text"/>

BALANCE SHEET

ELM-CA/LE

Item No	Item	Amount (£000)	Amount (£000)
	Assets		
B10	Fixed assets		<input type="text"/>
B20	Current assets		<input type="text"/>
B30	Total assets		<input type="text"/>
	Liabilities		
B40	<i>E-money outstandings</i>	<input type="text"/>	
B50	Other current liabilities	<input type="text"/>	
B60	Non current liabilities	<input type="text"/>	
B70	Capital and reserves		<input type="text"/>
B80	Provisions		<input type="text"/>
B90	Unaudited current year's profit		<input type="text"/>

OWN FUNDS STATEMENT**ELM-CA/LE**

Item No	Item	Amount (£000)	Amount (£000)
	Tier 1 capital		
C10A	Paid-up share capital (excluding preference shares)	<input type="text"/>	
C10B	Share premium account	<input type="text"/>	
C10C	Audited reserves excluding revaluation reserves	<input type="text"/>	
C10D	Externally verified interim net profits	<input type="text"/>	
C10E	Partnership capital	<input type="text"/>	
	Less		
C10F	Interim net losses	<input type="text"/>	
C20	Initial capital (C10A + C10B + C10C + C10D + C10E./C10F) (C20 must be ≥ 1 million euro (or its equivalent in sterling))	<input type="text"/>	
	Less		
C30A	Deduction according to <i>ELM</i> 4.4.3R (which relates to a <i>firm</i> paying up <i>electronic money</i> it issues)	<input type="text"/>	
C30B	Investment in own shares	<input type="text"/>	
C30C	Intangible assets	<input type="text"/>	
C40	Sub-total of deductions from initial capital (C30A + C30B + C30C)	<input type="text"/>	
C50	Total tier 1 capital (C20./C40)		<input type="text"/>
	Tier 2 capital		
	Upper Tier 2 capital		
C60A	Upper tier 2 subordinated debt	<input type="text"/>	
C60B	Revaluation reserves	<input type="text"/>	
C70	Sub-total of upper tier 2 capital (C60A + C60B)	<input type="text"/>	
C80	Lower tier 2 subordinated debt capital (as amortised according to <i>ELM</i> 2.4.13R over the final five years to maturity) (must be < C50 * 50%)	<input type="text"/>	
C90	Sub-total of tier 2 capital (C70 + C80) (must be < C50)		<input type="text"/>
	Less		
C100	<i>Material holdings in financial institutions</i>		<input type="text"/>
C110	<i>Own funds</i> (C50 + C70./C100)		<input type="text"/>

ASSET-LIABILITY MANAGEMENT

ELM-CA/LE

Item No	Item	Amount (£000)	Amount (£000)
	<i>Qualifying liquid assets</i>		
	<i>Zero weighted assets</i>		
D10	Cash	<input type="text"/>	
	Securities issued by and representing a claim on, or fully guaranteed by		
D20A	A central government or central bank of a <i>Zone A country</i>	<input type="text"/>	
D20B	The European Central Bank	<input type="text"/>	
D20C	The European Communities	<input type="text"/>	
D30	Sub-total of <i>zero weighted assets</i> (D10 + D20A + D20B + D20C)		<input type="text"/>
D60	Sight deposits held with <i>Zone A credit institutions</i>		<input type="text"/>
D70	<i>Qualifying debt securities</i> ¹		<input type="text"/>
D80	Total of <i>qualifying liquid assets</i> (D50 + D60 + D70)		<input type="text"/>
Less			
D90	<i>E-money outstandings</i> (= B40)		<input type="text"/>
D100	Total of <i>qualifying liquid assets</i> / <i>E-money outstandings</i> (must be ≥ 0)		<input type="text"/>

1

As defined in *ELM* 3.3.9R

ASSET-LIABILITY MANAGEMENT

ELM-CA/LE

Item No

D110 List derivative instruments held to hedge market risks associated with assets that form part of the *e-money float*. Indicate type, maturity, nominal value, market value (if available) and the hedged asset(s) in the table below

	Type ²	Residual Maturity (months)	Nominal Value (Amount £000)	Market Value (Amount £000)	Hedged Asset(s)
A					
B					
C					
D					
E					
F					
G					
H					
J					

OWN FUNDS REQUIREMENTS

ELM-CA/LE

Item No	Item	Amount (£000)
E10	Total <i>own funds</i> (= C110)	
E20	<i>E-money outstandings</i> at period end (= B40)	
E30	Average <i>e-money outstandings</i> for each <i>day</i> of the preceding six month period ³	
E40	Proportion of total <i>own funds</i> (E10) to the higher of E20 or E30 (must be ≥ 2%)	

FOREIGN EXCHANGE RISK

ELM-CA/LE

² Indicate
 1 = OTC foreign exchange related derivative instrument;
 2 = exchange traded foreign exchange related derivative instrument
 3 = interest rate risk related derivative instrument

³ If the *firm* has not been an *e-money firm* for the whole of the preceding 6 months it must calculate the amount from the projected amounts of its daily *e-money outstandings* for the first six month of trading contained in the business plan supplied by the *firm* to the *FSA* as part of its application for the granting of an *e-money permission*.

Item No

F10 Indicate base currency

F20 List all FX net open positions, long and short, converted to £, in the table below

	Currency	Long (Amount 000)	Short (Amount 000)
A	Canadian Dollars	<input type="text"/>	<input type="text"/>
B	Euro	<input type="text"/>	<input type="text"/>
C	Japanese Yen	<input type="text"/>	<input type="text"/>
D	Sterling	<input type="text"/>	<input type="text"/>
E	Swiss Francs	<input type="text"/>	<input type="text"/>
F	US Dollars	<input type="text"/>	<input type="text"/>
G	<input type="text"/>	<input type="text"/>	<input type="text"/>
H	<input type="text"/>	<input type="text"/>	<input type="text"/>
J	<input type="text"/>	<input type="text"/>	<input type="text"/>
K	<input type="text"/>	<input type="text"/>	<input type="text"/>

F30 Total long

F40 Total short

Item No	Item	Amount (000)
F50	<i>Net FX open currency position (the greater of F30 and F40)</i>	<input type="text"/>
F60	<i>FX exposure (8% * F50)</i>	<input type="text"/>
F70	<i>Absolute FX exposure limit (amount by which the firm's own funds exceed 2.5% of its e-money outstandings)</i>	<input type="text"/>
F80	<i>FX exposure limit (amount by which the firm's own funds exceed 3% of its e-money outstandings)</i>	<input type="text"/>
F90	Unused portion of the <i>absolute FX exposure limit</i> (F70 ./. F60 must be ≥ 0)	<input type="text"/>
F100	Unused portion of the <i>FX exposure limit</i> (F80 ./. F60 must be ≥ 0)	<input type="text"/>

FOREIGN EXCHANGE RISK

ELM-CA/LE

Item No

F110 Indicate dates of breaches of the *absolute FX exposure limit* or the *FX exposure limit* for the preceding 6 months and the amount by which the relevant limit has been exceeded in each case in the table below

	Date of breach of <i>absolute FX exposure limit</i>	Date of breach of <i>FX exposure limit</i>	Amount by which the limit has been exceeded (Amount £000)
A	<input type="text"/> dd mm yyyy	<input type="text"/>	<input type="text"/>
B	<input type="text"/>	<input type="text"/>	<input type="text"/>
C	<input type="text"/>	<input type="text"/>	<input type="text"/>
D	<input type="text"/>	<input type="text"/>	<input type="text"/>
E	<input type="text"/>	<input type="text"/>	<input type="text"/>
F	<input type="text"/>	<input type="text"/>	<input type="text"/>
G	<input type="text"/>	<input type="text"/>	<input type="text"/>
H	<input type="text"/>	<input type="text"/>	<input type="text"/>
J	<input type="text"/>	<input type="text"/>	<input type="text"/>
K	<input type="text"/>	<input type="text"/>	<input type="text"/>
L	<input type="text"/>	<input type="text"/>	<input type="text"/>
M	<input type="text"/>	<input type="text"/>	<input type="text"/>
H	<input type="text"/>	<input type="text"/>	<input type="text"/>
J	<input type="text"/>	<input type="text"/>	<input type="text"/>
K	<input type="text"/>	<input type="text"/>	<input type="text"/>
L	<input type="text"/>	<input type="text"/>	<input type="text"/>
M	<input type="text"/>	<input type="text"/>	<input type="text"/>

LARGE EXPOSURES

ELM-CA/LE

Item No	Item	Amount (£000)
G10	Total <i>own funds</i> (= C110)	<input type="text"/>
G20	Total of <i>qualifying liquid assets</i> that form part of the <i>e-money float</i> in the form of sight deposits held with <i>Zone A credit institutions</i> and <i>qualifying debt securities</i> (D60 + D70)	<input type="text"/>
G30	Proportion of total <i>own funds</i> (G10) to G20 (must be $\geq 5\%$)	<input type="text"/>

Item No	Item		
G40	List all <i>large exposures</i> (exposures $\geq 10\%$ total <i>own funds</i>) included in G20 (must be $\leq 25\%$ total <i>own funds</i>) and indicate total of large exposures (must be $\leq 800\%$ total <i>own funds</i>) in the table below		
	<i>Counterparty or group of closely related counterparties</i>	<i>Large exposure</i> (Amount £000)	<i>% total own funds</i> (up to one decimal place)
A	<input type="text"/>	<input type="text"/>	<input type="text"/>
B	<input type="text"/>	<input type="text"/>	<input type="text"/>
C	<input type="text"/>	<input type="text"/>	<input type="text"/>
D	<input type="text"/>	<input type="text"/>	<input type="text"/>
E	<input type="text"/>	<input type="text"/>	<input type="text"/>
F	<input type="text"/>	<input type="text"/>	<input type="text"/>
G	<input type="text"/>	<input type="text"/>	<input type="text"/>
H	<input type="text"/>	<input type="text"/>	<input type="text"/>
J	<input type="text"/>	<input type="text"/>	<input type="text"/>
K	<input type="text"/>	<input type="text"/>	<input type="text"/>
L	<input type="text"/>	<input type="text"/>	<input type="text"/>
G50	Total	<input type="text"/>	<input type="text"/>

QUESTIONS**ELM-CA/LE**Item
No

H10	Have the <i>firm's</i> total <i>own funds</i> been equal to or greater than its <i>own funds requirement</i> throughout the reporting period? (If no, please explain in accompanying letter)	YES/NO
H20	Have the <i>firm's</i> total <i>own funds</i> been equal to or greater than 5% of its <i>qualifying liquid assets</i> that form part of the <i>e-money float</i> and are in the form of sight deposits held with <i>Zone A credit institutions</i> and <i>qualifying debt securities</i> throughout the reporting period? (If no, please explain in accompanying letter)	YES/NO
H30	Have the <i>firm's large exposures</i> been within the large exposure limits throughout the reporting period? (If no, please explain in accompanying letter)	YES/NO
H40	Has the amount of the <i>firm's qualifying liquid assets</i> been no less than the amount of its <i>e-money outstandings</i> throughout the reporting period? (If no, please explain in accompanying letter)	YES/NO
H50	Has the <i>firm</i> complied with the base capital requirements throughout the reporting period? (If no, please explain in accompanying letter)	YES/NO

ANNEX C

Amendments to the Glossary

Part 1

Insert the following new definitions in the appropriate alphabetical position:

<i>absolute FX exposure limit</i>	(in <i>ELM</i>) the amount by which an <i>ELMI's own funds</i> exceed 2.5% of its <i>e-money outstandings</i> , calculated in accordance with <i>ELM 3.4.6R</i> (FX exposure limits).
<i>ancillary banking services undertaking</i>	(in <i>ELM</i>) (as defined in article 1.23 of the <i>Banking Consolidation Directive</i> (Definitions)) an <i>undertaking</i> the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more <i>credit institutions</i> .
<i>bank consolidation rule</i>	the <i>FSA consolidation rule</i> in <i>IPRU(BANK)</i> .
<i>consolidated sub-group</i>	(in <i>ELM</i>) (in relation to a <i>person</i>): (a) that <i>person</i> ; and (b) any <i>financial services undertaking</i> that is a member of its <i>sub-group</i> .
<i>consumer e-money card</i>	any <i>consumer e-money device</i> in the form of a <i>plastic card</i> , other portable device or device intended to be included in another portable device (or a function on a <i>plastic card</i> or on such a device) that is intended to be used by a <i>consumer e-money holder</i> .
<i>consumer e-money device</i>	any <i>e-money electronic device</i> intended to be used by and in the presence of a <i>consumer e-money holder</i> .
<i>consumer e-money holder</i>	(in relation to <i>e-money</i>) a <i>person</i> who holds that <i>e-money</i> otherwise than in the course of a business or profession.
<i>daily e-money outstandings amount</i>	(in <i>ELM</i>) (in relation to a particular <i>day</i> or time and <i>ELMI</i>) the highest amount that that <i>ELMI's e-money outstandings</i> reached on that <i>day</i> or, as the case may be, on the <i>day</i> in question prior to that time.
<i>EEA consolidated group</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i>) the <i>consolidated sub-group</i> of the <i>ELMI's EEA financial parent undertaking</i> , as established in accordance with <i>ELM 7</i> (Consolidated financial supervision).
<i>EEA financial parent undertaking</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i>) the highest <i>undertaking</i> in the <i>ELMI's group</i> that: (a) is a <i>relevant financial services company</i> or a <i>financial holding</i>

company;

- (b) is formed under the law of another *EEA State*; and
- (c) is a *parent undertaking* of the *ELMI*;

as established in accordance with *ELM 7* (Consolidated financial supervision).

EEA group large exposure (in *ELM*) (in relation to an *ELMI*) *e-money float exposures* of members of the *ELMI's EEA consolidated group* calculated and identified in accordance with *ELM 7.6.2R* (EEA group large exposures).

EEA group risk own funds (in *ELM*) (in relation to an *ELMI*) are identified and calculated by applying the definition of *own funds* to the *ELMI's EEA consolidated group* in accordance with *ELM 7.5.1R* (EEA group risk own funds).

EEA group risk own funds requirement (in *ELM*) (in relation to an *ELMI*) is calculated by applying the definition of *own funds requirement* to the *ELMI's EEA consolidated group* in accordance with *ELM 7.5.2R* (EEA group risk own funds requirement).

electronic money the *investment*, specified in article 74A of the *Regulated Activities Order* (Electronic money), which is monetary value, as represented by a claim on the issuer, which is:

- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by *persons* other than the issuer.

ELM the Electronic Money sourcebook.

ELM financial rules the *rules* in *ELM 2* (Initial and continuing own funds requirement), *ELM 3* (Management of the e-money float) and *ELM 7* (Consolidated financial supervision).

ELMI an *e-money firm* which is not a *bank, building society, incoming Treaty firm* or *incoming EEA firm*.

e-money *electronic money*.

E-Money Directive the Council Directive of 18 September 2000 relating to the taking up, pursuit of and prudential supervision of the business of electronic money institutions (No 2000/46/EC).

e-money electronic device an electronic device referred to in paragraph (a) of the definition of *electronic money* and any other device that a holder of *electronic money* uses to hold or to spend or otherwise use his *electronic money*.

<i>e-money firm</i>	a <i>firm</i> whose <i>permitted activities</i> include <i>issuing e-money</i> .
<i>e-money float</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i>) <i>qualifying liquid assets</i> owned by an <i>ELMI</i> except those that, taking into account <i>ELM</i> 3.3.13R (Establishment of the e-money float), the <i>ELMI</i> does not need in order to comply with <i>ELM</i> 3.3.1R (Asset-liability management).
<i>e-money float exposure</i>	(in <i>ELM</i>) the risks of loss set out in <i>ELM</i> 3.5.3 (Large exposure risk).
<i>e-money issue price</i>	(in respect of <i>e-money</i> issued by an <i>e-money firm</i>) the amount paid to the <i>e-money firm</i> for the issue of that <i>e-money</i> before or on the issue of that <i>e-money</i> .
<i>e-money issuer</i>	(in accordance with the definition of an “electronic money institution” in article 1.3 of the <i>E-Money Directive</i>) an <i>undertaking</i> or any other legal <i>person</i> , other than a <i>full credit institution</i> , which issues means of payment in the form of <i>e-money</i> .
<i>e-money outstandings</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i> and at any time) the total amount (actual or contingent) of the <i>ELMI</i> 's financial liabilities related to outstanding <i>e-money</i> at that time, including the total amount that would be payable by the <i>ELMI</i> if all the <i>e-money</i> in respect of which <i>persons</i> have, against the <i>ELMI</i> , a <i>redemption right</i> or any other right to require <i>e-money</i> to be redeemed were then due for redemption.
<i>e-money scheme rules</i>	(in <i>ELM</i>) (in relation to a scheme under which a <i>firm</i> issues <i>e-money</i>) the contracts between the participants in that scheme relating to the issue, circulation and redemption of <i>e-money</i> , including the contracts referred to in <i>ELM</i> 6.7.2R (Terms of redemption).
<i>financial holding company</i>	(in <i>ELM</i>) a <i>financial institution</i> , the <i>subsidiary undertakings</i> of which are either exclusively or mainly <i>relevant financial services companies</i> or <i>financial institutions</i> , one of which at least is a <i>relevant financial services company</i> .
<i>financial services undertaking</i>	(in <i>ELM</i>) a <i>financial institution</i> , <i>ancillary banking services undertaking</i> , <i>financial holding company</i> or <i>relevant financial services company</i> .
<i>foreign currency</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i>) any currency other than its <i>base currency</i> .
<i>FSA consolidation rule</i>	(in <i>ELM</i>) the following <i>rules</i> in <i>IPRU</i> : <ul style="list-style-type: none"> (a) 3.3.13R in chapter GN of <i>IPRU(BANK)</i> (except as it applies to a <i>bank</i> purely on a solo basis); (b) <i>IPRU(BSOC)</i> 1.2.1R (except as it applies to a <i>building society</i> purely on a solo basis);

	(c) <i>IPRU(INV)</i> 5.7.1R;
	(d) <i>IPRU(INV)</i> 10.200R(1) to 10.204R;
	(e) <i>IPRU(INV)</i> 13.7.2AR and 13.2.7BR.
<i>full BCD credit institution</i>	a <i>BCD credit institution</i> that falls within paragraph (1) of the definition of <i>credit institution</i> .
<i>full credit institution</i>	a <i>credit institution</i> that falls within paragraph (1) of the definition of <i>credit institution</i> .
<i>FX exposure</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i>) its <i>net FX open position</i> multiplied by 8%, calculated in accordance with <i>ELM</i> 3.4 (Foreign exchange risk).
<i>FX exposure limit</i>	(in <i>ELM</i>) (in relation to an <i>ELMI</i>) the amount by which the <i>ELMI's own funds</i> exceed 3% of its <i>e-money outstandings</i> , calculated in accordance with <i>ELM</i> 3.4 (Foreign exchange risk).
<i>granting an e-money permission</i>	(a) (in the case of a <i>firm</i> that previously had not had a <i>Part IV permission</i>) giving the <i>firm</i> a <i>Part IV permission</i> that includes <i>issuing e-money</i> ;
	(b) (in the case of a <i>firm</i> that does have a <i>Part IV permission</i>) a variation of a <i>Part IV permission</i> so that it includes <i>issuing e-money</i> .
<i>group of closely related counterparties</i>	(in <i>ELM</i>) a group of <i>persons</i> who fall within <i>ELM</i> 3.5.8R (Calculation of large exposure).
<i>initial capital</i>	(in <i>ELM</i>) items coming into stage A of the calculation in <i>ELM</i> 2.4.2R (Calculation of initial capital and own funds).
<i>issuing e-money</i>	the activity specified in article 9B of the <i>Regulated Activities Order</i> (Issuing electronic money), which is <i>issuing e-money</i> .
<i>large e-money float exposure</i>	(in <i>ELM</i>) an <i>e-money float exposure</i> or <i>e-money float exposures</i> that exceeds or together exceed 10% of an <i>ELMI's own funds</i> as specified in more detail in <i>ELM</i> 3.5.7R (Calculation of large exposure).
<i>lower tier two capital</i>	(in <i>ELM</i>) the lower tier two capital of an <i>ELMI</i> calculated in accordance with <i>ELM</i> 2.4 (Calculation of initial capital and own funds).
<i>material holdings</i>	(in <i>ELM</i>) the holdings and positions set out in <i>ELM</i> 2.4.17R (Material holdings).
<i>multilateral</i>	(in <i>ELM</i>) any of the following:

development bank

African Development Bank (AfDB)
Asian Development Bank (ASB)
Caribbean Development Bank (CDB)
Council of Europe Development Bank
European Bank for Reconstruction & Development (EBRD)
European Investment Bank (EIB)
European Investment Fund (EIF)
Inter-American Development Bank (IADB)
Inter-American Investment Corporation (IAIC)
International Bank for Reconstruction & Development (IBRD)
including International Finance Corporation (IFC)
Nordic Investment Bank (NIB).

*net FX open
currency position*

(in *ELM*) (in relation to an *ELMI*) the *ELMI*'s net open foreign currency position as calculated in accordance with *ELM* 3.4.4R (Calculation of FX exposure).

*own funds
requirement*

(in *ELM*) (in relation to an *ELMI*) 2% of the higher of the following amounts:

- (a) the *ELMI*'s *e-money outstandings* at that time; and
- (b) the average of the *ELMI*'s *daily e-money outstandings amount* for the six *month* period ending at that time;

calculated in accordance with *ELM* 2.5 (Continuing capital requirement).

ownership share

(in *ELM*) in accordance with the definition of a "share" in section 422(6) of the *Act* (Controller):

- (a) (in relation to an *undertaking* with a share capital) an allotted share;
- (b) (in relation to an *undertaking* with capital but no share capital) a right to share in the capital of the *undertaking*;
- (c) (in relation to an *undertaking* without capital) an interest:
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the *undertaking*; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the *undertaking* in the event of a winding up.

*qualifying debt
security*

(in *ELM*) a *security* falling into *ELM* 3.3.9R (Liquid assets).

qualifying liquid

(in *ELM*) an *investment* falling into *ELM* 3.3.5R (Liquid assets).

asset

recognised third country investment firm

(in *ELM*) an *investment firm* that:

- (a) is subject to the prudential rules of one of the *regulatory bodies* in Appendix C in section 10 of chapter CS of *IPRU(BANK)*; and
- (b) has its registered office (or, if it has no registered office, its head office) in the state in which that *regulatory body* is established.

redemption right

(in relation to an *e-money firm*) the right of a holder of *e-money* to require the *e-money firm* to redeem that *e-money* that corresponds to the duty of the *e-money firm* in *ELM* 6.3.1R (Duty to redeem) to redeem *e-money* issued by it.

regulatory capital resources

(in *ELM*) (in relation to a *full credit institution*) those parts of its capital that:

- (a) are treated as capital for the purpose of the laws and regulations about the maintenance of adequate capital that apply to it (including those imposed by or under the *regulatory system* or by a *regulatory body*); and
- (b) fall within the definition of own funds in the *Banking Consolidation Directive* or that the *Banking Consolidation Directive* allows *EEA States* to treat as own funds.

relevant financial services company

(in *ELM*) an *investment firm* or *credit institution*.

reportable large exposure

the same thing as *large e-money float exposure* with the following adjustments:

- (a) the figure of 10% in *ELM* 3.5.7R is replaced by 25%; and
- (b) *ELM* 3.5.6R does not apply.

small e-money issuer

(as defined by article 9C(10) of the *Regulated Activities Order* (Persons certified as small issuers etc)) a *person* to whom a certificate has been given by the *FSA* under that article (and whose certificate has not been revoked).

small e-money issuer certificate

a certificate given by the *FSA* under article 9C of the *Regulated Activities Order* (Persons certified as small issuers etc.).

sub-group

(in *ELM*) (in relation to a *person*):

- (a) that *person*; and
- (b) any *person* that is either:

- (i) a *subsidiary undertaking* of that person; or
- (ii) an *undertaking* in which that person or a *subsidiary undertaking* of that person holds a *participation*.

sufficiently liquid (in *ELM*) (in relation to an *investment*) complying with the requirements about liquidity in *ELM* 3.3.11R (Test for liquidity).

tier one capital (in *ELM*) the tier one capital of an *ELMI* calculated in accordance with *ELM* 2.4 (Calculation of initial capital and own funds).

tier two capital (in *ELM*) the tier two capital of an *ELMI* calculated in accordance with *ELM* 2.4 (Calculation of initial capital and own funds).

UK consolidated group (in *ELM*) (in relation to an *ELMI*) the *consolidated sub-group* of:

- (a) the *ELMI's UK financial parent undertaking*; or
- (b) (if the *ELMI* has no *UK financial parent undertaking* and the *ELMI* is a *UK domestic firm*) the *ELMI*;

as established in accordance with *ELM* 7 (Consolidated financial supervision).

UK financial parent undertaking (in *ELM*) the same thing as *EEA financial parent undertaking* except that references to another *EEA State* are replaced with ones to the *United Kingdom*.

UK group large exposure (in *ELM*) (in relation to an *ELMI*) the same thing as the *ELMI's EEA group large exposure* except that references to its *EEA consolidated group* are replaced with references to its *UK consolidated group*, as established in accordance with *ELM* 7 (Consolidated financial supervision).

UK group risk own funds (in *ELM*) the same thing as *EEA group risk own funds*, subject to the adjustments required by *ELM* 7.5.5R (UK group risk own funds and UK group risk own funds requirement).

UK group risk own funds requirement (in *ELM*) means the same thing as *EEA group risk own funds requirement*, subject to the adjustments required by *ELM* 7.5.5R (UK group risk own funds and UK group risk own funds requirement).

upper tier two capital (in *ELM*) the upper tier two capital of an *ELMI* calculated in accordance with *ELM* 2.4 (Calculation of initial capital and own funds).

zero weighted asset (in *ELM*) an *investment* falling into *ELM* 3.3.8R (Liquid assets).

Zone A credit institution (in *ELM*) a *full BCD credit institution* or a *full credit institution* that has its registered office (or, if it has no registered office, its head office) in a

Zone A country that is not an EEA State.

Part 2

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

agreeing to carry on a regulated activity the *regulated activity*, specified in article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II of that Order other than:

(a) *accepting deposits*;

(aa) *issuing electronic money*;

(b) *effecting contracts of insurance*; ...

bank

(a) a *firm* with a *Part IV permission* which includes *accepting deposits*, and:

(i) which is a *full credit institution*; or

(ii) whose *Part IV permission* includes a *requirement* that it comply with *IPRU(BANK)*;

but which is not a *building society*, a *friendly society* or a *credit union*;

(b) an *EEA bank* which is a *full credit institution*.

base currency

(1) (in *CIS*) the currency specified:

(a) in the *instrument of incorporation* of an *ICVC* as the currency in which its accounts are to be prepared; or

(b) in the *trust deed* of an *AUT* as the base currency of the *AUT*;

(2) (in *ELM*) (in relation to an *ELMI*) the currency in which that *ELMI*'s books of account are drawn up.

BCD credit institution

...article 2(3) of the *BCD*. (see also *full BCD credit institution*.)

credit institution

(as defined in article 1(1) of the *BCD*)

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

but excluding an institution within (2) that does not have the right to benefit from the mutual recognition arrangements under *BCD*.

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

financial institution

(1) (in accordance with paragraph 5(c) ...*BCD*.)

(2) (in *ELM*) an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex 1 of the *Banking Consolidation Directive*.

immediate group

(1) (in relation to ...

(e) a parent undertaking of a subsidiary undertaking of the authorised person.

(2) (in *ELM* 7) has the same meaning as in paragraph (1), with the omission of (1)(e).

investment firm

any legal person ... (see also *ISD investment firm* and *recognised third country investment firm*).

investment management firm

a firm whose permitted activities include *designated investment business*, which is not an authorised professional firm, bank, *ELMI*, building society, ...

own funds

(1) own funds as described in articles 34 to 39 of the *Banking Consolidation Directive*.

(2) (in *ELM*) the own funds of an *ELMI* calculated in accordance with *ELM* 2.4 (Calculation of initial capital and own funds).

personal investment firm

a firm whose permitted activities include *designated investment business*, which is not an authorised professional firm, bank, *ELMI*, building society, ...

regulated activity

(a) *accepting deposits* (article 5);

(aa) *issuing electronic money* (article 9B);

securities and futures firm a firm whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, bank, ELMI, building society, ...

participant firm a firm other than:

...

(h) a *UCITS qualifier*;

(i) an *ELMI* in relation to *issuing e-money*.

specified investment (a) *deposit* (article 74);

(aa) *electronic money* (article 74A);

ANNEX D

Consequential changes to the Handbook (other than to the Glossary)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new provision is inserted into the Handbook, the place that it goes is indicated but the text is not underlined.

READERS GUIDE

Contents of the Handbook In the section “Specialist sourcebooks”, after the row “(Later: United Kingdom Listing Authority)” insert a new row:

Electronic Money	ELM
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PRIN

1.1.3G The *Principles* apply with respect to *regulated activities* generally, but, in applying the *Principles* with respect to *accepting deposits*, *issuing electronic money*, *general insurance business* and *long-term insurance business* involving *pure protection contracts* or reinsurance contracts, the *FSA* will proceed only in a *prudential context*.

COND

COND 1: Introduction Annex 1G In the first (top) box of the right hand column of the flow chart, insert after “applied for accepting deposits”:

“or *issuing electronic money*”

2.1.1G **(1) If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate (other than a limited liability partnership), a registered friendly society or a member of Lloyd’s.**

(2) If the person concerned appears to the [FSA] to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits or issuing electronic money, it must be–

(a) a body corporate; or

(b) a partnership.

2.1 After 2.1.2G, insert :

“2.1.3G The words “or *issuing electronic money*” in paragraph 1(2) of Schedule 6 to the *Act* were added by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 with effect from 27 April 2002.”

GEN

Schedule 4 The following powers and related provisions in or under the *Act* have been exercised by the *FSA* in *GEN* to direct, require or specify:

...

Regulation 12 of the OIEC Regulations (Authorisation)-
article 9D of the Regulated Activities Order (Applications for certificates)
article 9F of the Regulated Activities Order (Revocation of the certificate on request).

Schedule 4 In the list of rule-making powers, after “Article 15 of the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 2001/2507)”, insert:

"The following articles of the *Regulated Activities Order*:

article 9G(1) (Obtaining information from certified persons);
article 9H(1) (Rules prohibiting the issue of electronic money at a discount)."

IPRU (BANK)

GN 3.5.1R Definition of credit institution:

“An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or an electronic money institution within the meaning of article 1(3)(a) of Directive 2000/46/EC (the E-Money Directive) that has the right to benefit from the mutual recognition arrangements under Directive 2000/12/EC (the Banking Consolidation Directive).”

CO 1.2.3, fourth paragraph These requirements reflect the requirements of the EU directives applying to deposit-taking credit institutions (that is, a “full credit institution” within the meaning of the Glossary).

CA 3.1.1 for authorised deposit-taking credit institutions (that is, a “full credit institutions” within the meaning of the Glossary) on an unconsolidated basis be Euro 5mn.

- CA 3.1.1(a) Insert after "... to grant credits for its own account.":
- “A credit institution that is an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the Banking Consolidation Directive is subject to the lower minimum initial capital requirements specified in the E-Money Directive.”
- CA 10.2.2(c)(b) The definition of *credit institution* is given in ~~the section on minimum capital requirements~~ rule 3.5.1R.
- TE 2.1.3(c) Insert after “to grant credit for its own account” :
- “or an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the Banking Consolidation Directive”
- LE 1.1.2 The Banking Consolidation Directive (formerly The Large Exposures Directive, ‘LED’ – 92/121/EEC), applying to deposit-taking credit institutions (that is, “full credit institutions” within the meaning of the Glossary) ...

IPRU (BSOC): VOLUME 1

- X.7.1G After the definition for “the BCD”, insert a new definition for a “credit institution”:
- “An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or an electronic money institution within the meaning of article 1(3)(a) of Directive 2000/46/EC (the E-Money Directive) that has the right to benefit from the mutual recognition arrangements under the BCD).”
- Annex
1B.4.1(2) Deposits with or securities issued, guaranteed, or (in the case of bills of exchange) accepted by, or other claims on, any Zone A credit institution (see Annex 1G).
- Annex
1B.4.1(3) Deposits with, or securities issued, or (in the case of bills of exchange) accepted by, or other claims on, any Zone B credit institution (see Annex 1G), with a maturity of one year or less.

Annex 1D.1.2 Credit Institution: ~~An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account~~ see paragraph X.7.1G

Annex 5A Prudential Liquidity: In Table 5A.1G, row 1.1: “Bank notes or coinage of any country or territory or electronic money issued by a credit institution”

IPRU (INV)

Ch 3 Appendix 1: Glossary of terms for IPRU(INV) 3, *credit institution*:

“means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or an electronic money institution within the meaning of article 1(3)(a) of Directive 2000/46/EC (the E-Money Directive) that has the right to benefit from the mutual recognition arrangements under Directive 2000/12/EC (the Banking Consolidation Directive).”

Ch 5 Appendix 1: Glossary of terms for chapter 5 (former IMRO firms), *credit institution*:

“(as defined in article 1 (1) of the Banking Consolidation Directive No. 2000/12/EC) means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or an electronic money institution within the meaning of article 1(3)(a) of Directive 2000/46/EC (the E-Money Directive) that has the right to benefit from the mutual recognition arrangements under the Banking Consolidation Directive.”

Ch 10 Appendix 1: Glossary of terms for IPRU(INV) 10, *credit institution*:

“means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or an electronic money institution within the meaning of article 1(3)(a) of Directive 2000/46/EC (the E-Money Directive) that has the right to benefit from the mutual recognition arrangements under Directive 2000/12/EC (the Banking Consolidation Directive).”

Ch 13 Appendix 13 (1): Defined terms for Chapter 13, *credit institution*:

“(as defined in article 1 (1) of the BCD) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or an electronic money institution within the meaning of article 1(3)(a) of Directive 2000/46/EC (the E-Money Directive) that has the right to benefit from the mutual recognition arrangements under Directive 2000/12/EC (the Banking Consolidation Directive). (See also BCD credit institution.)”

AUTH

2.6 After 2.6.4G, insert:

“Electronic Money

2.6.4A G *Electronic money* is specified as an *investment* in article 74A of the *Regulated Activities Order* (as amended by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002). It is defined, in article 2 of that order, as monetary value, as represented by a claim on the issuer, which is stored on an electronic device, issued on receipt of funds and accepted as a means of payment by *persons* other than the issuer. Further *guidance* is given in *AUTH 2 App 3*.”

2.7 After 2.7.2G, insert:

“Issuing e-money

2.7.2A G *Guidance* on the *regulated activity* of *issuing e-money* is given in *AUTH 2 App 3*.”

2.8 After 2.8.2G, insert:

“Issuing e-money

2.8.2A G Certain 'small issuers' of *e-money* may apply to the *FSA* for a certificate to be excluded from the *regulated activity* of *issuing e-money*. To be eligible, the issuer must be a *body corporate* or a *partnership* (other than a *full credit institution*) with its head office in the *United Kingdom* and it must meet certain conditions. The *FSA* must give that issuer a certificate if it appears to the *FSA* that the issuer meets those conditions. Further *guidance* on those conditions and how the application is made is given in *ELM 8.4* (The conditions for giving a small e-money issuer certificate).”

Ch 2, Annex 2G In Table 1: Regulated Activities, after the row “(a) accepting deposits ...”, insert a new row:

(aa) <i>issuing electronic money</i> (article 9B)	<i>electronic money</i> (article 74A)
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In Notes to Table 1 Note 1, after the row “accepting deposits (article 5)”, insert a new row:

• <i>issuing electronic money</i> (article 9B)
--

3.8.4G(2) The *Single Market Directives*, ~~and~~ the *Capital Adequacy Directive* and the *E-Money Directive* set out minimum financial requirements for all *firms* which carry on banking, issuing e-money, insurance or investment services within the scope of the *Single Market Directives* and the *E-Money Directive*, that is, most *firms* that are *credit institutions*, *financial institutions*, *insurance undertakings* or *investment firms* as defined in these Directives.

3.8.5G(2) ... under the scope of a *Single Market Directive* or the E-Money Directive ...

3.8.5G(3) ... outside the *Single Market Directives* or the E-Money Directive ...

3.13 Heading:
“Specific obligations: applicants seeking to carry on the regulated activities of accepting deposits or issuing electronic money”

3.13.1G Under threshold condition 1 (Legal status), an applicant who seeks to carry on the *regulated activities* of *accepting deposits* or *issuing electronic money* must be either a *body corporate* or a *partnership* (see *COND*).

Ch 3 Annex 2: in the flow chart headed “Determination of an applicant's prudential category”, in the fourth box down of the left hand column, line 1, after “*building society*” add “*ELMP*”

Ch 5 Annex 1: Establishment of a branch: Contents of Consent Notice

1 Table

	Para	No.
<i>Credit institution</i> or	(d)	“the solvency ratio of the <i>firm</i> (calculated in accordance with the <i>Banking Consolidation Directive</i>) <u>or, for a credit institution in the form of an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i>, its own funds ratio as calculated in accordance with article 4 (2) of the <i>E-Money Directive</i> and the amount of its investments and financial liabilities related to outstanding electronic money in accordance with article 5 (1) of the <i>E-Money Directive</i>.</u> ”
<i>Financial institution</i>	(d)	“the solvency ratio of the <i>firm's parent undertaking</i> (calculated in accordance with the <i>Banking Consolidation Directive</i>) <u>or, if the <i>firm's parent undertaking</i> is a credit institution in the form of an electronic</u>

money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the Banking Consolidation Directive, its own funds ratio as calculated in accordance with article 4 (2) of the E-Money Directive and the amount of its investments and financial liabilities related to outstanding electronic money in accordance with article 5 (1) of the E-Money Directive.”

Annex 3: Application of the Handbook to Incoming EEA Firms

The rows are to be amended as indicated. The heading to the table is shown for convenience.

2 Table

(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 (BANK)</i>	<p>“Only the following apply, and only if the <i>firm</i> is a <i>credit institution other than an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive (IPRU(BANK) 3.2.1R)</i>:</p> <p>(a) ...”</p>	[no change]
<i>COMP</i>	<p>“... a <i>BCD credit institution</i> (see the definition of a “<i>participant firm</i>”) <u>other than an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive</u> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i>. However, ... ”</p>	[no change]

After the row for 'REC' add:

"*ELM* Only *ELM* 6 and (insofar as it applies to the rules in *ELM* 6) *ELM* 5.6.1R apply. Does not apply."

SUP

3.1.2R In the "Table Applicable sections" after row (5), insert a new row. The heading to the table is shown for convenience.

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(5A) <i>ELMI</i>	<i>SUP</i> 3.1 - <i>SUP</i> 3.7	<i>SUP</i> 3.1, <i>SUP</i> 3.2, <i>SUP</i> 3.8

8.2.7G Amend the Table "Rules which can be made" as indicated.

Rules	Section of the Act or <u>other provision</u> regulation of the OEIC Regulations under which rules are made	Chapters of the Handbook where such rules appear (Note 1)
<i>Investment company with variable capital rules</i>	Regulation 6 <u>of the OEIC Regulations</u>	<i>CIS</i>
<u>Information from small e-money issuers rules</u>	Article 9G(1) of the <u>Regulated Activities Order</u>	<u><i>ELM</i> 8.7</u>
<u>Rules prohibiting the issue of e-money at a discount</u>	Article 9H(1) of the <u>Regulated Activities Order</u>	<u><i>ELM</i> 4.4</u>

15.4.1R(1) for a bank or an *ELMI*: the two or more *persons* who effectively direct its business in accordance with *IPRU (BANK)* GN 3.3.1R and *ELM* 5.3.1R, respectively;

Ch 15 *SUP* 15 Annex 2R Form F Changes in notified persons - for question 3.01(c) (Notified positions), insert:

c For a <u>bank or an <i>ELMI</i></u> : the two or more <i>persons</i> who effectively direct its business in accordance with <i>IPRU (BANK)</i> GN 3.3.1R <u>and <i>ELM</i> 5.3.1R, respectively</u>	<input type="checkbox"/>
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16.1.3R In the "Table Application of different sections of *SUP* 16", amend one row and, after the row "*Members' adviser*", insert a new row. The heading to the table is shown for convenience.

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
SUP 16.6	Bank, <u>ELMI</u>	SUP 16.6.4R to SUP 16.6.5R
	<u>ELMI</u>	<u>SUP 16.7.62R to SUP 16.7.64R</u>

16.6.2G In the “Table Applicable provisions of this section”, amend as indicated:

Category of firm	Applicable provisions
Bank, <u>ELMI</u>	SUP 16.6.4R – SUP 16.6.5R

16.6.4R A bank and an ELMI ...

16.6.5R Table Compliance reports from bank and an ELMI ...

16.7.5G In the Table “Applicable rules and guidance on financial reports”, after the row “*Members’ adviser*”, insert a new row. The heading to the table is shown for convenience.

Firm category	Applicable rules and guidance
<u>ELMI</u>	SUP 16.7.62R - SUP 16.7.64R

16.7 After 16.7.61R, insert three new rules:

“Electronic money institutions

16.7.62 R (1) SUP 16.7.63 R and SUP 16.7.64R do not apply to a *lead regulated firm*.

(2) A *lead regulated firm* must submit a copy of its audited annual financial statements to the *FSA* within six *months* of the date at which they were prepared.

16.7.63 R An *ELMI* must submit reports in accordance with SUP 16.7.64R.

16.7.64 R Table Financial reports from an *ELMI* (see SUP 16.7.63R)

Content of Report	Form (Note 1)	Frequency	Due date
Annual report and audited accounts	N/A	Annually	3 months after the firm's accounting reference date
Unconsolidated reporting statement on capital adequacy	ELM-CA/LE	Half-yearly	20 business days after period end (22 business days if submitted electronically)
Consolidated reporting statement on capital adequacy	ELM-CA/LE	Half-yearly	20 business days after period end (22 business days if submitted electronically)
Consolidated reporting statement on capital adequacy in the case of <i>ELM 7.3.2R</i>	BSD3	Half-yearly	20 business days after period end (22 business days if submitted electronically)
Unconsolidated large exposures reporting statement	ELM-CA/LE	Half-yearly	20 business days after period end (22 business days if submitted electronically)
Consolidated large exposures reporting statement	ELM-CA/LE	Half-yearly	20 business days after period end (22 business days if submitted electronically)
List of <i>companies</i> included in the <i>ELMI's</i> consolidated large exposure reporting	N/A	Annually	6 months after the firm's accounting reference date
Note 1 = When giving the report required, an <i>ELMI</i> must use the form indicated (if any). A copy of Forms BSD3 and ELM-CA/LE are set out in <i>SUP 16 Annex 1R</i> .			

Ch 16

SUP 16 Ann 1R:

“Banks and ELMIs reporting forms

...

7 Form ELM-CA/LE”

Appendix 1 In 1.3.1G Table “Prudential categories and sub-categories used in the Interim Prudential sourcebooks and the Supervision manual”, insert new row after [Building Society]. The heading to the table is shown for convenience.

Prudential categories (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
<i>ELMI</i>	<i>ELM</i>	

In 1.7 Figure 1: “Determination of a firm's prudential category - general”, in the fourth box down of the left hand column, line 1, after “*building society*” add “*ELMP*”

ENF

2.2.1G (3)(a) to gather information from *firms* and to conduct investigations of *firms*, *approved persons*, individuals involved in *firms*, ~~and~~ *appointed representatives*, and *small e-money issuers*, including issuing preliminary findings letters;

2.3.11G After the final sentence, insert:

As a result of article 9G of the *Regulated Activities Order*, the *FSA* has certain powers to require specified information and *documents* from a *small e-money issuer* and a power under section 166 to require a *small e-money issuer* to provide a report by a *skilled person*. These powers are described in *ELM* 8.7.

2.3.14G Insert a new paragraph:

(4) As a result of article 9G(8) of the *Regulated Activities Order*, sections 168(4) and (5) also have effect if it appears to the *FSA* that there are circumstances suggesting that a *small e-money issuer* may not meet, or may not have met, the conditions for the giving of a *small e-money issuer certificate* given under article 9C and referred to in *ELM* 8.4.

2.3.15G The *FSA* may use these powers to investigate *firms*, *approved persons*, ~~and~~ individuals employed by *firms*, and *small e-money issuers* as well as cases of market misconduct and breaches of the *general prohibition*. The *FSA*'s policies on the use of this power are therefore set out in three different sections of this chapter:

(1) *ENF* 2.5 deals with the use of this power and other powers in relation to *firms*, *approved persons*, individuals employed by *firms*, ~~and~~ *appointed representatives* and *small e-money issuers*;

2.5.1G They also set out the *FSA's* policy on using its powers to carry out investigations into the affairs of *firms, approved persons*, individuals involved in *firms, ~~and~~ appointed representatives, and small e-money issuers*.

2.5.4G If the information available to the *FSA* raises a regulatory concern about a *firm, ~~or~~ an approved person's* conduct or fitness and propriety, or a *small e-money issuer*, the *FSA* may need to make further enquiries by using its powers to require reports by *skilled persons* or to appoint investigators. The nature of the *FSA's* enquiries will depend on the nature and seriousness of its concerns and on the attitude of the *firm or small e-money issuer* concerned.

2.5.8G(1) This will include cases where an effective and thorough investigation by the *FSA* is likely to call for the exercise of powers to require the *firm or connected persons or small e-money issuer* to answer questions and/or produce *documents*. In those cases, the *FSA* will appoint an investigator under section 167 or 168 of the *Act*; if appropriate, the *FSA* may also require the *firm or small e-money issuer* to provide a *skilled person's* report under section 166.

2.5.12G Unless it is not practicable to do so (such as in cases of urgency), *FSA* staff (or the investigator appointed by the *FSA*) will generally send a preliminary findings letter to a *firm, approved person*, individual involved in a *firm, ~~or~~ appointed representative or small e-money issuer* under investigation (as the case may be) before considering whether to recommend that enforcement action be initiated.

DEC

Ch 2 Annex 1G: in the “Table List of warning notices and decision notices under the Act (other than Part VI) ”, after:

- the third row (beginning “52(7)/9(c) ” the first time it occurs in the first column), and
- the fifth row (beginning “52(7)/9(c) ” the third time it occurs in the first column),

insert the following rows respectively. The heading to the table is shown for convenience.

Note: Third party rights and access to *FSA* material apply to the powers listed in this table where indicated by an asterisk * (see *DEC* 2.4)

Section of the Act	Description	Handbook reference	Decision maker
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52(7)/9(c) as applied by article 9D of the <i>Regulated Activities Order</i>	when the <i>FSA</i> is proposing/deciding to refuse an application for a <i>small e-money issuer certificate</i>	<i>ELM 8</i>	<i>RDC</i>
54 as applied by article 9E of the <i>Regulated Activities Order</i>	when the <i>FSA</i> is proposing to revoke a <i>small e-money issuer certificate*</i>	<i>ELM 8</i>	<i>RDC</i>

Ch 4 In 4.1.4G after (4), insert:

“(4A) to refuse an application for, or to revoke, a *small e-money issuer certificate* (see *ELM 8* (Small e-money issuers));”

PROF

Ch 2 Amend Annex 2G (Status of exempt professional firm) as shown:

As at 21 ~~June 2001~~ March 2002 the Treasury had made the following order under section 327(6):

The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227), as amended by article 7 of the Financial Services and Markets Act 2000 (Regulated activities) (Amendment) Order 2002 (SI 2002/682))

**LISTING RULES (REGULATORY INFORMATION SERVICES)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers in section 74(4) of the Financial Services and Markets Act 2000 (The official list).

Commencement

- B. This instrument comes into force on 29 April 2002.

Amendments to the Listing Rules

- C. The Listing Rules are amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Listing Rules (Regulatory Information Services) Instrument 2002.

By order of the Board
18 April 2002

ANNEX

The Listing Rules are amended as shown in the document attached (underlining indicates new text).

SCHEDULE 12

REGULATORY INFORMATION SERVICES

Business Wire Regulatory Disclosure provided by Business Wire

FirstSight provided by Waymaker

Hugin Announce provided by Hugin ASA

Newslink Financial provided by Newslink

PimsWire provided by Pims

PR Newswire Disclose provided by PR Newswire

RNS provided by the London Stock Exchange

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(IMPLICIT ITEMS AND RESILIENCE TEST) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for friendly societies in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 June 2002.

Amendment of the Interim Prudential sourcebook for friendly societies

- C. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Implicit Items and Resilience Test) Instrument 2002.

By order of the Board
16 May 2002

ANNEX

Amendments to 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

...

Implicit items: future surpluses

~~4A. (1) A *friendly society* may apply for a waiver from rule 4.7(3) under section 148 of the *Act* (see SUP) so that the *implicit item* relating to future surpluses may be valued at not more than 50% of the full amount of future surpluses.~~

~~(2) For the purposes of (1), the full amount of future surpluses is the estimated annual surplus multiplied by a factor which as nearly as may be represents the average number of years remaining to run on policies, but does not exceed 10.~~

~~(3) For the purposes of (2)~~

~~(a) the estimated annual surplus is one-fifth of the surplus ("the periodic surplus") made in *long-term insurance business* over a period of five years ("the relevant period") ending on the last day of the most recent *financial year* for which a valuation for the purposes of rule 5.1 has been carried out, substantial items of an exceptional nature being excluded; and~~

~~(b) the average number of years remaining to run on policies is calculated~~

~~(i) by multiplying the number of years to run on each policy by the actuarial value of the benefits payable under the policy, adding together the products so obtained and dividing the total by the aggregate of the actuarial values of the benefits payable under all the policies, or~~

~~(ii) by an approximation to this method of calculation suitable to the circumstances of the case, including, where appropriate, an approximation involving the grouping of contracts,~~

~~appropriate allowance being made in either case for premature termination of contracts.~~

~~(4) For the purposes of (3)(a)–~~

- ~~(a) where a valuation under rule 5.1 has been carried out annually in relation to the relevant period, the annual surplus made in *long term insurance business* for any particular year of the relevant period is the surplus (if any) arising in the *long term insurance business* fund since the last such valuation, and the periodic surplus must be taken to be the aggregate of those annual surpluses less any deficiencies in the *long term insurance business* fund during that period;~~
- ~~(b) where a *friendly society* has carried on *long term insurance business* throughout the relevant period, but valuations under rule 5.1 have not been made annually in that period, the periodic surplus is the aggregate of surpluses arising in the *long term insurance business* fund since the last valuation preceding the relevant period less any deficiencies in the *long term insurance business* fund since the last valuation, except that the surplus or deficiency arising in the period ending with the first valuation within the relevant period is proportionately reduced to allow for any period of time falling outside the relevant period; and~~
- ~~(c) where a *friendly society* has not carried on *long term insurance business* throughout the relevant period, the periodic is the aggregate of any surpluses arising in the *long term insurance business* fund during that part of the relevant period for which *long term insurance business* was carried on less any deficiencies in the *long term insurance business* fund during that part of that period.~~

~~**Implicit items: Zillmerising**~~

- ~~4B. (1) A *friendly society* may apply for a waiver from rule 4.7(3) so that where *zillmerising* is appropriate, but either is not practised or is at a rate less than the loading for acquisition costs included in the *premium* then, subject to (6), the item relating to *zillmerising* is valued at an amount not exceeding the difference between–~~
- ~~(a) the *non zillmerised* or partially *zillmerised* figure for *mathematical reserves* maintained by the *friendly society* concerned; and~~
 - ~~(b) a figure for *mathematical reserves* (not less than those required in accordance with Appendix 5) *zillmerised* at a rate equal to the loading for acquisition costs included or allowed for in the *premium*.~~

- ~~(2) Where *zillmerising* is not practised, then subject to (6), the value given by (1) (less any amount relating to temporary assurances) may not exceed 3.5% of the aggregate of the difference between—~~
- ~~(a) the *relevant capital sums* for long term insurance business activities; and~~
 - ~~(b) the *mathematical reserves* (excluding *mathematical reserves* for temporary assurances).~~
- ~~(3) Where *zillmerising* is practised but is at a rate less than the loading for acquisition costs, then, subject to (6), the value given by (1) (less any amount relating to temporary assurances) together with the difference between the partially *zillmerised mathematical reserves* and the *non-zillmerised mathematical reserves* may not exceed 3.5% of the aggregate of the difference between—~~
- ~~(a) the *relevant capital sums* of long term insurance business activities; and~~
 - ~~(b) the *mathematical reserves* (excluding *mathematical reserves* for temporary assurances).~~
- ~~(4) In (2) and (3) "*relevant capital sums*" means—~~
- ~~(a) for whole life assurances, the sum assured;~~
 - ~~(b) for policies where a sum is payable on maturity (including policies where a sum is also payable on earlier death), the sum payable on maturity;~~
 - ~~(c) for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater);~~
 - ~~(d) for capital redemption contracts, the sums payable at the end of the contract period; and~~
 - ~~(e) for *linked long term contracts*, notwithstanding (a) to (d), the lesser of—~~
 - ~~(i) the amount for the time being payable on death, and~~
 - ~~(ii) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the *premiums* remaining to be paid during such part of the term of the contract as is appropriate for *zillmerising*, or, if such *premiums* are payable beyond~~

~~the age of seventy five, until that age, excluding in all cases any vested reversionary bonus and any capital sums for temporary assurances.~~

~~(5) Where, under the contract relating to any such business as is mentioned in (4), the payment of *premiums* is to stop before the sum assured becomes due, then, notwithstanding (4), "*relevant capital sums*" in (1) to (3) means the *mathematical reserves* appropriate for that contract at the end of the *premium* paying term.~~

~~(6) For the purposes of this guidance-~~

~~(a) reserves for vested reversionary bonuses will not be regarded as *mathematical reserves*; and~~

~~(b) the result given by (1), (2) or (3) will be reduced by the amount of any undepreciated acquisition costs brought into account as an asset.~~

~~Implicit items: hidden reserves~~

~~4C. A *friendly society* may apply for a waiver from rule 4.7(3) so that the *implicit item* relating to hidden reserves, if it consists of hidden reserves resulting from the underestimation of assets and overestimation of liabilities (other than *mathematical reserves*), may, in so far as the hidden reserves in question are not of an exceptional nature, be given its full value.~~

~~4A. Guidance Note 2.2 in IPRU(INS) (Guidance on applications for waivers relating to implicit items) applies to *friendly societies* applying for a waiver of rule 4.7(3) of IPRU(FSOC) under section 148 of the Act (Modification or waiver of rules).~~

~~4B. [deleted]~~

~~4C. [deleted]~~

After paragraph 11.6 add the following:

“12.1 Resilience Test

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)*.

12.3 *Friendly societies* should, as a minimum, consider the scenario of a fall in the *market value* of equities of the greater 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) 10%.
- 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.
- 12.5 The *appointed actuary*, in advising the *friendly society*, would then be expected to apply his or her own professional judgement in considering the level of changes in the *market value* of, and yield on, other types of investment held by the society for the purpose of this 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.
- 12.6 The *friendly society* should also take account of the nature of the assets and liabilities. For example, a *friendly society* which has only unit linked business, some of which carries a guaranteed annuity rate, should not necessarily assume that equity values fall in applying tests for lower fixed interest rates. Indeed *friendly societies* should consider their resilience to a rise in equity values combined with falling interest rates.
- 12.7 The *FSA* also expects that *friendly societies* will continue to investigate a wide range of possible future investment scenarios for the purpose of their own stress testing and risk management.”

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(IMPLICIT ITEMS AND RESILIENCE TEST) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for insurers in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 June 2002.

Amendment of the Interim Prudential sourcebook for insurers

- C. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Implicit Items and Resilience Test) Instrument 2002.

By order of the Board
16 May 2002

ANNEX

Amendments to IPRU(INS)

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

FSA Guidance Notes

Guidance Note 4.1

Guidance for insurers and auditors on the Valuation of Assets Rules

4. Valuation Rules

...

~~Implicit items: future profits~~

~~4.92 (1) — Insurers may apply for a waiver from rule 2.10 so that the *implicit item* relating to future profits may be valued at not more than 50% of the full amount of future profits.~~

~~(2) — For the purposes of (1), the full amount of future profits is the estimated annual profit multiplied by a factor which, as closely as possible, represents the average number of years remaining to run on *policies*, but does not exceed 10.~~

~~(3) — For the purposes of (2) —~~

~~(a) — the estimated annual profit is one fifth of the profits made in *long-term insurance business* over a period of five years (the **relevant period**) ending on the last day of the most recent *financial year* for which a valuation under rule 9.4 has been carried out, substantial items of an exceptional nature being excluded; and~~

~~(b) — the average number of years remaining to run on *policies* is calculated —~~

~~(i) — by multiplying the number of years to run on each *policy* by the actuarial value of the benefits payable under the *policy*, adding together the products so obtained and dividing the total by the aggregate of the actuarial values of the benefits payable under all the *policies*, or~~

~~(ii) — by an approximation to this method of calculation suitable to the circumstances of the case, including, where appropriate, an approximation involving the grouping of contracts,~~

appropriate allowance being made in either case for premature termination of contracts.

~~(4) For the purposes of (3)(a)~~

- ~~(a) where a valuation under rule 9.4 has been carried out annually in relation to the 'relevant period', the profits made in *long-term insurance business* for any particular year of the 'relevant period' is the surplus (if any) arising in the *long-term insurance fund* since the last such valuation, and the profit so made for that period is the aggregate of those surpluses less any deficiencies in the *long-term insurance fund* during that period;~~
- ~~(b) where an *insurer* has carried on *long-term insurance business* throughout the 'relevant period' but valuations under rule 9.4 have not been made annually in that period, the profits so made for that period are the aggregate of surpluses arising in the *long-term insurance fund* since the last valuation preceding the 'relevant period' less any deficiencies in the *long-term insurance fund* since that last valuation, except that the surplus or deficiency arising in the period ending with the first valuation within the 'relevant period' is proportionately reduced to allow for any period of time falling outside the relevant period; and~~
- ~~(c) where an *insurer* has not carried on *long-term insurance business* throughout the 'relevant period', the profits made in *long-term insurance business* for the 'relevant period' are the aggregate of any surpluses arising in the *long-term insurance fund* during that part of the 'relevant period' for which *long-term insurance business* was carried on less any deficiencies in the *long-term insurance fund* during that part of that period.~~

~~Implicit items: zillmerising~~

~~4.93 (1) *Insurers* may apply for a waiver from rule 2.10 so that, where *zillmerising* is appropriate, but either is not practised or is at a rate less than the loading for acquisition costs included in the premium, then, subject to (6), the *implicit item* relating to *zillmerising* may be valued at an amount not exceeding the difference between~~

- ~~(a) the *non-zillmerised* or partially *zillmerised* figure for *mathematical reserves* maintained by the *insurer*; and~~
- ~~(b) a figure for *mathematical reserves* (not less than those required by the *Determination of Liabilities Rules*)~~

~~*zillmerised* at a rate equal to the loading for acquisition costs included or allowed for in the premium.~~

- (2) ~~Where *zillmerising* is not practised, then, subject to (6), the value given by (1) (less any amount relating to temporary assurances) may not exceed 3.5% of the aggregate of the difference between—~~
- (a) ~~the ‘relevant capital sums’ for *long-term insurance business* activities; and~~
 - (b) ~~the *mathematical reserves* (excluding *mathematical reserves* for temporary assurances).~~
- (3) ~~Where *zillmerising* is practised but is at a rate less than the loading for acquisition costs, then, subject to (6), the value given by (1) (less any amount relating to temporary assurances) together with the difference between the partially *zillmerised mathematical reserves* and the *non-zillmerised mathematical reserves* may not exceed 3.5% of the aggregate of the difference between—~~
- (a) ~~the ‘relevant capital sums’ of *long-term insurance business* activities; and~~
 - (b) ~~the *mathematical reserves* (excluding *mathematical reserves* for temporary assurances).~~
- (4) ~~In (2) and (3), **relevant capital sums** means—~~
- (a) ~~for whole life assurances, the sum assured;~~
 - (b) ~~for *policies* where a sum is payable on maturity (including *policies* where a sum is also payable on earlier death), the sum payable on maturity;~~
 - (c) ~~for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater);~~
 - (d) ~~for capital redemption contracts, the sums payable at the end of the contract period; and~~
 - (e) ~~for *linked long-term contracts*, notwithstanding (a) to (d), the lesser—of—~~
 - (i) ~~the amount for the time being payable on death, and~~

- (ii) ~~the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the premiums remaining to be paid during such of the term of the contract as is appropriate for *zillmerising* or, if such premiums are payable beyond the age of seventy five, until that age,~~

~~excluding in all cases any vested reversionary bonus and any capital sums for temporary assurances.~~

- (5) ~~Where, under the contract relating to any such business as is mentioned in (4), the payment of premiums is to stop before the sum assured becomes due, then, notwithstanding (4), **relevant capital sums** in (1) to (3) means the *mathematical reserves* appropriate for that contract at the end of the premium-paying term.~~

- (6) ~~For the purposes of this guidance—~~

(a) ~~reserves for vested reversionary bonuses will not be regarded as *mathematical reserves*; and~~

(b) ~~the result given by (1), (2) or (3) will be reduced by the amount of any undepreciated acquisition costs brought into account as an asset.~~

Implicit items: hidden reserves

~~4.94 *Insurers* may apply for a waiver of rule 2.10 so that the *implicit item* relating to hidden reserves, if it consists of hidden reserves resulting from the underestimation of assets and overestimation of liabilities (other than *mathematical reserves*), may, in so far as the hidden reserves in question are not of an exceptional nature, be given its full value.~~

[paragraphs 4.92 to 4.94 deleted]

After Guidance Note 2.1 insert the following:

“Guidance Note 2.2

GUIDANCE ON APPLICATIONS FOR WAIVERS RELATING TO IMPLICIT ITEMS

Implicit items under the Act

1. Rule 2.10(5) of *IPRU(INS)* and rule 4.7(3) of *IPRU(FSOC)* do not permit *implicit items* to count towards solvency. However, the *First Life Directive* states that *implicit items* can count towards solvency, within limits, providing that the supervisory

authority agrees. Accordingly, the *FSA* may be prepared to grant a waiver from rule 2.10(5) of *IPRU(INS)* or rule 4.7(3) of *IPRU(FSOC)* to allow *implicit items*, in line with the purpose of the Directive, and provided the Directive conditions are met.

2. The Financial Services and Markets Act 2000 (the “Act”) applies from 1 December 2001. Under section 148 of the *Act*, the *FSA* may, on the application of an *insurer* or *friendly society*, grant a waiver from *IPRU(INS)* or *IPRU(FSOC)*. There are general requirements that must be met before any waiver can be granted. As explained in *SUP 8*, the *FSA* may not give a waiver unless it is satisfied that:
 - (1) compliance by the *firm* with the rule will be unduly burdensome, or would not achieve the purpose for which the rules were made; and
 - (2) the waiver would not result in undue risk to persons whose interests the rules are intended to protect.
3. Compliance with the requirements will be assessed by the *FSA* in the light of all the relevant circumstances. This will include consideration of the costs incurred by compliance with a particular rule or whether a rule is framed in a way that would make compliance difficult in view of the *firm’s* circumstances. For example, the *firm* may demonstrate that if an *implicit item* were not allowed the *firm* would either have to suffer increased (and unwarranted) costs in injecting further capital or operate with a lower equity backing ratio (see case studies in paragraph 42).
4. *Implicit items* are economic reserves which are hidden within the *long-term insurance business* provisions. Rule 2.10(5) of *IPRU(INS)* identifies three types of *implicit item*: future profits, *zillmerisation* and hidden reserves. This note is intended to give guidance on factors in addition to the general requirements of *SUP 8* relating to the granting of waivers for *implicit items*.

Solvency I Directive

5. The proposed Solvency I Directive was published by the EU Commission in October 2000 and a final directive has now been adopted (Directive 2002/12/EC of 5 March 2002, OJ L 77/11, 20.3.2002). This directive requires member states to end a *firm’s* ability to take into account future profits *implicit items* by (at the latest) 31 December 2009. Until then, from a time to be established by member states under transitional provisions in the directive, the maximum amount of these economic reserves that can count will be limited to 25% of the lesser of the available solvency margin and the required solvency margin, and the 'average period to run' will be limited to 6 years. This guidance does not anticipate the new limits. The *FSA* will consult on the implementation of new limits in due course. However, waivers will typically only be granted for a maximum of 12 months and *firms* will need to consider the potential impact of these future changes when engaging in future capital planning.

Future profits

6. The future profits implicit item allows *insurers* to take credit for margins in the *mathematical reserves* to the extent that these are expected to emerge from in force business. The future profit from in force business should be assessed, in the first instance, on prudent assumptions, to demonstrate that there is an ‘economic reserve’.

Having demonstrated that it exists, the amount should be limited to an amount calculated using a formula that takes into account the actual profit which has emerged over the last five years (see paragraph 19).

Zillmerisation

7. *Zillmerisation* is an allowance for acquisition costs that are expected, under prudent assumptions, to be recoverable from future premiums. *Insurers* can make a direct adjustment to their reserves for *zillmerisation*, subject to the rules on *mathematical reserves*. However, where no such adjustment has been made, the *FSA* will consider an application for a waiver to take into account an *implicit item*.

Hidden reserves

8. Hidden reserves are reserves resulting from the underestimation of assets and overestimation of liabilities (other than *mathematical reserves*).

Process for applying for a waiver, including limits applicable when a waiver is granted

9. This section sets out the procedures to be followed and the form of calculations and data which should be submitted by *firms* to the *FSA*. This guidance should also be read in conjunction with the general requirements relating to the waiver process described in *SUP* 8. The *FSA* expects that applications for waivers in respect of future profits and *zillmerising* will not normally be considered to pass the “not result in undue risk to persons whose interests the rules are intended to protect” test unless the relevant criteria set out in this guidance have been satisfied. As set out below, waivers in respect of hidden reserves will not normally be given except in very exceptional circumstances.

Timing

10. A *long-term insurer* may apply to the *FSA* for a waiver in respect of *implicit items*. A waiver will not apply retrospectively (see *SUP* 8.3.6G). Consequently, applications intended for a particular accounting reference date will normally need to be made well before that reference date. Applications by *insurers* must be made in writing to the *FSA* and include the relevant details specified under *SUP* 8.3.2D. Given the uncertainty in predicting the future, waivers will normally be granted for a maximum of 12 months at a time and any further applications will need to be made accordingly.
11. The information that will be required to enable an application to be considered, set out below, should normally include a demonstration of how the *required solvency margin* is to be met, with and without the waiver. Clearly, up-to-date information may not be available before the *financial year-end*. In some cases information from the previous year-end’s *return* may be used, as long as any known significant changes in the structure of the *insurer*, or the assumptions used, have been taken into account.
12. If the application for a waiver is granted, when an *insurer* submits its *return* the amount of the *implicit item* shown should not exceed that supported by the *insurer’s* calculations **as at the valuation date**. In the event that the amount of the future profits item calculated by the *appointed actuary* based on these updated assumptions is less

than the amount calculated at the time of the *insurer's* waiver application, the lower figure should be used in the *return*.

13. An *implicit item* in respect of *zillmerising* or hidden reserves is related to the basis on which liabilities or assets have been valued. In the case of hidden reserves, as explained below, the granting of a waiver will be dependent on the overall solvency position of the *insurer*. Waivers in respect of these *implicit items* will, therefore, only be made in relation to the position shown in a particular set of *returns* and it will be essential for *insurers* to submit applications to the *FSA* well in advance of the latest date for the submission of the relevant *return*.
14. Waivers cannot be back-dated and may be withdrawn by the *FSA* at any time (e.g. where the *FSA* considers the amount in respect of which a waiver has been given can no longer be justified). This may be as a result of changes in the *insurer's* position or as a result of queries arising on scrutiny of the *returns*.

Information to be submitted

15. An application to the *FSA* for a waiver should state clearly the nature and the amounts of the *implicit items* that an *insurer* wishes to count against its *required margin of solvency*. The application should be accompanied by full supporting information to enable the *FSA* to arrive at a decision on the merits of the case. In particular, the application should demonstrate that in allowing for *implicit items* there has been no double counting of future margins and that the basis for valuing such margins is prudent.
16. The *FSA* recognises that the assessment of the insurance *technical provisions* reflects the contractual obligations of the *insurer*. *Implicit items* are therefore “fat” in these *technical provisions* only. Non-contractual “constructive” obligations such as *policy holders' reasonable expectations* as to future terminal bonuses are not fully captured by the *technical provisions*. The *appointed actuary* must instead be satisfied that the *insurer* has sufficient resources at all times to meet “reasonable bonus expectations” (see *SUP* 4.3.13R). The granting of a waiver for an *implicit item* does not in any way detract from this requirement and the *appointed actuary* will need to be satisfied that this condition is still met.
17. Applications for a waiver in respect of a hidden reserves *implicit item* will normally be considered only if accompanied by the information which is contained in the annual regulatory *returns*. In particular, the balance sheet forms, *long-term insurance business revenue accounts*, and abstract valuation report of the actuary as set out in **Appendices 9.1, 9.3 and 9.4** of *IPRU(INS)* should be provided. As a minimum, applications for a future profits *implicit item* should be supported by the information contained in **Forms 13, 14, 40, 41, 42, 48, 49**, the answers to questions 1 to 12 of the abstract valuation report, **Appendix 9.4** of *IPRU(INS)* and **Forms 51, 52, 53, 54 and 58**. For a *zillmerisation implicit item*, only those items noted above forming part of the abstract valuation report will normally be needed. This is not to say that a full regulatory *return* must be provided in the specified format, simply that the information contained in these forms should be provided. Where appropriate, the information may be summarised.
18. In addition, the following information relating to the calculation of the amounts claimed should be supplied:

- Future profits: the profits reported in each of the last five *financial years* up to the date of the most recent available valuation under rule 9.4 of *IPRU(INS)* which has been submitted to the *FSA* prior to, or together with, the application, and the amounts and nature of any exceptional items left out of account; the method used for calculating the average period to run and the results for each of the main categories of business, both before and after allowing for premature termination (where the calculation has been made in two stages); and the basis on which this allowance has been made.
- *Zillmerising*: the categories of contracts for which an item has been calculated and the percentages of the relevant capital sum in respect of which an adjustment has been made.
- Hidden reserves: particulars, with supporting evidence, of the undervaluation of assets or the overvaluation of liabilities (other than *mathematical reserves*) for which recognition is sought.

Continuous monitoring by firms

19. *Firms*, advised by their *appointed actuaries*, should take into account any material changes in financial conditions or other relevant circumstances that may have an impact on the level of future profits that can prudently be taken into account e.g. change in valuation assumptions due to higher equity yield assumptions from 1 December 2001 (see *IPRU(INS)* rule 5.11(5)). *Firms* and their *appointed actuaries* should also re-evaluate whether an application to vary an *implicit item* waiver should be made whenever circumstances have changed. In the event that circumstances have changed such that an amendment is appropriate, the *firm* should contact the *FSA* as quickly as possible (see *SUP* 8.5.1R). Principle 11 of the Principles for Businesses requires *firms* to disclose anything of which the *FSA* would reasonably expect notice. In this context the *FSA* would expect notice of any matter that materially impacts on the *firm's* financial condition, or any waivers granted.

Future profits - factors to take into account when submitting calculations to support waiver applications

20. Where an application is made in respect of an *insurer* which has separate with-profit and non-profit funds, the *insurer* should ensure that the *required minimum margin* in respect of the non-profit fund is not covered by future profits attributable to *policy holders* arising in the *with-profits fund*.
21. *Firms* need to assess prospective future profit (i.e. how much can reasonably be expected to arise) and compare this to maximum limits (in the *First Life Directive*), which relate to past profits.

Future profits - prospective calculation

22. The application for a waiver should be supported by details of a prospective calculation of future profits arising from in-force business. The information supplied to the *FSA* should include a description of the method used in the calculation and of the assumptions made, together with the results arising.

Assumptions

23. The assumptions made should be prudent, rather than best estimate, assumptions of future experience (i.e. the prudent assumptions should allow for the fair market price for assuming that risk). In particular, it would not normally be considered appropriate for the projected return on any asset to be taken to be higher than the risk-free yield (i.e. assessed by reference to the yield on suitable government stocks). Furthermore, it may be appropriate to bring future withdrawals into account on a suitably prudent basis. For with-profits business, the assumptions for future investment returns should not capitalise future bonus loadings except where the with-profits *policy holders* share in risks other than the investment performance of the fund. Furthermore, the rate at which future profits are discounted should include an appropriate margin over a risk free rate of return. Calculations should also be carried out to demonstrate that the financial position of the *insurer* is resilient to the same changes in financial conditions assumed for the resilience test of the *mathematical reserves*.

Other charges to future profits

24. To avoid double counting, no account should be taken of any future surplus arising from assets corresponding to explicit items which have been counted towards the *required solvency margin* such as shareholders funds, surplus carried forward or investment reserves. Deductions should be made in the calculation of future surpluses for the impact of any other arrangements which give rise to a charge over future surplus emerging (e.g. financial reinsurance arrangements, subordinated loan capital or contingent loan agreements). The information supplied to the *FSA* should identify the amount and reason for any adjustments made to the calculation of the prospective amount of future profits.
25. The *appointed actuary* should confirm to the *FSA* that the calculations have been properly carried out and that there are no other factors that should be taken into account.

Future profits - retrospective calculation

Overriding limit

26. The maximum amount of the *implicit item* relating to future profits permitted under the *First Life Directive* is 50% of the product of the estimated annual profit and the average period to run (not exceeding 10 years) on the *policies* in the portfolio. The *FSA* will not therefore allow more than this.

Definition of profits

27. The estimated annual profit should be taken as the average annual surplus arising in the *long-term insurance fund* (including the change in any investment reserve) over the last five *financial years* up to the date of the most recent available valuation under rule 9.4 of *IPRU(INS)* which has been submitted to the *FSA* prior to, or together with, the application. For this purpose, deficiencies arising should be treated as negative surpluses. Where a *firm's financial year* has altered, the surplus arising in a period falling partly outside the relevant five year period should be assumed to accrue uniformly over the period in question for the purpose of estimating the profits arising

within the five year period. When there has been a transfer of a block of business into the *firm* (or out of the *firm*) during the period, the impact of the transfer will need to be taken into account to reflect the remaining portfolio.

28. Where a *firm* has been carrying on *long-term insurance business* for less than 5 years, the total profits made during the past 5 years should be taken to be the aggregate of any surpluses that have arisen during the period in which *long-term insurance business* has been carried on less any deficiencies that may have arisen during that period. The resulting total should still be divided by five to obtain the estimated annual profit.

Exceptional items

29. Substantial items of an exceptional nature should be excluded from the calculation of the estimated annual profit. Such items include profits arising from an exceptional change in the value at which assets are brought into account, where this is not reflected in a similar change in the amount of the liabilities, and profits arising from a change in the overall valuation approach between one year and another. An exceptional loss (i.e. a reduction of an exceptional nature in the surplus arising) may be excluded from the calculation only to the extent that it can be set against a profit or profits up to the amount of the loss and arising from a similar cause. It is not intended, however, that any adjustment should be made for the effect on surplus of a net strengthening of reserves for costs associated with an expansion of the business or for special capital expenditure, such as the purchase of computer systems.

Double counting

30. The inclusion of investment income arising from the assets representing the explicit components of the solvency margin (as part of the estimated annual profit for the purpose of determining the future profits *implicit item*) would result in double counting. If those assets were required to meet the effects of adverse developments, this would automatically result in the cessation of the contribution to profits from the associated investment income. It would clearly not be appropriate for the *FSA* to grant a waiver which would enable a *firm* to meet the *required solvency margin* on the basis of counting both the capital values of the assets and the value of the income flow which they can be expected to generate.
31. The definition of the estimated annual profit as the surplus arising in the *long-term insurance fund* ensures that any contribution to surplus arising from transfers from the profit and loss account, including investment income on shareholders' assets, is not included in the estimated annual profit. Thus double-counting should not arise in respect of shareholders' assets. Double-counting may arise, however, in respect of the investment income from the assets representing the explicit components of the solvency margin carried within the *long-term insurance fund* (e.g. surplus carried forward or investment reserves), but the amount of such investment income is not separately identified in the *return*.
32. Where there is reason to suspect that the elimination of any such double-counting would reduce a *firm's* solvency margin to close to or below the required level, or would otherwise be significant, the *FSA* will request this information with a view to taking account of this factor in determining the amount of the *implicit item*. Additional information concerning investment income should be furnished with an application for

a waiver, if a *firm* believes that any double-counting would fall into one of the categories mentioned above.

Average period to run

33. The average number of years remaining to run on *policies* should be calculated on the basis of the weighted average of the periods for individual *contracts of insurance*, using as weights the actuarial present value of the benefits payable under the contracts. A separate weighted average should be calculated for each of the various categories of contract and the results combined to obtain the weighted average for the portfolio as a whole. Approximate methods of calculation, which the *appointed actuary* considers will give results similar to the full calculation, will be accepted. In particular, the *FSA* will normally accept the calculation of an average period to run for a specific category of contract on the basis of the average valuation factor for future benefits derived from data contained in the *appointed actuary's* report in the regulatory returns. A *firm* will be asked to demonstrate the validity of the method adopted only where an abnormal distribution of the business in force gives grounds for doubt about its accuracy.
34. Calculations will normally be requested only for the main categories of *insurance business*, accounting for not less than 90% of the *mathematical reserves*, except where there are grounds for expecting that the exclusion of certain categories of *policies* under this provision might have a significant effect on the resulting average period to run. Detailed calculations will not be required where a waiver is sought in respect of a low multiple of the annual profits, well within the average period to run for the *firm*.
35. Where, for a particular category of business, a method of valuation is used which does not involve the calculation of the value of future benefits and which is significant for the *firm* in question, the calculation of the average period to run should be based on estimates of the value of future benefits. For non-linked benefits, these estimates would normally be available from the demonstration required under paragraph 8(d) of **Appendix 9.4** of *IPRU(INS)* – that the reserves are not less than those obtained on the basis of a net premium valuation; otherwise special estimates of the value of future benefits may have to be made specifically for the purpose of the application. In the case of regular premium unit *linked contracts*, where the method of valuation does not involve estimating the value of benefits to be purchased by further premiums, the value of benefits should be taken to be the reserves currently held (unit and non-unit liabilities) together with the present value of the portions of future premiums which are to be invested in units under the terms of the contracts.

Premature termination of contracts

36. Allowance should be made for the premature termination of *contracts of insurance*, based on the actual experience of the *insurer* over the last five years, or other appropriate period, and taking into account specific features of contracts such as options which can be expected to lead to premature termination (e.g. guaranteed surrender values on income bonds written as *long-term insurance contracts* and option dates on flexible whole-life contracts). The adjustment should be made separately for each of the main categories of business. The use of industry-wide rates of termination will be acceptable where the *appointed actuary* is satisfied that this will result in sufficient allowance being made having regard to the *insurer's* own experience. Methods of calculation that involve a degree of approximation will be permitted.

37. For certain types of contract, where the period left to run is most naturally defined as the term to a fixed maturity or expiry date, the allowance for premature termination should also take into account terminations resulting from death.

Overall limit

38. The overall average period left to run calculated as described above should be limited to a maximum of ten years before applying it to the estimated annual profit in order to determine the maximum value of the future profits *implicit item*.

Definition of period to run

39. The definition of the period to run and the basis of the allowance for early termination should clearly be considered together. For certain types of contracts (e.g. pension contracts with a range of retirement ages or other options), there is inherent uncertainty about the likely term to run. In such circumstances any estimate for determining the amount of the future profits *implicit item* for which a waiver is sought should be based on prudent assumptions tending, if anything, to underestimate the average period to run.

Zillmerising

40. The *FSA* does not normally expect to grant waivers permitting *implicit items* due to *zillmerisation* except in very exceptional circumstances. *Zillmerisation* is an allowance for acquisition costs that are expected, under prudent assumptions, to be recoverable from future premiums. *Firms* can make a direct adjustment to their reserves for *zillmerisation*, subject to the requirements on *mathematical reserves* set out in rule 5.10 of *IPRU(INS)*, and this is the usual approach. However, where no such adjustment has been made, or where the maximum adjustment has not been made in the *mathematical reserves*, the *FSA* will consider an application for an *implicit item*, if the amount is consistent with the amount that would have been allowed as an adjustment to *mathematical reserves* under rule 5.10 of *IPRU(INS)*.

Hidden reserves

41. The *FSA* will grant waivers permitting *implicit items* due to hidden reserves only in very exceptional circumstances. These items relate to hidden reserves resulting from the underestimation of assets and overestimation of liabilities (other than *mathematical reserves*). The *Valuation of Assets Rules* and *Determination of Liabilities Rules* which apply to assets and liabilities other than *mathematical reserves* are based on current value with adjustments for regulatory prudence such as concentration limits for large holdings, and would not normally be expected to contain hidden reserves.

Case studies on “unduly burdensome”

42. Some examples of situations where the existing rules might be considered to be unduly burdensome are given below:-
- A *firm* writes with-profit business. The *firm's* investment policy is affected by its published financial position. Application of the rules without an *implicit item* would result in the *firm* adopting a lower equity backing ratio. It may be possible to

demonstrate that, in the circumstances, it would be unduly burdensome to require the *firm* to incur costs (which might prejudice policyholders) resulting from the lower equity backing ratio, rather than take allowance for an *implicit item*.

- A *firm* has purchased a block of in-force business, on which the future profits may be reasonably estimated. However, this asset is given no value under the rules. It may be possible to demonstrate that it is unduly burdensome for the *firm* to recognise the cost of acquiring the assets whilst giving no value to the asset acquired.
- A *firm* has a block of in-force business, on which the future profits may be reasonably estimated. Application of the rules without an *implicit item* would result in a need to obtain additional capital. It may be possible to demonstrate that it is unduly burdensome, having regard to the particular circumstances of the *firm*, to require it to incur the costs involved in the injection of further capital rather than take allowance for an *implicit item*.
- A *firm* has purchased matching assets for guaranteed annuity liabilities. The operation of the asset and liability valuation rules leads to statutory losses in certain circumstances in spite of good matching of assets and liabilities on a realistic basis of assessment. It may be possible to demonstrate that it is unduly burdensome to require the *firm* to incur the costs involved in the injection of further capital rather than take allowance for an *implicit item*.

Conditions which will typically be applied to implicit items waivers

Limits

43. Where *implicit items* waivers are granted, the value cannot exceed (and will normally be less than) the monetary limits described in paragraph 26. In addition, time limits will apply and waivers will normally only last for 12 months.

Publicity

44. The waiver will be published by the *FSA* (see *SUP* 8.7). Public disclosure is standard practice unless the *FSA* is satisfied that publication is inappropriate or unnecessary (see section 148 of the *Act*). Any request that a direction not be published should be made to the *FSA* in writing with grounds in support, as set out in *SUP* 8.6.
45. Disclosure of a waiver will normally be required in the *firm's* annual *returns*.”

After Guidance Note 4.4 insert the following.

“Guidance Note 5.1

RESILIENCE TEST

1. 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 rule 5.17 of *IPRU(INS)*.
2. *Firms* should, as a minimum, consider the scenario of a fall in the *market value* of equities of the greater 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 rule 5.11(9) of *IPRU(INS)*); and
 - (2) 10%.
3. At the same time, *firms* 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.
4. The *appointed actuary*, in advising the *firm*, would then be expected to apply his or her own professional judgement in considering the level of changes in the *market value* of, and yield on, other types of investment held by the *firm* for the purpose of this 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.
5. The *firm* should also take account of the nature of the assets and liabilities. For example, a *firm* which has only unit linked business, some of which carries a guaranteed annuity rate, should not necessarily assume that equity values fall in applying tests for lower fixed interest rates. Indeed *firms* should consider their resilience to a rise in equity values combined with falling interest rates.
6. The *FSA* also expects that *firms* will continue to investigate a wide range of possible future investment scenarios for the purpose of their own stress testing and risk management.”

FINANCIAL PROMOTION GUIDANCE INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority amends the Authorisation manual, the Conduct of Business sourcebook, the Professional firms sourcebook and the Glossary in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 June 2002.

Amendments to the Authorisation manual

- C. The Authorisation manual is amended by inserting, as AUTH App 1, the provisions in Annex A to this instrument.

Amendments to the Conduct of Business sourcebook, the Professional Firms sourcebook and the Glossary

- D. The Conduct of Business sourcebook, the Professional Firms sourcebook and the Glossary are amended in accordance with Annexes B, C and D to this instrument.

Citation

- E. This instrument may be cited as the Financial Promotion Guidance Instrument 2002.

By order of the Board
16 May 2002

Annex A

Appendices



Appendix 1

Appendix 1. Financial promotion and related activities

1.1 Application and purpose

Application

- 1.1.1 **G**_{/1} This appendix applies to *persons* who need to know whether their communications are subject to or comply with the *Act*. It also helps them decide whether their activities in making or helping others to make *financial promotions* are *regulated activities*.

Purpose of guidance

- 1.1.2 **G**_{/1} The purpose of this *guidance* is two fold:
- (1) to outline the restriction on financial promotion under section 21 of the *Act* (*Restrictions on financial promotion*) and the main exemptions from this restriction; and
 - (2) to outline the main circumstances in which *persons* who are primarily involved in making or helping others to make *financial promotions* may be conducting *regulated activities* requiring *authorisation* or exemption themselves; this part of the *guidance* may also be of more general relevance to *persons* who may be concerned whether or not they are carrying on the *regulated activities* of *advising on investments* or *making arrangements with a view to transactions in investments*.
- 1.1.3 **G**_{/1} In particular, this *guidance* covers:
- (1) invitations and inducements (see ■ AUTH App 1.4);
 - (2) meaning of 'in the course of business' (see ■ AUTH App 1.5);
 - (3) meaning of '*communicate*' (see ■ AUTH App 1.6);
 - (4) meaning of '*engage in investment activity*' (see ■ AUTH App 1.7);
 - (5) meaning of 'having an effect in the *United Kingdom*' (see ■ AUTH App 1.8);

- (6) circumstances where the restriction in section 21 does not apply (see ■ AUTH App 1.9);
- (7) types of *financial promotion*, including:
 - (a) meaning of '*real time financial promotion*' (see ■ AUTH App 1.10.2G); and
 - (b) meaning of '*unsolicited real time financial promotion*' (see ■ AUTH App 1.10.8G);
- (8) types of exemption under the *Financial Promotion Order*, including:
 - (a) exemption for certain one-off promotions (see ■ AUTH App 1.14.3G);
 - (b) exemption for *financial promotions* not directed at the *United Kingdom* (see ■ AUTH App 1.12.2G);
 - (c) exemptions for *financial promotions* by journalists and in broadcasts (see ■ AUTH App 1.12.23G);
- (9) *financial promotions* concerning *deposits* and *contracts of insurance* other than *life policies* (see ■ AUTH App 1.13);
- (10) *financial promotions* concerning promotions by members of the professions (see ■ AUTH App 1.15);
- (11) *financial promotions* concerning funeral plans (see ■ AUTH App 1.16);
- (12) *financial promotions* concerning the Lloyd's market (see ■ AUTH App 1.18);
- (13) additional restrictions on the promotion of:
 - (a) *life policies* (see ■ AUTH App 1.19);
 - (b) *collective investment schemes* (see ■ AUTH App 1.20);
- (14) *company* statements, announcements and briefings (see ■ AUTH App 1.21);
- (15) *financial promotions* made on the Internet (see ■ AUTH App 1.22);
- (16) *regulated activities* :
 - (a) *advising on investments* (see ■ AUTH App 1.24);
 - (b) *making arrangements with a view to transactions in investments* (see ■ AUTH App 1.32); and
- (17) the business test for *regulated activities* (see ■ AUTH App 1.34).

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This *guidance* is issued under section 157 of the *Act*. It represents the FSA's views and does not bind the courts. For example, it would not bind the courts in an action for damages brought by a *private person* for breach of a *rule* (see section 150 of the *Act* (Actions for damages)), or in relation to the enforceability of a contract where there has been a breach of sections 19 (The general prohibition) or 21 (Restrictions on financial promotion) of the *Act* (see sections 26 to 30 of the *Act* (Enforceability of agreements)). Although the *guidance* does not bind the courts, it may be of persuasive effect for a court considering whether it would be just and equitable to allow a contract to be enforced (see sections 28(3) and 30(4) of the *Act*). Anyone

reading this *guidance* should refer to the *Act* and to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (SI 2001/1335) (as amended) (the *Financial Promotion Order*) and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (as amended) (the *Regulated Activities Order*). These should be used to find out the precise scope and effect of any particular provision referred to in the *guidance* and any reader should consider seeking legal advice if doubt remains. If a *person* acts in line with the *guidance* in the circumstances mentioned by it, the *FSA* will proceed on the footing that the *person* has complied with the aspects of the requirement to which the *guidance* relates.

1.2 Introduction

1.2.1 G_{/1} The effect of section 21 of the *Act* (Restrictions on financial promotion) is that in the course of business, an *unauthorised person* must not *communicate* an invitation or inducement to *engage in investment activity* unless either the content of the communication is *approved* for the purposes of section 21 by an *authorised person* or it is exempt. Under section 25 of the *Act* (Contravention of section 21), a *person* commits a criminal offence if he carries on activities in breach of the restriction in section 21 of the *Act*. A *person* who commits this criminal offence is subject to a maximum of two years imprisonment and an unlimited fine. However, it is a defence for a *person* to show that he took all reasonable precautions and used all due diligence to avoid committing the offence.

1.2.2 G_{/1} Another consequence of a breach of section 21 of the *Act* is that certain agreements could be unenforceable (see section 30 of the *Act* (Enforceability of agreements resulting from unlawful communications)). This applies to agreements entered into by a *person* as a customer as a consequence of a communication made in breach of section 21.

1.2.3 G_{/1} An *authorised person* will not breach section 21 when *communicating a financial promotion*. Nevertheless, this *guidance* may be relevant where an *authorised person* needs to know whether ■ COB 3 (Financial promotion) applies to a particular communication. For example, to find out if the communication would be subject to an exemption if it were made by an *unauthorised person* (see ■ COB 3.2.4R and ■ COB 3.2.5R(2)).

1.2.4 G_{/1} A *person* who is concerned to know whether his communications will require *approval* or, if he is an *authorised person*, whether ■ COB 3 will apply to his communications will need to consider the following:

- (1) am I making a communication or causing a communication to be made? (see ■ AUTH App 1.6);
- (2) if so, is it an invitation or inducement? (see ■ AUTH App 1.4);
- (3) if so, does the invitation or inducement relate to a *controlled investment*? (see ■ AUTH App 1.7);
- (4) if so, is the invitation or inducement to *engage in investment activity*? (see ■ AUTH App 1.7);

- (5) if so, is it made in the course of business? (see ■ AUTH App 1.5);
- (6) if so, and the *financial promotion* originates outside the *United Kingdom*, is it capable of having an effect in the *United Kingdom*? (see ■ AUTH App 1.8);
- (7) if so, or if the answer to (5) is yes and the *financial promotion* was made in the *United Kingdom*, is the promotion exempt? (see ■ AUTH App 1.12 to ■ AUTH App 1.15 and ■ AUTH App 1.21).
- (8) if not, am I an *authorised person* ?

- 1.2.5** G_{/1} If the answer to ■ AUTH App 1.2.4G(8) is yes then ■ COB 3 will apply (subject to additional exemptions in ■ COB 3.2.5R). If the answer is no, then the promotion must be *approved* by an *authorised person* if it is a *non-real time financial promotion*. *Authorised persons* are not allowed to *approve real time financial promotions* (see ■ COB 3.12.2R). ■ AUTH App 1.36.2 contains a flowchart explaining these steps.
- 1.2.6** G_{/1} One of the main effects of the *Act* is to bring together in one statute the regulation of *persons* who provide financial services. These would previously have been regulated under the Financial Services Act 1986, the Banking Act 1987, the Insurance Companies Act 1982 or under laws relating to *building societies*, *friendly societies* and *credit unions*. The *Act* also consolidates the provisions of those statutes which governed advertising and making unsolicited personal communications.
- 1.2.7** G_{/1} The restriction in section 21 applies to all forms of communication such as advertising, broadcasts, websites, e-mails and all other forms of written or oral communication whether sent to one *person* or many. However, the restrictions only apply to a communication made in the course of business and not, for example, to personal communications between individuals.
- 1.2.8** G_{/1} There are extensive exemptions in the *Financial Promotion Order*. This is explained in greater detail in ■ AUTH App 1.11 to ■ AUTH App 1.15 and ■ AUTH App 1.21.

1.3 Financial promotion

- 1.3.1** G_{/1} The basic restriction on the *communication of financial promotions* is in section 21(1) of the *Act*. Sections 21(2) and (5) disapply the restriction in certain circumstances. Their combined effect is that a *person* must not, in the course of business, *communicate* an invitation or inducement to *engage in investment activity* unless :
- (1) he is an *authorised person*; or
 - (2) the content of the communication is *approved* for the purposes of section 21 by an *authorised person*; or
 - (3) the communication is exempt under an order made by the Treasury under section 21(5) – the *Financial Promotion Order* (as amended).

- 1.3.2** **G**_{/1} Section 21 of the *Act* does not itself (other than in its heading and side-note) refer to a ‘*financial promotion*’ but rather to the *communication* of ‘an invitation or inducement to *engage in investment activity*’. References in this *guidance* to a *financial promotion* mean an invitation or inducement to *engage in investment activity*.
- 1.3.3** **G**_{/1} Section 21 of the *Act* contains a number of key expressions or phrases which will determine whether or not it will apply. These are:
- (1) ‘invitation or inducement’ (see ■ AUTH App 1.4);
 - (2) ‘in the course of business’ (see ■ AUTH App 1.5);
 - (3) ‘*communicate*’ (see ■ AUTH App 1.6);
 - (4) ‘*engage in investment activity*’ (see ■ AUTH App 1.7); and
 - (5) ‘having an effect in the *United Kingdom*’ (see ■ AUTH App 1.8).
- 1.3.4** **G**_{/1} The *FSA*’s views as to the meaning of these are explained in ■ AUTH App 1.4 to ■ AUTH App 1.8.
- 1.3.5** **G**_{/1} In addition, this *guidance* deals with other factors such as when the exemptions in the *Financial Promotion Order* can be applied, including the exemptions relating to territorial scope and one-off *financial promotions*.
- 1.3.6** **G**_{/1} Section 21 of the *Act* was commenced, for most purposes, on 1 December 2001. However, it did not come into effect as respects *financial promotions* about *funeral plan contracts* until 1 January 2002 and will not come into effect for *financial promotions* about agreements for qualifying credit until a date in 2004 yet to be set by the Treasury. *Guidance* on the application of section 21 to *financial promotions* about funeral plans is in ■ AUTH App 1.16.

1.4 Invitation or inducement

Promotional element

- 1.4.1** **G**_{/1} The *Act* does not contain any definition of the expressions ‘invitation’ or ‘inducement’, leaving them to their natural meaning. The ordinary dictionary entries for ‘invitation’ and ‘inducement’ offer several possible meanings to the expressions. An ‘invitation’ is capable of meanings ranging from merely asking graciously or making a request to encouraging or soliciting. The expression ‘inducement’ is given meanings ranging from merely bringing about to prevailing upon or persuading. In the *FSA*’s view it is appropriate, in interpreting the expressions, to take due account of the context in which they are being used and their purpose.
- 1.4.2** **G**_{/1} The Treasury, responding to consultation on the draft *Financial Promotion Order*, stated its intention that only communications containing a degree of incitement would amount to ‘inducements’ and that communications of purely factual information would not. This is provided the facts are presented in such a way that

they do not also amount to an invitation or inducement. This was made clear both in the Treasury's consultation document on financial promotion and during the passage of the *Act* through Parliament. Under questioning, the Minister confirmed that the government's policy was "to capture promotional communications only". The Minister also stated that 'inducement', in its Bill usage, already incorporates an element of design or purpose on the part of the person making the communication" and that "design or purpose is implicit in this context" (Hansard HL, 18 May 2000 cols 387 and 388). In the same debate, the Minister stated that the restriction would not apply to such things as "public announcements, exchange of draft share purchase agreements in corporate finance transactions or cases in which the recipient of a communication simply misunderstands its contents and engages in investment activity as a result".

1.4.3 G_{/1} The *FSA* recognises that the matter cannot be without doubt. However, it is the *FSA*'s view that the context in which the expressions 'invitation' or 'inducement' are used clearly suggests that the purpose of section 21 is to regulate communications which have a promotional element. This is because they are used as restrictions on the making of financial promotions which are intended to have a similar effect to restrictions on advertising and unsolicited personal communications in earlier legislation. Such communications may be distinguished from those which seek merely to inform or educate about the mechanics or risks of investment. In this respect, the *FSA* supports the views expressed by Ministers as referred to in ■ AUTH App 1.4.2G. To the extent that doubt may remain as to the true meaning of 'invitation' or 'inducement' when used in section 21, it is the opinion of the *FSA* that the courts are likely to take account of the ministerial statements under the judgement in *Pepper (Inspector of Taxes) v Hart* [1993] AC593.

1.4.4 G_{/1} The *FSA* considers that it is appropriate to apply an objective test to decide whether a communication is an invitation or an inducement. In the *FSA*'s view, the essential elements of an invitation or an inducement under section 21 are that it must both have the purpose or intent of leading a *person* to *engage in investment activity* and be promotional in nature. So it must seek, on its face, to persuade or incite the recipient to *engage in investment activity*. The objective test may be summarised as follows. Would a reasonable observer, taking account of all the circumstances at the time the communication was made:

- (1) consider that the *communicator* intended the communication to persuade or incite the recipient to *engage in investment activity* or that that was its purpose; and
- (2) regard the communication as seeking to persuade or incite the recipient to *engage in investment activity*.

It follows that a communication which does not have any element of persuasion or incitement will not be an invitation or inducement under section 21.

Invitations

1.4.5 G_{/1} An invitation is something which directly invites a *person* to take a step which will result in his *engaging in investment activity*. It follows that the invitation must cause the *engaging in investment activity*. Examples of an invitation include:

- (1) *direct offer financial promotions*;
- (2) a prospectus with application forms; and

- (3) Internet promotions by brokers where the response by the recipient will initiate the activity (such as ‘register with us now and begin dealing online’).

A communication may contain a statement that it is not an invitation. Such statements may be regarded as evidence that the communication is not an invitation unless its contents indicate otherwise.

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Merely asking a *person* if they wish to enter into an agreement with no element of persuasion or incitement will not, in the *FSA*’s view, be an invitation under section 21. For example, the *FSA* does not consider an invitation to have been made where:

- (1) a trustee or nominee receives an offer document of some kind and asks the beneficial owner whether he wishes it to be accepted or declined;
- (2) a *person* such as a professional adviser enquires whether or not his client would be willing to sign an agreement; or
- (3) a *person* is asked to sign an agreement on terms which he has already accepted or to give effect to something which he has already agreed to do.

Inducements

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An inducement may often be followed by an invitation or vice versa (in which case both communications will be subject to the restriction in section 21 of the *Act*). An inducement may be described as a link in a chain where the chain is intended to lead ultimately to an agreement to *engage in investment activity*. But this does not mean that all the links in the chain will be an inducement or that every inducement will be one to *engage in investment activity*. Only those that are a significant step in persuading or inciting or seeking to persuade or incite a recipient to *engage in investment activity* will be inducements under section 21. The *FSA* takes the view that the mere fact that a communication may be made at a preliminary stage does not, itself, prevent that communication from being a significant step. However, in many cases a preliminary communication may simply be an inducement to contact the *communicator* to find out what he has to offer. For example, an advertisement which merely holds out a *person* as having expertise in or providing services about investment management or venture capital will not be an inducement to *engage in investment activity*. It will merely be an inducement to make contact for further material and will not be a significant step in the chain. However, that further material may well be a significant step and an invitation or inducement to *engage in investment activity*. In contrast, an advertisement which claims that what the recipient should do in order to make his fortune is to invest in securities and that the *communicator* can provide him with the services to achieve that aim will be a significant step and an inducement to *engage in investment activity*.

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■ AUTH App 1.4.9G to ■ AUTH App 1.4.34G apply the principles in ■ AUTH App 1.4.4G to ■ AUTH App 1.4.7G to communications made in certain circumstances. They do not seek to qualify those principles in any way. A common issue in these circumstances arises when contact details are given (for example, of a provider of investments or investment services). In the *FSA*’s view, the inclusion of contact details should not in itself decide whether the item in which they appear is an inducement or, if so, is an inducement to *engage in investment activity*. However, they are a factor which should be taken into account. The examples also refer, where appropriate, to specific exemptions which may be relevant if a communication is an invitation or inducement to *engage in investment activity*.

Directory listings

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Ordinary telephone directory entries which merely list names and contact details (for example where they are grouped together under a heading such as 'stockbrokers') will not be inducements. They will be sources of information. Were they to be presented in a promotional manner or accompanied by promotional material they would be capable of being inducements. Even so, they may merely be inducements to make contact with the listed person. Specialist directories such as ones providing details of venture capital providers, unit trust managers or investment trusts will usually carry greater detail about the services or products offered by the listed firms and are often produced by representatives bodies. Such directories may also be essentially sources of information. Whether or not this is the case where individual entries are concerned will depend on their contents. If they are not promotional, the entries will not be inducements to *engage in investment activity*. However, it is possible that other parts of such a directory might seek to persuade recipients that certain *controlled investments* offer the best opportunity for financial gain. They may go on to incite recipients to contact one of the member firms listed in the directory in order to make an investment. In such cases, that part of the directory will be an inducement to *engage in investment activity*. But this does not mean that the individual entries or any other part of the directory will be part of the inducement. AUTH App 1.6 provides *guidance* on the meaning of 'communicate' and 'causing a communication'. This is of relevance to this example and those which follow.

Tombstone advertisements (announcements of a firm's past achievements)

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Such advertisements are almost invariably intended to create awareness, hopefully generating future business. So they may or may not be inducements. This depends on the extent to which their contents seek to persuade or incite *persons* to contact the advertiser for details of its services or to do business with it. Merely stating past achievements with no contact details will not be enough to make such an advertisement an inducement. Providing contact details may give the advertisement enough of a promotional feel for it to be an inducement. But, if this is the case, it will be an inducement to contact the advertiser to find out information or to discuss what he can offer. Only if the advertisement contains other promotional matter will it be capable of being an inducement to *engage in investment activity*. In practice, such advertisements are often aimed at influencing only investment professionals. Where this is the case, the exemption in article 19 of the *Financial Promotion Order* (Investment professionals) may be relevant (see ■ AUTH App 1.12.21G). Tombstone advertisements will not usually carry the indicators required by article 19 to establish conclusive proof. However, article 19 may apply even if none of the indicators are present if the *financial promotion* is in fact directed at investment professionals.

Links to a website

1.4.11

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Links on a website may take different forms. Some will be inducements. Some of these will be inducements under section 21 and others not. Links which are activated merely by clicking on a name or logo will not be inducements. The links may be accompanied by or included within a narrative or, otherwise, referred to elsewhere on the site. Whether or not such narratives or references are inducements will depend upon the extent to which they may seek to persuade or incite *persons* to use the links. Simple statements such as 'these are links to stockbrokers' or 'click here to find out about stockmarkets – we provide links to all the big exchanges' will

either not amount to inducements or be inducements to access another site to get information. If they are inducements, they will be inducements to *engage in investment activity* only if they specifically seek to persuade or incite *persons* to use the link for that purpose. Where this is the case, but the inducement does not identify any particular *person* as a provider of a *controlled investment* or as someone who carries on a *controlled activity*, the exemption in article 17 of the *Financial Promotion Order* (Generic promotions) may be relevant (see ■ AUTH App 1.12.14G).

Banner advertisements on a website

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These are the Internet equivalent to an advertisement in a newspaper and are almost bound to be inducements. So whether they are inducements to *engage in investment activity* will depend upon their contents as with any other form of advertising and the comments in ■ AUTH App 1 4.11G will be relevant.

Publication or broadcast of prices of investments (historic or live)

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These may or may not involve invitations or inducements. Where a *person* such as a newspaper publisher, broadcaster or data supplier merely presents prices of *investments* whether historic or live the information can be purely factual and not be an inducement. Historic prices on their own will never be invitations or inducements. Merely adding simple contact details to such prices will not make them invitations or inducements to *engage in investment activity*. However, any additional wording seeking to persuade or incite *persons* to contact firms so that they may buy or sell such *investments* may do so. In other circumstances, the publication of prices may involve an invitation or an inducement to *engage in investment activity*. For example, *persons* may use an electronic trading system to display prices and other terms such as lot size and volume at which they are prepared to deal, on screens viewed by potential counterparties. The price and other terms may be firm or indicative. The *persons* using the trading systems will have accepted the general terms and conditions for trading. Where prices and terms quoted are firm, the screen display may be an invitation to *engage in investment activity* by entering into a transaction at that price and on those terms. This will be where the offer may be accepted by the counterparty by a simple electronic response. Where the price or other terms are indicative, the screen display may be an inducement to *engage in investment activity* after negotiating acceptable terms. But in either case, the display of prices and other terms will only be invitations or inducements to *engage in investment activity* if it also contains material which seeks to persuade or incite the recipient to do so.

Company statements and announcements and analyst briefings

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Encouraging (or discouraging) statements may be made by a *company* director. These will typically be made in reports or accounts or at a presentation or road show or during a briefing of analysts. Alternatively, such statements may be made on the company's behalf by its public relations adviser. Statements of fact about a *company's* performance or activities will not, themselves, be inducements to *engage in investment activity* even if they may lead *persons* to decide to buy or sell the *company's* shares. However, statements which speculate about the *company's* future performance or its share price may have an underlying purpose or intent to

encourage investors to act. If this is so, whether they will be inducements to *engage in investment activity* will depend entirely on their contents and the extent to which they seek to promote investment in the *company*. ■ AUTH App 1.21 contains detailed *guidance* on the various exemptions which may apply in this area.

Journalism

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Journalism can take many forms. But typically a journalist may write an editorial piece on a *listed company* or about the *investments* or investment services that a particular firm provides. This may often be in response to a press release. The editorial may or may not contain details of or, on a website, a link to the site of the *company* or firm concerned. Such editorial may specifically recommend that readers should consider buying or selling *investments* (whether or not particular *investments*) or obtaining investment services (whether or not from a particular firm). If so, those recommendations are likely to be inducements to *engage in investment activity* (bearing in mind that a recommendation not to buy or sell *investments* cannot be an inducement to *engage in investment activity*). In other cases, the editorial may be an objective assessment or account of the *investment* or its issuer or of the investment firm and may not encourage *persons* to make an *investment* or obtain investment services. If so, it will not be an inducement to *engage in investment activity*. Article 20 of the *Financial Promotion Order* (Communications by journalists) contains a specific exemption for journalism and journalists may be able to make good use of the generic promotions exemption in article 17 of the *Financial Promotion Order* (see ■ AUTH App 1.12.23 and ■ AUTH App 1.12.14G). Journalists should bear in mind that they may *communicate* a *financial promotion* by repeating a recommendation that originates from another source. That source could be, for example, an *authorised person*, an academic or another publication. Such a *financial promotion* would be viewed as *communicated* by the journalist where he has editorial control over its form and content. In the *FSA's* view, a *person* is not causing the *communication* of a *financial promotion* merely by providing material, including a press release or a quotation, to a journalist who uses it in an article. This is provided that the *person* has no control over the way in which the article is prepared and published. The press release or quotation itself, if it is a *financial promotion*, should be exempt under article 47 of the *Financial Promotion Order* (Persons in the business of disseminating information) – see ■ AUTH App 1.21.10G.

Performance tables

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League tables showing the past performance of investment products of a particular kind or investment firms of a particular class (such as investment managers) and determined by the application of pre-set criteria will not, in themselves, be inducements. The fact that such tables represent pure information could, for example, be made clear by their being accompanied by a statement to the effect that the fact of a product or firm being well placed in the tables based on past performance is no guide to their likely future performance. The effectiveness of such a statement will, of course, depend upon it being the case that they do, in fact, represent mere information. But if, for example, the tables are accompanied by or presented or provided in a way that they are an actual or implied recommendation that a particular product's performance suggests it is a potential buy or sell they may become inducements.

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Tables or other forms of list may identify products with their relevant features such as interest rates, redemption periods and charges. Again, provided that the tables

amount to purely factual information enabling comparison of products they will not be inducements. This includes such things as electronic systems that allow users to programme in their requirements and find details of the products that meet them. Producers of the table or list may, to some extent, expect that the information will lead *persons* to make investments. Or they might have negotiated a payment from the firms featured that reflects leads generated. In either case, the absence of a promotional element in the table will be determinative. As with performance tables, these can become inducements to *engage in investment activity*. This will happen when there is an actual or implied recommendation that either the products which come out best in respect of certain features or a specific combination of features or those that have been chosen for inclusion are likely to be good or best buys. This might, for example, include identifying the top ten *deposit* accounts for *persons* looking for *deposit* accounts offering certain features. The mere inclusion in tables of the kind referred to generally in this paragraph or those in ■ AUTH App 1.4.16G of contact details should not turn what is otherwise factual or neutral information into an inducement. Both types of table may benefit, if necessary, from the exemption for journalists in article 20 (see ■ AUTH App 1.12.23G). This will be where they are prepared by a *person* acting as a journalist and are included in a publication, service or broadcast as described in article 20(5)(b). Where the tables are merely a reproduction of information supplied by a third party data source which does not provide them as a journalist article 20 will not be available.

Decision Trees

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A decision tree (or flow chart) will generally be used in one of two ways. Either it will be an educational tool (for instance, where an employer wishes to help his employees understand their pension options) or a promotional tool. As an educational tool which does no more than enable a *person* to identify generic investment options it will not be an inducement. But if its use is intended to procure business for an investment firm then it is likely to be an inducement. For example, electronic decision trees on websites may typically invite *persons* to enter basic information about their circumstances and objectives leading to a recommendation or choice of products or services, or both, possibly with links to other firms' sites. These decision trees will be inducements to *engage in investment activity* although, in some cases, the journalists' exemption in article 20 of the *Financial Promotion Order* may be relevant (see ■ AUTH App 1.12.23G).

Investment agreements, share purchase agreements and customer agreements

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These types of agreements will only rarely be inducements or invitations. For instance, where the terms of a deal have been agreed in principle and the agreement is merely the means of giving it effect, the inducement phase has clearly passed. And an agreement or draft agreement itself may usually be seen as a document setting out the terms and conditions of a deal and not itself an inducement (or an invitation) to deal. However, an agreement or draft agreement may often be accompanied by an invitation or inducement such as a covering letter or an oral communication that seeks to persuade or incite a *person* to enter into the agreement. Whilst such accompaniments are capable of being inducements (or invitations), merely offering concessions or amendments to a draft agreement during negotiations will not turn those accompaniments into inducements. It is, however, possible for an agreement itself to be or to include an invitation or inducement. For example, an advertisement that contains the terms and conditions

and the means to enter into it as a binding contract, a *direct offer financial promotion* or a prospectus with an application form included.

Image advertising

- 1.4.20** G_{/1} Activities which are purely profile raising and which do not identify and promote particular *investments* or investment services may not amount to either an invitation or inducement of any kind. Examples of this include where *listed companies* sponsor sporting events or simply put their name or logo on the side of a bus or on an umbrella. This is usually done with a view, among other things, to putting their names in the minds of potential investors or consumers. In other cases, an image advertisement for a *company* which provides investment services (for example, on a pencil or a diary) may include, along with its name or logo, a reference to its being an investment adviser or fund manager or a telephone or fax number or both. Profile raising activities of this kind may involve an inducement (to contact the advertiser) but will be too far removed from any possible investment activity to be considered to be an inducement to *engage in investment activity*.

Advertisements which invite contact with the advertiser

- 1.4.21** G_{/1} These will be advertisements that contain encouragement to contact the advertiser. They are likely to be inducements to do business with him or to get more information from him. If so, they will be inducements to *engage in investment activity* if they seek to persuade or incite *persons* to buy or sell *investments* or to get investment services. See ■ AUTH App 1.4.7G for more guidance on preliminary communications and whether they are a significant step in the chain of events which are intended to lead to the recipient *engaging in investment activity*. Where advertisements invite *persons* to send for a prospectus, article 73 (Material relating to prospectus for public offer of unlisted securities) may provide an exemption. Any *financial promotion* which contains more information than is allowed by article 73 but which is not the prospectus itself is likely to require *approval* by an *authorised person* unless another exemption applies. ■ AUTH 1.9.1G explains about *approval*.

Introductions

- 1.4.22** G_{/1} Introductions may take many forms but typically involve an offer to make an introduction or action taken in response to an unsolicited request. An introduction may be an inducement if the introducer is actively seeking to persuade or incite the *person* he is introducing to do business with the *person* to whom the introduction is made. So it may fall under section 21 if its purpose is to lead to investment activity. For example, if a *person* answers the question ‘do you or can you provide investment advice’ with a simple ‘no, but I can introduce you to someone who does’, that may be an inducement. But, if so, it is likely to be an inducement to contact someone to find out information about his services rather than to *engage in investment activity*. Where a *person* calls in to an office or branch of a *company* and asks to see ‘the investment adviser’, a *person* who responds merely by directing or showing the way is not making an inducement. Neither would a *person* be making an inducement by responding to an enquiry with ‘we do not provide investment services – you need to consult an *authorised person*’ or words to that effect. That is provided he does not go on to seek to persuade or incite the enquirer to contact a particular *authorised person* for investment services. But a *person* would be making an inducement to *engage in investment activity* if, for example, he

seeks to persuade or incite *persons* to allow him to introduce them to a particular *authorised person* so that they may take advantage of the cheap dealing rates which that *person* offers. Where introductions do amount to inducements under section 21 they may fall under the exemption for generic promotions (article 17 of the *Financial Promotion Order*) (see ■ AUTH App 1.12.14G). This will be the case provided the *financial promotion* does not identify any particular *investment* or *person* to whom introductions are to be made or identify the introducer as a *person* who carries on a *regulated activity* (typically of *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order* - (see ■ AUTH App 1.33). It is most likely to apply where the *financial promotion* relates to *deposits* or *contracts of insurance* which are not *contractually based investments*. The journalists' exemption in article 20 may be relevant where the introduction is made through or in a publication, broadcast or regularly updated news or information service (see ■ AUTH App 1.12.23G). Article 15 (Introductions) may apply where the introduction is a *real time financial promotion* (see ■ AUTH App 1.12.11G).

Distributors

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A *person* may be distributing *financial promotions* which have been issued or *approved* by an *authorised person*. This may be by displaying copies or delivering them or handing them out whether or not on request. ■ AUTH App 1.6 explains when such a person will be *communicating* the *financial promotions*. Where this is so, the exemption for mere conduits in article 18 of the *Financial Promotion Order* may apply (see ■ AUTH App 1.12.18G). But article 18 will not apply if the distributor creates his own *financial promotion* by seeking to persuade or incite the recipient to act upon the *financial promotions* he is distributing.

Investment trading methods and training courses

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Trading methods and techniques, such as traded options training courses and software-based or manual trading tools will, in many cases, be too remote from any eventual investment dealing activities to be inducements to *engage in investment activity*. Promotions of such things will be inducements (or invitations) to receive training and general trading tips and techniques. However, such things may be sold on the basis that they are almost certain to produce profits from the trading which the recipient will undertake using the training or technique. If this is the case, the promotions are capable of being inducements to engage in those trading activities. Such *financial promotions* are capable of being generic promotions under article 17 of the *Financial Promotion Order* (see ■ AUTH App 1.12.14G).

Invitations to attend meetings or to receive telephone calls or visits

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These are clearly invitations or inducements. Whether they will involve invitations or inducements to *engage in investment activity* rather than to attend the meeting or receive the call or visit, will depend upon their purpose and content. ■ AUTH App 1.4.7G discusses communications which are a significant step in the chain of events leading to an agreement to *engage in investment activity*. The purpose of the meeting, call or visit to which the invitation or inducement relates may be to offer the audience or recipient investment services. In this case, the invitation or inducement will be a significant step in the chain if it seeks to persuade or incite the

invitee to *engage in investment activity* at the meeting, call or visit. Any *financial promotions* made during the meeting, call or visit would still need to be *communicated* or *approved* by an *authorised person* or be exempt.

Explanation of terms

- 1.4.26** G_{/1} An explanation of the terms of an agreement or of the consequences of taking a particular course of action can be merely factual information unless it includes or is accompanied by encouragement to enter into the agreement or take the course of action. The mere fact that the explanation may present the investment in a good light or otherwise influence the recipient will not make it an inducement. Where such communications are *financial promotions* they may fall under one of the exemptions for one-off promotions in articles 28 and 28A of the *Financial Promotion Order* (see ■ AUTH App 1.14.3G).

Enquiries about a person's status or intentions

- 1.4.27** G_{/1} A *person* ('A') may enquire:
- (1) whether another *person* is certified as a high net worth individual or a sophisticated investor so that A may determine whether an exemption applies;
 - (2) whether a *person* has received material sent to him; or
 - (3) how a *person* might propose to react to a take-over offer.

Enquiries of this or a similar kind will not amount to inducements to *engage in investment activity* unless they involve persuasion or incitement to do so. The enquiry may be accompanied by a brief statement of the reason why it is being made. This may, for example, include a reference to the type of *investment* to which any subsequent *financial promotions* would relate. Such initial enquiries may be followed up with an inducement but this fact alone will not turn the initial enquiry into a *financial promotion*. For example, an enquiry about whether a *person* is certified for the purposes of article 48 (Certified high net worth individuals) or article 50 (Sophisticated investors) may, where the answer is positive, be followed by a *financial promotion*. That *financial promotion* can then rely on article 48 or 50 as the case may be.

Solicited and accompanying material

- 1.4.28** G_{/1} Solicited or accompanying material which does not contain any invitation or inducement to *engage in investment activity* will not itself be a *financial promotion*. This is provided that the material is not part of any *financial promotion* which may accompany it. This is explained in greater detail in ■ AUTH App 1.4.29G to ■ AUTH App 1.4.30G.
- 1.4.29** G_{/1} *Persons* may sometimes be asked to send material which has not been prepared for use as a *financial promotion* to a *person* who is interested in making an investment. For example, a prospective participant in a Lloyd's *syndicate* may ask for a copy of the business plan or forecast prepared by the *managing agent* to comply with Lloyd's requirements. As another example, a prospective purchaser of, or investor in, a *company* may wish to see a valuation report, a due diligence report or legal

advice. The fact that the *person* requesting the material may intend to rely on it in making his investment decision does not, itself, make the material an inducement under section 21.

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The *person* who responds to the request for the material in the circumstances in ■ AUTH App 1.4.29G may make a *financial promotion* in the form of a covering letter or oral communication ('C'). This will not mean that the material accompanying C must itself be treated as an inducement. This will depend on the circumstances. The material itself would only become an inducement if it is turned into part of the *financial promotion* in C. For example, C may refer to the contents or part of the contents of the accompanying material and claim that they will convince the recipient that he should *engage in investment activity*. In such a case, the contents, or the relevant part of the contents as the case may be, would become part of the *financial promotion* in C. In other cases, C may simply refer to the fact that certain material has been enclosed or is available without using it as a selling point to persuade or incite the recipient to *engage in investment activity*. In that case, the material will not become part of the *financial promotion*. A similar situation arises if a *person* other than the *person* who originated an oral or written communication which is not itself a *financial promotion* uses it to persuade or incite a potential investor.

Telephone services

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A *person* ('P') may be engaged, typically by investment product companies, to provide telephone services. Where such services require P to seek to persuade or incite prospective customers to receive investment literature or a personal call or visit from a representative of his principal they will frequently involve inducements to *engage in investment activity*. This is so whether the inducement results from P making unsolicited calls or by his raising the issue during a call made by the prospective customer. Generally speaking, it is likely that P would be carrying on a *regulated activity* under article 25(2) of the *Regulated Activities Order* and require *authorisation* or exemption (for example, as an *appointed representative*) if he is required to procure leads for his principal. In other cases, P may merely respond to a request from a prospective customer. This may be a request for investment literature or to arrange a call or visit. P will not be making an inducement simply by agreeing to send the literature, referring the caller to a representative of his principal or agreeing to arrange for the visit or call. Where *persons* providing telephone services are *appointed representatives* the exemption in article 16 of the *Financial Promotion Order* (Exempt persons) may apply (see ■ AUTH App 1.12.12G).

Personal illustrations

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A personal illustration (for instance, of the costs of and benefits under a particular investment product) may or may not be an invitation or inducement. This will depend on the extent to which it seeks to persuade or incite the recipient to invest as opposed to merely providing him with information. A personal illustration may, however, be accompanied by an invitation or inducement to buy the investment in which case the exemptions for one-off *financial promotions* in articles 28 or 28A may apply (see ■ AUTH App 1.14.3G). *Authorised persons* should note that, where personal quotations or illustrations do amount to a *financial promotion* ■ COB 3 will not usually apply to them (see ■ COB 3.2.5R (6)).

Instructions or guidance on how to invest

- 1.4.33 **G**_{/1} Things such as help-lines for *persons* who wish to make an investment will not usually involve invitations or inducements to *engage in investment activity*. This is where their purpose is merely to explain or offer guidance on how to invest or to accept an offer. In such cases, the investor will already have decided to invest and there will be no element of persuasion on the part of the *person* giving the explanation or guidance.

Communications by employers to their employees

- 1.4.34 **G**_{/1} Employers may *communicate* with their employees on matters which involve *controlled investments*. For example, personal pension schemes (including stakeholder schemes) and other employee benefit schemes other than *occupational pension schemes*. Interests under the trusts of an *occupational pension scheme* are not a *controlled investment* (see paragraph 27 (2) of Schedule 1 to the *Financial Promotion Order*). Such communications will only be invitations or inducements to *engage in investment activity* if they seek to persuade or incite employees to do things such as:
- (1) participate in or leave the pension or other benefit scheme;
 - (2) exercise certain rights under such a scheme, include making additional contributions or exercising options.

Communications which are intended to educate or give employees information with no element of persuasion or incitement will not be invitations or inducements under section 21. Employers may wish to give their employees investment material prepared and *approved* by an *authorised person*. This material may be given under cover of a communication from the employer. If so, the covering communication will not itself be an inducement if all it does is to refer employees to the material and explain what they should do if they wish to act on it, without seeking to persuade or incite them to act. Where the covering communication is itself a *financial promotion* it will need to be *approved* by an *authorised person* provided it is a *non-real time financial promotion* unless an exemption applies. If it is a *real time financial promotion* it cannot be *approved* (see ■ COB 3.12.2R). In such cases, an exemption would need to apply. Where employee share schemes are concerned, the exemption in article 60 of the *Financial Promotion Order* (Participation in employee share schemes) is likely to apply to any *financial promotions* made by employers or members of their *group*. Where an employer's *financial promotions* relate to such things as company health or general insurance benefit packages, the exemptions in article 24 (Relevant insurance activity: non real time communications) or 26 (Relevant insurance activity: real time communications) of the *Financial Promotion Order* may apply. Any *financial promotion* made by an employer for the purpose of meeting his obligations under the Welfare Reform and Pensions Act 1999 to offer his employees a *stakeholder pension scheme* should be able to use the exemption in article 29 (Communications required or authorised by enactments).

1.5 In the course of business

- 1.5.1** G_{/1} Under section 21(4) of the *Act*, the Treasury has the power to specify circumstances in which a *person* is viewed as ‘acting in the course of business’ or ‘not acting in the course of business’. The power under section 21(4) relates only to *financial promotions* and is distinct from the power in section 419 which relates to *regulated activities*. To date, the Treasury has not used the power in section 21(4). As a result, the phrase has its ordinary or natural meaning.
- 1.5.2** G_{/1} The *FSA* considers that ‘in the course of business’ requires a commercial interest on the part of the communicator. This does not necessarily have to be a direct interest. And the communicator does not need to be carrying on *regulated activities* (the test in section 19 of the *Act*) as or as part of his business. Neither does the communication need to be made in the course of carrying on activities as a business in their own right (the test in article 3 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001). For example, if a holding company proposes to sell one of its subsidiaries, that sale will be ‘in the course of business’ irrespective of the fact that the company may well not be in the business of selling subsidiaries.
- 1.5.3** G_{/1} The position is slightly more blurred with individuals. The ‘in the course of business’ test is intended to exclude genuine non-business communications. Examples of these would be friends talking in a pub, letters between family members or e-mails sent by individuals using an Internet chat-room or bulletin board for personal reasons. An issue arises where capital is raised for small private *companies*. Where such a *company* is already in operation, it will be acting ‘in the course of business’ when seeking to generate additional share or loan capital. At the pre-formation stage, however, it will often be the case that individuals who are proposing to run the company will approach a small number of friends, relatives and acquaintances to see if they are willing to provide start-up capital. In the *FSA*’s view, such individuals will not be acting ‘in the course of business’ during the pre-formation stage of a small private *company*. This is provided that they are not:
- (1) forming *companies* with such regularity that they would be regarded as carrying on the business of forming *companies*; or
 - (2) already running the business which the *company* will carry on (for example, as a partnership).
- 1.5.4** G_{/1} There is, of course, no reason why an individual cannot act ‘in the course of business’. For example, sole traders who are independent financial advisers will give investment advice ‘in the course of business’ and so satisfy the test. Individuals who are merely seeking to make personal investments will not be acting ‘in the course of business’ by approaching a company about making an investment in its shares. However, it is possible that an individual who regularly seeks to invest in companies who are seeking to raise venture capital with a view to becoming a director and influencing their affairs may be regarded as acting in the course of business. In approaching *companies*, such as a *person* should be able to make use of the exemptions for one-off *financial promotions* in articles 28 and 28A of the *Financial Promotion Order* (see ■ AUTH App 1.14.3G).
- 1.5.5** G_{/1} *Persons* who carry on a business which is not a *regulated activity* will need to be particularly careful in making communications which may amount to *financial promotions* (because they seek to persuade or incite *persons* to *engage in investment activity* (see ■ AUTH App 1.4)). For example, where a *company* makes *financial promotions* to its employees, they may well be made in the course of business. Examples of these include *financial promotions* concerning employee share schemes, group wide insurance arrangements and *stakeholder pension schemes*. These would need to be *approved* by an *authorised person* unless an appropriate exemption is available. ■ AUTH App 1.4.34G provides further *guidance* on this.

1.6 Communicate

- 1.6.1** G_{/1} The word ‘*communicate*’ is extended under section 21(13) of the *Act* and includes causing a communication to be made. This means that a *person* who causes the *communication* of a *financial promotion* by another *person* is also subject to the restriction in section 21. Article 6(d) of the *Financial Promotion Order* also states that the word ‘*communicate*’ has the same meaning when used in exemptions in the Order. Article 6(a) also states that the word ‘communication’ has the same meaning as ‘*financial promotion*’. It appears to the FSA that a *person* is *communicating* where he gives material to the recipient or where, in certain circumstances (see ■ AUTH App 1.6.5G), he is responsible for transmitting the material on behalf of another *person*. As both causers and communicators *communicate* under section 21 the distinction between them is not usually of great significance. What is important is whether a *person* who is not himself *communicating* is or is not causing a communication to be made by another. In the FSA’s view, primary responsibility for a communication to which section 21 applies and which is capable of being read will rest with its originator. This is the *person* responsible for its overall contents. Where it is an oral communication primary responsibility will rest with the speaker. A speaker will, of course, be an individual. But where the individual speaks on behalf of his employer, it will be the employer who is responsible. The same will apply if the individual is an officer of a *company* or partner in a partnership and speaks on behalf of the *company* or partnership. Individuals who make *financial promotions* otherwise than in their capacity as employees, officers or partners will need to consider their own position (they may not be acting in the course of business (see ■ AUTH App 1.5)). Where a *person* other than the originator (for example a newspaper publisher) transmits a communication on the originator’s behalf he is *communicating* it and the originator is causing its *communication*.

Persons who communicate or cause a communication

- 1.6.2** G_{/1} Apart from the originators of a *financial promotion*, the FSA considers the following *persons* to be *communicating* it or causing it to be *communicated*:
- (1) publishers and broadcasters who carry advertisements (including websites carrying banner advertisements); and
 - (2) intermediaries who redistribute another *person*’s communication probably with their own communications.

Persons who do not communicate or cause a communication

- 1.6.3** G_{/1} In the FSA’s view, the following *persons* will not be causing or *communicating*:
- (1) advertising agencies and others when they are designing advertising material for originators;
 - (2) *persons* who print or produce material for others to use as advertisements;
 - (3) professional advisers when they are preparing material for clients or advising them on the need to *communicate* or the merits or consequences of their *communicating* a *financial promotion*; and

- (4) *persons* who are responsible for securing the placing of an advertisement provided they are not responsible for its contents.

Need for an active step to communicate or cause a communication

1.6.4 G_{/1} The FSA considers that, to *communicate*, a *person* must take some active step to make the communication. This will be a question of fact in each case. But a *person* who knowingly leaves copies of a document where it is reasonable to presume that *persons* will pick up copies and may seek to act on them will be *communicating* them.

1.6.5 G_{/1} The *Financial Promotion Order* contains an exemption for mere conduits in article 18. It does not follow that all *persons* who provide services for facilitating the distribution of *financial promotions* are *communicating*. Where *persons* of this kind would normally be unaware of the fact that they may be distributing *financial promotions* or are indifferent as to whether they are doing so, or both, they will not be regarded as *communicating* them. This may, for example, include:

- (1) postal services providers;
- (2) telecommunication services providers;
- (3) broadcasting services providers;
- (4) courier services providers;
- (5) *persons* employed to hand out or disseminate communications.
- (6) a newsagent who sells newspapers and journals containing *financial promotions*.

In other cases, persons of this kind may need to rely on the mere conduit exemption (see ■ AUTH 1.12.18G).

Website operators

1.6.6 G_{/1} Where a website operator provides links to other sites he is not usually to be regarded as causing the *communication* of the contents of those other sites to *persons* who may use the links. See further *guidance* on Internet issues in ■ AUTH App 1.22.

Application of exemptions to persons causing a communication

1.6.7 G_{/1} A general point arises about causing and *communicating* on whether a particular exemption includes a *person* who is causing a communication to be made by another *person*. For example, article 43 of the *Financial Promotion Order* (Members and creditors of certain bodies corporate) applies only to a communication by a *body corporate* to its own shareholders or creditors about its own *securities*. This exemption may apply where a *company* ('P') wishes to acquire another *company* ('C') for cash and arranges for C to *communicate* its offer to C's shareholders. In this case, where P causes C to *communicate*, it is the FSA's view that the exemption that applies to C will also apply to P. This is because, as

'communicate' includes 'causing to *communicate*', the exemption applies where P causes the *communication* of the *financial promotion* by C.

Application of exemptions to persons who communicate on behalf of others

- 1.6.8** G_{/1} Another general point arises about the scope of exemptions that apply only to *financial promotions* by a particular *person*. This is whether the exemption applies to the *communication* of a *financial promotion* by an *unauthorised person* on behalf of the *person* to whom the exemption applies. In the FSA's view, this will not be the case unless the exemption specifically states that it applies to a communication made on behalf of the *person* identified in the exemption. For example, article 62 (Sale of body corporate) applies to 'any communication by or on behalf of a body corporate'.

Meaning of 'made to', 'directed at' and 'recipient'

- 1.6.9** G_{/1} Section 21(1) of the *Act* refers only to the *communication* of an invitation or inducement. It says nothing about communications being 'made to' or 'directed at' *persons* or about who the 'recipient' of a communication will be. These facts are determined by the following sequence:
- (1) section 21(13) of the *Act* indicates that communications are 'made';
 - (2) article 6 of the *Financial Promotion Order* (Interpretation: communications) indicates that communications are made by being 'addressed to' a *person*;
 - (3) article 6 then indicates that communications may be addressed:
 - (a) to a particular *person* or *persons* whether verbally or in a legible form (for example, in a telephone call or letter) – these are referred to as communications which are 'made to' *persons*; or
 - (b) to *persons* generally (for example, in a television broadcast or on a website) – these are referred to as communications which are 'directed at' *persons*;
 - (4) article 6 also indicates that a recipient of a communication is the *person* to whom the communication is made, or, in the case of a non-real time communication directed at *persons* generally, anyone who reads or hears the communication.
- 1.6.10** G_{/1} In the FSA's opinion, the matters in ■ AUTH App 1.6.9G have the following effects.
- (1) Any one particular communication will either be real time or non-real time but not both. This is because:
 - (a) a real time communication is one made in the course of an interactive dialogue (see ■ AUTH App 1.10.2G for guidance on the meaning of real time);
 - (b) those exemptions which concern real time communications apply only to communications which are made to *persons* and not those which are directed at *persons*;

- (c) a communication is made to a *person* where it is addressed to him specifically;
- (d) the persons to whom a real time communication is addressed are those *persons* who take part in the interactive dialogue; and
- (e) where a communication is addressed to a particular *person* or *persons* it is not made to anyone else who may read or hear it.

This means that a real time communication cannot also be a non-real time communication made to *persons* other than those to whom it is addressed. But it is possible for the same communication to be issued in different forms. For example, the text of a *real time financial promotion* may be made available to *persons* generally in writing intending to persuade or incite them to *engage in investment activity*. In that case, the written version will be a separate *non-real time financial promotion* which will need to be *approved* or exempt. A similar situation may arise where a *real time financial promotion* made during a meeting is recorded on video and then made available to the public. Also, a *person* may, in the course of an interactive dialogue with a particular *person*, address an invitation or inducement to others who may be present. Where this does not result in an interactive dialogue taking place with those other *persons*, the invitation or inducement will be a separate non-real time communication.

- (2) A communication in the form of a letter or e-mail addressed to a particular *person* is not made to anyone else who, legitimately or otherwise, may read it. For example, it will not be made to any *persons* to whom it is copied unless any invitation or inducement that may be in it is addressed also to those *persons*.
- (3) A communication in the form of a personal conversation or telephone call will not be *communicated* to anyone else who may eavesdrop or otherwise listen to the conversation.
- (4) The recipient of a communication to whom it is addressed, will not always be the *person* who physically receives it. As a communication under section 21 is an invitation or inducement *to engage in investment activity*, it will be addressed to the *person* or *persons* (P) who is or are being invited or induced. An invitation or inducement may be *communicated* to someone such as a friend or relative of P who is asked to pass it on. If so, the communication will be regarded as addressed to P and not to the friend or relative. The same will usually apply where an invitation or inducement is *communicated* to P's adviser or other agent. However, this will not always be the case. The communication made to the agent may be aimed at getting him to act in a particular way. For example, to exercise discretion on his client's behalf. In this case, the communication may be an invitation or inducement to the agent himself to *engage in investment activity*. In the FSA's view, the friend, relative or agent should not himself be regarded as *communicating* the invitation or inducement simply because he faithfully relays the message to P. This is provided that the friend, relative or adviser, in relaying the message, does not make his own invitation or inducement. Friends and relatives would not, in any case, be *communicating* in the course of business. Should agents be making their own *financial promotions* in relaying messages, it is likely that the exemptions for one-off *financial promotions* in articles 28 and 28A of the *Financial Promotion Order* will apply.
- (5) It is important to consider whether any particular *financial promotion* is 'made to' or 'directed at' *persons* as some exemptions in the *Financial Promotion Order* apply only to *financial promotions* which are made to *persons*.

1.7 Engage in investment activity

1.7.1 G_{/1} A communication must be an invitation or inducement to *engage in investment activity* for the restriction in section 21 to apply. Section 21(8) defines this phrase as :

- (1) entering or offering to enter into an agreement the making or performance of which by either party is a *controlled activity*; or
- (2) exercising any rights conferred by a *controlled investment* to acquire, dispose of, underwrite or convert a *controlled investment*.

1.7.2 G_{/1} *Controlled activity* and *controlled investment* are defined in Schedule 1 to the *Financial Promotion Order* and are listed in ■ AUTH App 1.36.4 and ■ AUTH App 1.36.5. Broadly speaking, *controlled activities* and *controlled investments* are similar to *regulated activities* and *specified investments* under the *Regulated Activities Order*. However, with *controlled activities*, the exclusions set out in the *Regulated Activities Order* do not, in most cases, apply. It is important to note, however, that there are certain differences between *controlled activities* and *regulated activities* – most notably with certain credit agreements and funeral plans. So, it is quite possible for a *person* to be carrying on a business in the *United Kingdom* for which he does not require *authorisation* because the business activity either is not connected with financial services or falls within one of the exclusions in the *Regulated Activities Order* but find that the restriction in section 21 applies to his communications.

1.7.3 G_{/1} The overall effect is that a *financial promotion* must relate in some way to a *controlled investment* and may be summarised as the *communication*, in the course of business, of an invitation or inducement to :

- (1) acquire, dispose of or underwrite certain *investments* or exercise rights conferred by such an *investment* for such purpose or for the purpose of converting it; or
- (2) receive or undertake investment services such as *dealing in investments as principal or as agent, managing investments, advising on investments or safeguarding and administering investments*.

1.7.4 G_{/1} So a *financial promotion* will not include an invitation or inducement to:

- (1) refrain from doing any of the things in ■ AUTH App 1.7.3G; or
- (2) exercise rights conferred by an *investment* other than to acquire, dispose of, underwrite or convert an *investment*.

This means that most invitations or inducements to exercise voting rights will not be *financial promotions*.

1.7.5 G_{/1} In the FSA's opinion, section 21 will apply to a communication (made in the course of business) if it contains an invitation or inducement to *engage in investment activity* which is addressed to a particular *person* or to *persons* generally. Where this is the case, it will not matter that the communication may be physically delivered to someone other than the *person* who is intended to *engage in investment activity*. ■ AUTH App 1.6.10G gives more *guidance* on this.

1.8 Having an effect in the United Kingdom

- 1.8.1** G_{/1} Section 21(3) of the *Act* states that, in the case of a communication originating outside the *United Kingdom*, the restriction in section 21(1) applies only if it is capable of having an effect in the *United Kingdom*. In this respect, it is irrelevant whether the communication has an effect provided it is capable of doing so.
- 1.8.2** G_{/1} This appears to give a potentially broad jurisdictional scope to section 21. It seems clear that a communication which originates overseas will be capable of having an effect in the *United Kingdom* if it is an invitation or inducement to *engage in investment activity* which is *communicated* to a *person* in the *United Kingdom*. It would seem that communications made in other circumstances may also be capable of having an effect in the *United Kingdom*. However, the exemption for communications to overseas recipients in article 12 of the *Financial Promotion Order* (Communications to overseas recipients) (see ■ AUTH App 1.12.2G) prevents section 21 from applying to communications which are not directed at *persons* in the *United Kingdom*.
- 1.8.3** G_{/1} Where communications by *persons* in another *EEA State* are made to or directed at *persons* in the *United Kingdom* account must be taken of the effect of any relevant *EU Directives*. For example, the Electronic Commerce Directive (2000/31/EC) will, with limited exceptions, prevent the *United Kingdom* from imposing restrictions on incoming *financial promotions* in information society services. The Treasury has stated in its consultative document ‘Implementation of the E-Commerce Directive in Financial Services: a Second Consultation document’ issued in March 2002 that it intends to amend the *Financial Promotion Order* to give effect to this. Other potentially relevant directives include the Television Without Frontiers Directive (89/552/EEC). This prevents the *United Kingdom* from restricting the re-transmission in the *United Kingdom* of television broadcasts from other *EEA States*. The *Financial Promotion Order* does not have any specific provisions about the Television Without Frontiers Directive. However, it is not intended to block incoming television programmes from other *EEA States*. The *FSA* will take this into account in interpreting the *Financial Promotion Order* and enforcing the restriction in section 21 of the *Act*.

1.9 Circumstances where the restriction in section 21 does not apply

- 1.9.1** G_{/1} Section 21(2) of the *Act* sets out two circumstances in which a *financial promotion* will not be caught by the restriction in section 21(1). These are where the *communicator* is an *authorised person* or where the content of the *financial promotion* has been *approved* for the purposes of section 21 by an *authorised person*. Where *approval* is concerned it must be specifically for the purposes of enabling the *financial promotion* to be *communicated* by *unauthorised persons* free of the restriction under section 21. For example, if a solicitor who is an *authorised person* approves a *financial promotion* for legality generally, that would not suffice unless the solicitor also specifically *approves* the *financial promotion* for the purposes of section 21. And it will not be enough that an *authorised person* has

ensured that the *financial promotion* complies with ■ COB 3 purely so that he can *communicate* it himself. In the FSA's view an *unauthorised person* should be able to rely on a statement made by an *authorised person* on the face of a *financial promotion* that its approval has been given for the purpose of section 21. Such *approval* may be stated to be made for limited purposes. For example, as with the *approval* of a *financial promotion* for an *unregulated collective investment scheme* (see ■ AUTH App 1.20). In other cases, the *unauthorised person* may satisfy himself that it is evident from the facts that *approval* has been given for the purposes of section 21.

- 1.9.2** G_{/1} Where an *authorised person* makes a *financial promotion*, he is not subject to the restriction in section 21. So, the *communication* of the *financial promotion* by the *authorised person* will not be a criminal offence under the provisions of section 25 of the *Act* (Contravention of section 21) and any resulting contract will not be unenforceable under section 30 of the *Act* (Enforceability of agreement resulting from unlawful communications). However, ■ COB 3 may apply wholly or partially to any such *financial promotion*.
- 1.9.3** G_{/1} An *unauthorised person* may wish to pass on a *financial promotion* made to him by an *authorised person*. In this case, the fact that the *financial promotion* was made to him by an *authorised person* will not be enough for the restriction in section 21 not to apply to him. The *authorised person* must also both have *approved* its content and have done so for the purpose of section 21 of the *Act*. If an *authorised person* wishes to ensure that an *unauthorised person* can *communicate* a *financial promotion* made by the *authorised person* to third parties, it may *approve* its own *financial promotion* for the purposes of section 21 of the *Act* (see ■ COB 3.12.1G(3)).
- 1.9.4** G_{/1} With *approval* generally, issues may arise as to what would be subject to the restrictions in section 21 where an invitation or inducement to *engage in investment activity* is made through a publication, broadcast or website or is accompanied by other material. In any such instances, it is necessary to consider the circumstances in which the *financial promotion* is made. For example, where a *financial promotion* takes the form of an advertisement or advice in a newspaper, broadcast or website, the rest of the newspaper, broadcast or website would not ordinarily be part of the *financial promotion*. There may, of course, be a number of *financial promotions* in the same publication, broadcast or website. They will be regarded as separate *financial promotions* unless it is clear that they are part of the same invitation or inducement. ■ AUTH App 1.4.28G offers guidance about when accompanying material may be part of a *financial promotion*.
- 1.9.5** G_{/1} The restriction in section 21 is also disapplied under section 21(5) where provided for by the Treasury by order. The Treasury made such an order on 2 April 2001 (the *Financial Promotion Order*). This contains a number of specific exemptions which are referred to in ■ AUTH App 1.12 to ■ AUTH App 1.15 and ■ AUTH App 1.21. The *Financial Promotion Order* has been amended by:
- (1) The Financial Services and Markets Act 2000 (Financial Promotion (Amendment) Order 2001 (SI 2001/2633);
 - (2) The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (SI 2001/3650); and
 - (3) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No2) Order 2001 (SI 2001/3800).

A consolidated version of the *Financial Promotion Order* is available on the Treasury website www.hm-treasury.gov.uk under 'consultations'.

1.10 Types of financial promotion

- 1.10.1** G_{/1} Although the restriction in section 21 addresses all forms of *financial promotion*, it is necessary to distinguish between particular types of *financial promotion* as these are treated differently under the *Financial Promotion Order*. This regime recognises two types of *financial promotion*. These are *real time* and *non-real time financial promotions*. *Real time financial promotions* are then divided into *solicited* or *unsolicited real time financial promotions*.

Real time v non-real time financial promotions

- 1.10.2** G_{/1} The terms *real time financial promotion* and *non-real time financial promotion* are defined in article 7 of the *Financial Promotion Order* (Interpretation: real time communications). Article 7(1) defines a *real time financial promotion* as a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue. A *non-real time financial promotion* is one that is not a *real time financial promotion*. Article 7(5) states that *financial promotions* made by letter or e-mail or in a publication (defined in article 2 (Interpretation: general) as a newspaper, journal, magazine or other periodical publication, a website, a television or radio programme or a teletext service) are *non-real time financial promotions*. Articles 7(4) and (5) provide certain indicators that a *financial promotion* is a *non-real time financial promotion*. These are that:

- (1) the *financial promotion* is made to or directed at more than one recipient in identical terms (save for details of the recipient's identity);
- (2) the *financial promotion* is made or directed by way of a system which in the normal course is or creates a record of the *financial promotion* which is available to the recipient to refer to at a later time; and
- (3) the *financial promotion* is made by way of a system which in the normal course does not enable or require the recipient to respond to it immediately.

■ AUTH App 1.6.9G explains the meaning of 'made to' and 'directed at'.

- 1.10.3** G_{/1} In the FSA's view, the matters identified in ■ AUTH App 1.10.2G mean that:

- (1) for a communication to be real time it must be made in course of an interactive dialogue; but that
- (2) If the interactive dialogue takes place by means of the exchange of letters or e-mails or in a publication (that is, a newspaper, journal, magazine or other periodical publication, a website, a television or radio programme or a teletext service) the communication will be deemed to be non-real time.

- 1.10.4** G_{/1} The words 'personal visit, telephone conversation or other interactive dialogue' clearly imply that the first two are types of the third. In the FSA's view, it is difficult to envisage circumstances in which a personal visit or telephone conversation would not be interactive. The very fact of a conversation taking place would mean two or more *persons* were interacting with each other. A telephone call is not the same thing as a conversation. It may be made to, or even by, an intelligent machine which asks questions and responds to answers. That is, in the FSA's view, no more an interactive dialogue than a questionnaire or an electronic

decision tree. The FSA cannot see how a scripted call can avoid being an interactive dialogue. The caller presumably has prompts as to what to say depending on the response given or question asked by the recipient of the call. However, the recipient is clearly able to and likely to interact and the degree of interaction cannot be determined in advance.

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In the FSA's view, the fact that scope for interaction is essential if a *financial promotion* is to be real time leads to the following conclusions.

- (1) Most communications made in written or pictorial form will not offer scope for interaction. The most likely exception to this is where *persons* are expected to respond immediately. This situation may arise, for example, where the equivalent of a telephone conversation is conducted by e-mail. This is the basis of the exemption in article 20A(1)(b)(ii) (see ■ AUTH App 1.12.37G). However, the only communications in written or pictorial form which can be real time communications are those which are not contained in a letter, e-mail or publication. This results from article 7(3) as explained in ■ AUTH App 1.10.2G and ■ AUTH App 1.10.3G(2).
- (2) The factors in article 7(5), whilst they are helpful as indicators, do not necessarily have to be satisfied for a communication to be non-real time provided it does not represent an interactive dialogue. For example, in the FSA's view, a broadcast made by megaphone from a moving vehicle or temporary chalk markings on a board are non-real time communications even though there may be no lasting record.
- (3) Some oral communications will not involve an interactive dialogue. This is because:
 - (a) they are recorded or broadcast, so preventing interaction; or
 - (b) they represent a one-way flow such as a speech, address or presentation.

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An issue arises where a *person* (P), during the course of a presentation or meeting, invites or is asked to answer questions from the audience. P's response may or may not be a real time communication. For example, the question may not be personal to the questioner and P may respond by addressing the audience in a way that precludes or does not call for any interaction. This will be a non-real time communication. On the other hand, the question may call for P to pursue a conversation with the questioner, in which case the communication will be an interactive dialogue and a real time communication. In this case, the communication will not involve a non-real time communication made to or directed at the rest of the audience as it is addressed and made to the questioner. It may be that P, in the course of an interactive dialogue with a questioner, makes an invitation or inducement that is addressed to the audience as a whole. This will be a separate communication that will be non-real time. Any handout or slide or other visual aids used during the presentation will be non-real time communications.

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In the FSA's view, a communication which may exist in enduring form will be a non-real time communication. Examples of this include videos, audio cassettes, bulletin boards, websites and recorded telephone messages. Messages placed on Internet chat-rooms will also be non-real time. Radio or television programmes or teletext services may contain communications that involve an interactive dialogue. For example, a communication made by the broadcaster and addressed to an interviewee studio guest, a member of the audience or a person who speaks to the broadcaster by telephone. These will always be non-real time communications. This is again the effect of article 7(3) as explained in ■ AUTH App 1.10.2G and ■ AUTH App 1.10.3G(2). Broadcasters may be able to use the exemption for

journalists in article 20 of the *Financial Promotion Order* (see ■ AUTH App 1.12.23G). Interviewee studio guests, if they make *financial promotions* during a broadcast, may be able to use the exemption in article 20A of the *Financial Promotion Order* (Promotion broadcast by company director etc) (see ■ AUTH App 1.12.32G).

Solicited v unsolicited real time financial promotions

- 1.10.8** G_{/1} Article 8(1) of the *Financial Promotion Order* (Interpretation: solicited and unsolicited real time communications) states that a *real time financial promotion* is solicited where it is made in the course of a personal visit, telephone conversation or other interactive dialogue which was initiated by or takes place in response to an express request from the recipient. An express request for these purposes may have been made before section 21 entered into force. An *unsolicited real time financial promotion* is any *real time financial promotion* which is not solicited.
- 1.10.9** G_{/1} Article 8(3) of the *Financial Promotion Order* clarifies that a *person* will not have expressly requested a call, visit or dialogue merely :
- (1) because he does not 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
 - (2) 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 the visit, call or dialogue to take place.
- 1.10.10** G_{/1} Article 8(3) of the *Financial Promotion Order* also has the effect in broad terms that *financial promotions* made during a visit, call or dialogue will be solicited only if they relate to *controlled activities* or *controlled investments* of the kind to which the recipient envisaged that they would relate. In determining whether this is the case, account must be taken of all the circumstances when the call, visit or dialogue was requested or initiated. For example, a *person* may ask for a visit from a representative of an investment product company with a view to receiving advice on an appropriate pension product. In this case, the representative would be likely to be making an *unsolicited real time financial promotion* if, during conversation, he attempts to persuade or incite the recipient to make an investment which would not be for the purposes of pension provision.
- 1.10.11** G_{/1} ■ AUTH App 1.6.9G explains that article 6 of the *Financial Promotion Order* has the broad effect that a communication is made to another *person* where it is addressed to a particular *person* or *persons*. It also states that a ‘recipient’ of a communication is the *person* or *persons* to who it is made (that is to whom it is addressed). This takes on importance where certain exemptions which apply to *real time financial promotions* made to a *person* are concerned. It appears to the FSA that, in certain situations, a *person* may make a *financial promotion* to someone who has expressly asked that it be made or who has initiated it but where, at the same time, it is also made (that is addressed) to *persons* who may have not requested or initiated it. For example, a married couple may visit their financial adviser. One partner may request or initiate the dialogue which the adviser then addresses to both. Article 8(4) of the *Financial Promotion Order* recognises this and has the effect that an *unsolicited real time financial promotion* will have been made to the *persons* other than the *person* who expressly asked for or initiated the call, visit or dialogue in which it was made unless they are:

- (1) close relatives of that *person* (that is, a *person's* spouse, children and step-children, parents and step-parents and brothers and sisters and step-brothers and step-sisters, including a spouse of any of those *persons*); or
- (2) expected to engage in any investment activity jointly with that *person*.

1.10.12 G /1 In the FSA's view, *persons* who may be *engaging in investment activity* jointly include:

- (1) a married couple;
- (2) two or more *persons*, who will invest jointly in a product (for example, a cohabiting couple who are not married or members of a family);
- (3) the directors of a *company* or partners in a firm;
- (4) members of a *group of companies*;
- (5) the participants in a joint commercial enterprise;
- (6) the members of an investment club; and
- (7) the managers or prospective managers of a *company* who are involved in a management buy-out or buy-in.

1.10.13 G /1 There will be occasions when *financial promotions* are received by *persons* other than those in ■ AUTH App 1.10.11G(1) or ■ AUTH App 1.10.11G(2) who will not have solicited them. For example, a more distant relative or friend ('F') who acts as a support to the *person* who is to *engage in investment activity* ('P') or P's professional adviser ('A'). As explained in ■ AUTH App 1.6.10G, in such cases the *financial promotion* will not be made to F or A unless it is also addressed to them. And it will only be addressed to F or A if the invitation or inducement relates to F or A *engaging in investment activity*. So a solicited *financial promotion* made to P will not also be an unsolicited *financial promotion* made to F or A.

1.10.14 G /1 In the FSA's view, the mere fact of a *person* accepting an invitation to attend a meeting does not automatically mean that he has initiated any dialogue which may take place during the meeting and which may amount to a *financial promotion*. This will depend on the facts of each case and such matters as the manner in which the invitations are made, the arrangements for acceptance and how the meeting is conducted. For example, the fact that *investments* or investment services will be offered during the meeting may be made clear in the invitation.

1.11 Types of exemption under the Financial Promotion Order

1.11.1 G /1 The various exemptions in the *Financial Promotion Order* are split into three categories :

- (1) exemptions applicable to all *controlled activities* (Part IV of the Order);
- (2) exemptions applicable only to *controlled activities* concerning *deposits* and *contracts of insurance* other than *life policies* (Part V of the Order); and

(3) exemptions applicable to any other types of *controlled activity* (Part VI of the Order).

1.11.2 G_{/1} Each individual exemption indicates the type of *financial promotion* (for example, non-real time) to which it relates. ■ AUTH App 1.36.7 contains a table showing this breakdown. Each exemption also indicates whether it applies to any communication or only to those made to or directed at *persons*.

1.11.3 G_{/1} Article 11 of the *Financial Promotion Order* (Combination of different exemptions) allows for certain exemptions to be combined when no single exemption may apply. The combinations allowed are:

- (1) exemptions in Part IV of the *Financial Promotion Order* (all *controlled activities*) may be combined with each other or any of the exemptions in:
 - (a) Part V (*deposits and contracts of insurance other than life policies*); or
 - (b) Part VI (other *controlled activities*);
- (2) exemptions in Part V may be combined with each other; and
- (3) exemptions in Part VI may be combined with each other.

However, there is no power to combine exemptions in Part V with exemptions in Part VI.

1.11.4 G_{/1} In a few instances, the requirements of a particular exemption may affect the practicality of its being combined with another. These are article 12 (Communications to overseas recipients) and article 52 (Common interest group of a company). Article 12, for example, requires that *financial promotions* must be made to or directed only at overseas *persons* and certain *persons* in the *United Kingdom*. This presents no difficulty with article 12 being combined with other exemptions in Parts IV or VI of the *Financial Promotion Order* where *financial promotions* are being made to *persons*. But, where a *financial promotion* is directed at the *persons* mentioned in article 12, it is difficult to see how the requirement that it must be directed only at those *persons* can be satisfied if it is also directed at other *persons* under another exemption. However, in the *FSA's* view, this does not prevent the same *financial promotion* being *communicated* under another exemption in another form or at any other time. For example, an electronic version of a *financial promotion* may be directed at overseas *persons* from a *person's* website in the *United Kingdom* using article 12. That *person* may then use another exemption to send paper copies of the same *financial promotion*.

1.11.5 G_{/1} A number of exemptions require that a *financial promotion* must be accompanied by certain indications. Article 9 of the *Financial Promotion Order* states that indications must be presented in a way that can be easily understood and in such manner as is 'best calculated' to bring the matter to the recipient's attention. In the *FSA's* opinion, the expression 'best calculated' should be construed in a sensible manner. It does not, for instance, demand that the indication be presented in bold red capitals at the start of a document or advertisement. If the indication is given enough prominence, taking account of the medium through which it is *communicated*, to ensure that the recipient will be aware of it and able to consider it before deciding whether to *engage in investment activity*, the *FSA* would regard article 9 as being satisfied.

1.11.6 G_{/1} Some exemptions are based on the *communicator* believing on reasonable grounds that the recipient meets certain conditions. For example, articles 19(1)(a), 44, 47 and 49. What are reasonable grounds for these purposes will be a matter for the

courts to decide. In the *FSA's* view, it would be reasonable for a *communicator* to rely on a statement made by a potential recipient that he satisfies relevant conditions. This is provided that there is no reason to doubt the accuracy of the statement. In case of doubt, further checks may be necessary. These could include:

- (1) checking on the record kept by the *FSA* under section 347 of the *Act* (The record of authorised persons etc) that a *person* is *authorised*;
- (2) checking with a *person's* employer that he is employed in a particular capacity; or
- (3) in the case of a *person* claiming to be a certified high net worth individual or sophisticated investor, asking to see a copy of the current certificate or the signed statement or both.

1.12 Exemptions applying to all controlled activities

- 1.12.1** G_{/1} Part IV of the *Financial Promotion Order* contains several exemptions which apply to all *controlled activities*. These are summarised in ■ AUTH App 1.12.2G to ■ AUTH 1.12.37G.

Financial promotions to overseas recipients (article 12)

- 1.12.2** G_{/1} This exemption concerns *financial promotions* which are made to or directed only at overseas persons (except in the circumstances referred to in ■ AUTH App 1.12.8G).
- 1.12.3** G_{/1} The exemption applies to situations where a *financial promotion* is either :
- (1) made to a *person* who receives it outside the *United Kingdom*; or
 - (2) directed at *persons* who are outside the *United Kingdom*.
- 1.12.4** G_{/1} The exemption presently applies whether or not the *financial promotion* is made from the *United Kingdom*. However, there is the exception that, if it is an *unsolicited real time financial promotion*, it must be made from a place outside the *United Kingdom* and be for the purposes of a business carried on entirely outside the *United Kingdom*. The exemption as currently drafted conflicts with the requirements of the Electronic Commerce Directive (2000/31/EC). The Treasury has indicated in its consultative document 'Implementation of the E-Commerce Directive in Financial Services: A Second Consultation Document' issued in March 2002 that it intends to amend the *Financial Promotion Order*. The Treasury plans to ensure that section 21 does not restrict *persons* in other *EEA States* who wish to make *financial promotions* in the *United Kingdom* though an information society service. The Treasury document also states that amendments will be made to ensure that section 21 applies to outgoing *financial promotions* of that kind, in order to ensure that the principle of *Home State* regulation of information society services is sustained.
- 1.12.5** G_{/1} Articles 12(3) and (4) of the *Financial Promotion Order* (subject to article 12(5) – see ■ AUTH App 1.12.8G) have the effect that, where a *financial promotion* is

directed from a place outside the *United Kingdom*, it will be conclusive proof that it is not directed at *persons* in the *United Kingdom* even if it is received by a *person* in the *United Kingdom*, if:

- (1) the *financial promotion* is not referred to in or directly accessible from another communication (for example, an advertisement in a *UK* newspaper or a *UK* website) which is itself made to or directed at *persons* in the *United Kingdom* by or on behalf of the same overseas *person*; and
- (2) there are proper systems and procedures in place to prevent recipients in the *United Kingdom* other than *persons* to whom the *communication* might otherwise lawfully have been made from engaging in the investment activity to which the *financial promotion* relates with the *overseas person* or his *close relative* or *group company*.

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There is no definition in the *Financial Promotion Order* of what ‘proper systems and procedures’ are, and the matter will ultimately be for the courts to determine. This is unsurprising as systems and procedures may take many different forms depending upon the precise circumstances in which *financial promotions* are made. But it is clear that *persons* seeking conclusive proof that the exemption applies must consciously make arrangements to prevent their dealing with certain recipients in the *United Kingdom*. In the *FSA*’s view, proper systems and procedures will involve arrangements for scrutinising enquirers or applications with a view to identifying *persons* who are located in the *United Kingdom* and are not *persons* to whom the *communication* could lawfully have been made. *Persons* to whom the *financial promotion* could lawfully have been made does not mean only those covered by article 12. For example, depending on the *controlled investment* which the *financial promotion* is about, they could include a certified high net worth individual or a sophisticated investor. Such arrangements may be conducted manually using a questionnaire or electronically through password-protected access to information or the programming of software to recognise and reject *United Kingdom* addresses or both. The need for proper systems and procedures does not automatically mean that there will no longer be conclusive proof should, on isolated occasions, the systems or procedures fail to prevent dealings with a recipient in the *United Kingdom*. Provided the systems and procedures were and remain proper there will be conclusive proof that the exemption applies. A *financial promotion* from overseas might lead to a recipient in the *United Kingdom* engaging in investment activity with another *group company* (G) of the *person* (P) who makes the *financial promotion*. In this situation, it is not necessary that P operates the proper systems and procedures to get conclusive proof that the exemption applies. It will be enough that G operates the proper systems and procedures.

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Where a *financial promotion* is directed from within the *United Kingdom*, articles 12(3) and (4) also state (subject to article 12(5) – see ■ AUTH App 1.12.8G) that there can be conclusive proof that the *financial promotion* is directed only at *persons* outside the *United Kingdom*. This will be the case if, in addition to the conditions referred to in ■ AUTH App 1.12.5G(1) and ■ AUTH App 1.12.5G(2), the *financial promotion* is accompanied by an indication that :

- (1) it is directed only at *persons* outside the *United Kingdom*; and
- (2) it must not be acted upon by *persons* in the *United Kingdom*.

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In any case, some but not all of the conditions referred to in ■ AUTH App 1.12.5G(1) to ■ AUTH App 1.12.5G(2) and ■ AUTH App 1.12.7G(1) to ■ AUTH App 1.12.7G(2) (or the additional condition that the communication is included in a website, newspaper or periodical publication which is principally accessed in or intended for a non-UK market or in a radio or television broadcast or teletext service transmitted

principally for reception overseas) may be met. In these cases, those conditions being satisfied will be taken into account in assessing whether the *financial promotion* is directed only at *persons* outside the *United Kingdom*. Even if none of the conditions are satisfied, it is still possible that a *financial promotion* which has been received by a *person* in the *United Kingdom* may properly be regarded as not having been directed at him. In the FSA's view, it will be an indication that a *financial promotion* in a website is directed at the *United Kingdom* if the website is registered with a UK search engine. Article 12(5) of the *Financial Promotion Order* also states that a *financial promotion* may be regarded as directed only at *persons* outside the *United Kingdom* where it is also directed at *persons* in the *United Kingdom*. This is provided those *persons* are limited to :

- (1) investment professionals (article 19); or
- (2) high net worth companies etc (article 49), or both.

Where a *financial promotion* is also directed at such *persons* in the *United Kingdom* the conclusive conditions referred to in ■ AUTH App 1.12.5G(1) to ■ AUTH App 1.12.5G(2) and ■ AUTH 1.12.7G(1) to ■ AUTH 1.12.7G(2) should be read as if references to *persons* to whom the *financial promotion* may be made or directed included investment professionals or high net worth companies etc. ■ AUTH App 1.11.4G explains how article 12 may be combined with other exemptions.

Financial promotions from customers and potential customers (article 13)

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Financial promotions made by a prospective customer to a *person* who supplies a *controlled investment* or services comprising *controlled activities* with a view to his acquiring the *investment*, or receiving the services or receiving information about those *investments* or services, are exempted. This exemption will only be of relevance to corporate customers or others who are acting in the course of business. Other types of customers will not be subject to section 21 to begin with.

Follow up financial promotions (article 14)

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Financial promotions other than *unsolicited real time financial promotions* are exempt where they follow up an earlier *financial promotion* which, in compliance with another exemption (such as that for promotions made to high net worth individuals or sophisticated investors – see ■ AUTH App 1.14.21G and ■ AUTH App 1.14.27G), contains certain indications or information. This is provided the *financial promotion*:

- (1) is made by the *person* who made or directed the earlier *financial promotion*;
- (2) is made to a recipient of the earlier *financial promotion*;
- (3) relates to the same matter as the earlier *financial promotion*; and
- (4) is made within 12 months of the earlier *financial promotion*.

This exemption does not help in situations where the original *financial promotion* was made or directed under an exemption which did not require it to include any indications or information. However, it is likely that, in many cases where no indications or information are required, the exemption to which the earlier *financial promotion* applies would also apply to any follow up *financial promotion*. The

requirement that the follow up *financial promotion* be made by the *person* who made or directed the earlier one would seem to prevent use of the exemption by someone acting on behalf of that *person*. However, the earlier *financial promotion* may have been made or directed by an individual in his capacity as an officer or employee of a company or a partner or employee of a partnership. If so, the exemption will be satisfied if the follow-up *financial promotion* is made by another employee, director or partner of the same *company* or partnership.

Introductions (article 15)

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This exemption applies only to *real time financial promotions* which are made with a view to or for the purposes of introducing *persons* to an *authorised* or *exempt person* whose *authorisation* or exemption covers the *controlled activity* to which the *financial promotion* relates. This is subject to the requirement that:

- (1) the *person* making the *financial promotion* ('P') is not a *close relative* or *group company* of the *authorised* or *exempt person*;
- (2) P does not receive any financial reward for making the introduction other than from the recipient of the *financial promotion*; and
- (3) the recipient of the *financial promotion* has not, in his capacity as investor, sought advice from P or, if he has, P has declined to provide it and has recommended that he seek advice from an *authorised person*.

For the purposes of (2), it is the FSA's view that P may be viewed as not receiving any financial reward other than from the recipient where P treats any commission or other financial benefit received from third parties to whom introductions are made as belonging to and held to the order of the recipient. P cannot simply tell the recipient that P will receive commission. The position must be that the commission belongs to the recipient and must be paid to him unless he agrees to its being kept by P. Where this occurs, the payment may be seen to be received by P from the recipient. In the FSA's opinion, the condition would be satisfied by P paying over to the recipient any third party payment he receives. Otherwise, it would be satisfied by P informing the recipient of the sum and that he has the right to require that the sum to be paid to him. This would allow the sum to be used to offset fees due from the recipient for other services provided to him by P. This could take the form of an agreement between P and the recipient that sums received by P will be used to offset any other fees due to P from the recipient. This is provided that P informs the recipient of sums which P has received and of the fees which they have been used to offset. However, it does not allow P to keep third party payments by seeking the recipient's agreement through standard terms and conditions. Similarly, a mere notification to the recipient that a particular sum has been received coupled with a request to keep it does not satisfy the condition.

Exempt persons (article 16)

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This exemption covers two distinct situations. Article 16(1) applies to all exempt persons where they make *financial promotions* for the purpose of their exempt activities. These *persons* would include *appointed representatives*, *recognised investment exchanges*, *recognised clearing houses* and those who are able to take advantage of the *Exemption Order*. So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities* and to make *financial promotions* in the course of carrying them on. Article 16(1) does not apply to

unsolicited real time financial promotions. Persons to whom the *general prohibition* does not apply because of Part XX (Provision of financial services by members of the professions) or Part XIX (Lloyd's members and former underwriting members) of the *Act* are not, for the purposes of article 16, *exempt persons* for their Part XX or Part XIX activities.

- 1.12.13** G_{/1} Article 16 (2) applies to *unsolicited real time financial promotions* made by an *appointed representative* in carrying on the business:
- (1) for which his principal has accepted responsibility for the purposes of section 39 of the *Act* (Exemption of appointed representatives); and
 - (2) in relation to which the *appointed representative* is exempt under section 39.

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. This ensures a level playing field as between employed and tied sales forces. This exemption may be of particular use to telephone sales agencies who will often need to be *appointed representatives* of investment product companies.

Generic promotions (article 17)

- 1.12.14** G_{/1} Under this exemption, the *financial promotion* itself must not relate to a *controlled investment* provided by a *person* who is identified in it, nor must it identify any *person* as someone who carries on any *controlled activity*. So, it will apply where there is a *financial promotion* of a class of products. For example 'ISAs are great' or 'buy into an investment trust and help the economy'. Such *financial promotions* may be made by a *person* such as a trade association which is not itself carrying on a *controlled activity*. But this is provided there is no mention of any particular ISA or investment trust or of any *person* who may give advice on or arrange, sell or manage such investments.
- 1.12.15** G_{/1} The exemption can also be used where an unauthorised intermediary is advertising its services as an intermediary. For instance, an unauthorised intermediary offering to find the best rates on *deposits* or most competitive premiums on motor insurance will not be carrying on a *controlled activity* himself. So, he may identify himself (but not any particular deposit-taker or *insurer*) in the *financial promotion*.
- 1.12.16** G_{/1} Other *persons* may be able to take advantage of the exemption. For example, a *person* making a generic *financial promotion* may identify himself, whether he may carry on a *controlled activity* or not. This is provided that the *financial promotion* does not (directly or indirectly) identify him as someone who carries on a *controlled activity*.
- 1.12.17** G_{/1} Journalists may be able to take advantage of this exemption when writing about *investments* generally. But the exemption would not apply if the *financial promotion* recommends the purchase or sale of particular *investments* such as XYZ Plc shares. This is because it will be identifying XYZ Plc as a *person* who provides the *controlled investment* (being its *shares*) and as a *person* who carries on the *controlled activity* of dealing in securities and contractually based investments (by issuing its own *shares*). Nor would the exemption apply if the *financial promotion* identifies an exchange on which *investments* are traded. That would indirectly identify the exchange as a *person* who carries on the *controlled activities* of dealing in securities or contractually based investments or arranging deals in investments. Journalists may also be able to use the exemption for journalists in article 20 (See ■ AUTH App 1.12.23G).

Mere conduits (article 18)

- 1.12.18** **G**_{/1} The purpose of this exemption is to ensure that, subject to certain conditions, the restriction in section 21 of the *Act* does not apply to those who merely transport the *financial promotions* of other *persons*. Obvious examples here are postal and Internet service providers, courier companies and telecommunications companies. ■ AUTH App 1.6.5G explains that such *persons* may not be regarded as *communicating* a *financial promotion* simply because they have distributed it.
- 1.12.19** **G**_{/1} The conditions in article 18(2) include a requirement that the *person* making the *financial promotion* does not select, modify or otherwise exercise control over its content before it is transmitted or received. Article 18(3) provides that a *person* is not selecting, modifying or exercising control merely as a result of having power to remove material which is illegal, defamatory or in breach of copyright or at the request of a regulatory body or where the law requires him to do so. However, in the FSA's view, the control normally exercised by newspaper publishers or broadcasters over traditional forms of advertising they carry is likely to be enough for the exemption not to be available to such *persons*.
- 1.12.20** **G**_{/1} The conditions in article 18 also require that the *person* acting as the mere conduit must *communicate* in the course of a business carried on by him the principal purpose of which is transmitting or receiving material provided to him by others. In the FSA's view, what matters is that the *person* is carrying on a business which has the required principal purpose. Such a business might represent but a part of a *person's* activities (however small), so long as it represents a discrete business. A discrete business is an activity whose principal purpose is to receive and transmit other *persons'* communications and which is not simply a service provided incidentally or as an adjunct to another service. For example a *person* who operates a website will not be entitled to the exemption (should he be *communicating financial promotions* see ■ AUTH App 1.6) simply because he chooses to provide a chatroom or bulletin board for the use of his customers.

Investment professionals (article 19)

- 1.12.21** **G**_{/1} *Financial promotions* made only to or directed only at certain types of *person* who are sophisticated enough to understand the risks involved are exempt. These are:
- (1) *authorised persons*;
 - (2) *exempt persons* (where the *financial promotion* relates to a *controlled activity* which is a *regulated activity* for which the *person* is exempt);
 - (3) governments and local authorities; and
 - (4) *persons* whose ordinary business involves carrying on a *controlled activity* of the kind to which the *financial promotion* relates and which may include:
 - (a) investment trust companies;
 - (b) *companies* which provide venture capital;
 - (c) large *companies* which have a corporate treasury function;
 - (d) other *persons* who carry on an activity such as dealing in, arranging or advising on *investments* but who do not require *authorisation* because of an exclusion in the *Regulated Activities Order*; and

(e) *professional firms* who are exempt under Part XX of the Act.

This also includes *persons* acting in their capacity as directors, officers or employees of such *persons*.

1.12.22 G_{/1} Article 19(4) sets out conditions which, if all are satisfied, offer conclusive proof that a *financial promotion* is directed only at investment professionals. These conditions relate to indications accompanying the *financial promotion* and the existence of proper systems and procedures. The *guidance* about proper systems and procedures in ■ AUTH App 1.12.6G applies equally to article 19. Article 19(6) specifically states that a *financial promotion* may be treated as made only to or directed only at investment professionals even if it is also made to or *directed at* other *persons* to whom it may lawfully be *communicated*. This would include overseas persons and high net worth companies, etc. Where this is the case, the conditions in article 19(4) should, in the FSA's view, be satisfied if:

- (1) the indications make it clear that the *financial promotion* is directed only at investment professionals and other *persons* to whom it may lawfully be promoted; and
- (2) the systems and procedures are designed to prevent *persons* other than such types of *persons engaging in investment activity*.

Journalists (article 20)

1.12.23 G_{/1} The broad scope of the restriction in section 21 of the *Act* will inevitably mean that it will, from time to time, apply to journalists and others who make their living from commenting on news including financial affairs (such as broadcasters). This is liable to happen when such *persons* offer share tips or recommend the use of a particular firm for investment purposes. Such tips or recommendations are likely to amount to inducements to *engage in investment activity*.

1.12.24 G_{/1} The Treasury, in making the *Financial Promotion Order*, noted that financial journalism has an important part to play in increasing consumer awareness of financial services and products. It further observed the need to strike the right balance between protecting consumers and ensuring that the level of regulation is as light as possible, while respecting the principle of the freedom of the press.

1.12.25 G_{/1} With this objective in mind, the exemption in article 20 (as amended by article 2 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No2) Order 2001) applies to any *non-real time financial promotion* the contents of which are devised by a *person* acting as a journalist where the *financial promotion* is in:

- (1) a newspaper, journal, magazine or other periodical publication;
- (2) a regularly updated news or information service (such as a website or teletext service); or
- (3) a television or radio broadcast or transmission.

In addition, the publication, service or broadcast must be one which satisfies the principal purpose test set out in article 54 of the *Regulated Activities Order*. This means that the principal purpose must not be to advise on or lead or enable *persons* to *buy* or *sell securities* or *contractually based investments*. See ■ AUTH 7 for further *guidance* on this. Article 20 does not define what is meant by a person 'acting in the

capacity of a journalist'. In the FSA's opinion, this expression has a potentially wide meaning. It will apply to anyone who writes for or contributes to a publication, service or broadcast. This includes experts or analysts who may be asked to contribute articles for a publication or website service or to offer their opinion in a broadcast.

1.12.26 G_{/1} Provided the conditions in ■ AUTH App 1.12.25G are met, the exemption in article 20 applies to any *non-real time financial promotion*. However, there is an additional condition where the subject matter of the *financial promotion* is *shares or options, futures or contracts for differences* relating to *shares* and the *financial promotion* identifies directly a *person* who issues or provides such an *investment*. In such cases, the exemption is subject to a disclosure requirement which is itself subject to certain exceptions (see ■ AUTH 1.12.27G). This requirement is that the *financial promotion* must be accompanied by an indication of the nature of any financial interest held by the *person* responsible for the promotion (that is, the journalist or editor) or member of his family (his spouse or children under 18). A financial interest would be subject to disclosure where the *person* or a member of his family would be likely to get a financial benefit or avoid a financial loss if *persons* acted in line with the *financial promotion*. Article 20 does not specify the way in which a financial interest should be indicated. In the FSA's view, a financial interest should be disclosed in a way that will enable recipients to understand readily its nature. For example, 'the writer has a substantial holding of traded call options in these shares'.

1.12.27 G_{/1} The exceptions to the disclosure requirement are where the *financial promotion* is in either :

- (1) a publication, service or broadcast which has proper systems and procedures which prevent the publication of communications without disclosure of financial interests; or
- (2) a publication, service or broadcast which falls within the remit of:
 - (a) the Code of Practice issued by the Press Complaints Commission;
 - (b) the Programme Code of the Radio Authority; or
 - (c) the Producers' Guidelines issued by the British Broadcasting Corporation.

1.12.28 G_{/1} The effect of ■ AUTH App 1.12.27G(2) is that *financial promotions* made by journalists in publications, services or broadcasts to which one of the codes or the guidelines apply are not subject to the disclosure requirement. This is so even if a *financial promotion* is made in breach of the codes or guidelines. Such *financial promotions* would remain to be dealt with by the body responsible for the code or guidelines and the publisher concerned. The code or guidelines may, of course, themselves require disclosure but the fact that they have been specified does not necessarily mean that they will or will always require disclosure. That is something which depends on the requirements of the particular code or guidelines.

1.12.29 G_{/1} The effect of ■ AUTH App 1.12.27G(1) is that a journalist will not breach section 21 by not disclosing a financial interest, providing that the publication, service or broadcast concerned operates proper systems and procedures. As with the exemption in article 12 of the *Financial Promotion Order* (see ■ AUTH App 1.12.6G), what proper systems and procedures are will be a matter ultimately for the courts to determine and may vary according to the medium used. It will depend upon all the circumstances surrounding the publication, service or broadcast. In the FSA's opinion, proper systems and procedures may achieve the objective of preventing the publication of communications without the required disclosure in

one of two ways. They may require that disclosure be made. Or they may seek to prevent journalists from acting in a way which would enable them to profit if *persons* follow their published recommendations. For example, by banning their dealing in the *shares* or related investments for a reasonable period following the promotion. This would ensure that the journalist will not have a financial interest to disclose. For example, and in the *FSA's* opinion, a publication, service or broadcast may be likely to satisfy the test referred to in ■ AUTH App 1.12.27G(1) if it has set up procedures:

- (1) for *persons* responsible for devising the content of *financial promotions*, or for deciding that they should be included in the publication, service or broadcast, to register their financial interests in a central log;
- (2) for the central log to be properly maintained and regularly reviewed;
- (3) where disclosure is required, for all *financial promotions* to be subject to review before publication or broadcast by an appropriately qualified and senior *person*; and
- (4) for the *persons* referred to in (1) to be made aware in writing of the procedures and of their obligations to disclose their financial interests or to refrain from any course of action which may be likely to give them a financial interest requiring disclosure and, preferably, to have confirmed their acceptance of those obligations in writing.

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Persons such as experts or analysts may be approached to contribute at very short notice and may be overseas. In such cases, the systems and procedures referred to in ■ AUTH App 1.12.29G may not be practical. It is the *FSA's* opinion that, where occasional contributors are concerned, proper systems and procedures may include arrangements for ensuring that the need for disclosure (or the avoidance of financial interests) is drawn to the contributor's attention before the communication is made. The contributor's confirmation that he understands and accepts the position on disclosure would also need to be obtained. The arrangements for bringing the position on disclosure to the contributor's attention and for obtaining his understanding and acceptance should be made in whatever way is most appropriate in the circumstances. In other cases, it may be enough that the *persons* responsible for the broadcast satisfy themselves that contributors represent reputable regulated businesses. And that it would be reasonable to believe that they would not seek to promote an investment or investment service in which they had a financial interest without disclosing that fact. This is, of course, merely an example and not the only circumstances in which overseas broadcasts may be regarded as having proper systems and procedures.

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It appears to the *FSA*, however, that there will be situations when it may not be practical for the *persons* who are responsible for a publication, service or broadcast to apply proper systems and procedures to every *person* who may, whilst acting in the capacity of a journalist, *communicate a financial promotion*. For example where *persons* are asked to stand in at the last moment. In such cases, it is the *FSA's* opinion that the benefit of the exclusion will not be lost as respects those *persons* who are subject to the proper systems and procedures. However, any *financial promotions communicated* by *persons* who are not subject to them would still be subject to the restriction in section 21 and would need to be *approved* by an *authorised person* or otherwise exempt.

Promotion broadcast by company director etc

1.12.32 G_{/1} Article 20A (which was added by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No 2) Order 2001) provides a further exemption for certain *financial promotions communicated* by means of a service or broadcast which satisfies the principal purpose test in article 54 of the *Regulated Activity Order* (see ■ AUTH App 1.12.25G and ■ AUTH 7). Readers of this section should also refer to the guidance on *company* statements in ■ AUTH App 1.21.

1.12.33 G_{/1} The main purpose of the exemption appears to be to guard against the possibility that, during the course of a broadcast interview or a live website presentation, a *financial promotion* is made inadvertently by a director or employee of a *company* or other business undertaking when he is not acting in the capacity of a journalist (see ■ AUTH App 1.12.25G). The exemption applies if the *financial promotion* relates only to:

- (1) *shares* of the undertaking or of another undertaking in the same *group* or *options*, *futures* or *contracts for differences* related to those *shares*; or
- (2) any *controlled investment* issued or provided by an *authorised person* in the same *group* as the undertaking.

1.12.34 G_{/1} The exemption applies where the *financial promotion*:

- (1) comprises words which are spoken by the director or employee and not broadcast, transmitted or displayed in writing; or
- (2) is displayed in writing only because it is part of an interactive dialogue to which the director or employee is a party and in the course of which he is expected to respond immediately to questions put by a recipient of the communication.

This is provided that the *financial promotion* is not part of an organised marketing campaign. ■ AUTH App 1.14.4G(3) provides guidance on the meaning of an organised marketing campaign. In the context of article 20A, it is the FSA's view that an individual or isolated *financial promotion* will not represent or be part of an organised marketing campaign. However, a *company* representative may use a broadcast interview or webcast to encourage or incite viewers or listeners to acquire *investments* or investment services which are the subject of an advertising campaign being conducted at the same time. In such cases, any *financial promotion* contained in that interview or webcast will be part of an organised marketing campaign. Where this is the case, the company representative may be able to rely on other exemptions depending upon the subject matter of the *financial promotion* – see ■ AUTH App 1.21.

1.12.35 G_{/1} The exemption also requires that the director or employee is identified as such in the *financial promotion* before it is *communicated*.

1.12.36 G_{/1} The first part of the exemption (referred to in ■ AUTH App 1.12.34G(1)) specifically precludes any form of written communication. However, the FSA understands that the Treasury did not intend to prohibit the use of written words in the form of subtitling. These may be an aid to those with hearing difficulties or to interpret a foreign language, or the use of captions which supplement a spoken communication by highlighting aspects of it without introducing anything new. The FSA cannot fetter its discretion and must consider potential breaches of section 21 of the *Act* on their merits. However, where the only reason why a *person* may have breached section 21 of the *Act* is because he has used subtitling or captioning in this way the FSA would not expect to take further action. In the FSA's view, the position is different if a transcript of the spoken communication is later made available. This

would be a separate communication and would need to be *approved* or otherwise exempt.

- 1.12.37** G_{/1} The second part of the exemption (referred to in ■ AUTH App 1.12.34G(2)) envisages that the director or employee will be holding the equivalent of a conversation conducted in writing. Typically this will involve the exchange of e-mails. It is possible that this part of the exemption could be used by companies making so-called webcasts over the Internet. However, this would only be the case if the service through which the webcast is provided is a regularly updated news or information service (and which meets the principal purpose test – see ■ AUTH 1.12.25G). There is no reason why the exemption should not apply to a *company* website which provides regularly updated news or information about the activities, products or services of the *company* where the website represents a service provided to those who use it. However, not all *company* websites will be services of this kind.

1.13 Exemptions applying to financial promotions concerning deposits and certain contracts of insurance

- 1.13.1** G_{/1} The exemptions in Part V of the *Financial Promotion Order* concern *financial promotions* relating to *deposits* and *contracts of insurance* other than *life policies*. The exemptions may be combined with exemptions in Part IV but not with those in Part VI.
- 1.13.2** G_{/1} Part V provides two kinds of exemption of a general nature and one specific exemption. The exemptions of a general nature are :
- (1) any form of *real time financial promotion* (articles 23 (Deposits: real time communications) and 26 (Relevant insurance activity; real time communications)); and
 - (2) *non-real time financial promotions* containing certain specified information including the name, country of incorporation (if relevant) and principal place of business of the deposit-taker or *insurer* and whether it is regulated, details of any redress schemes and, for deposit-takers only, certain financial information (articles 22 (Deposits: non-real time communications) and 24 (Relevant insurance activity: non-real time communications)).
- 1.13.3** G_{/1} Article 25 (Relevant insurance activity: non-real time communications: reinsurance and large risks) exempts *financial promotions* concerning *contracts of insurance* which are either contracts of reinsurance or contracts covering certain large risks.
- 1.13.4** G_{/1} Intermediaries involved with arranging and advising on *deposits* and *contracts of insurance* other than *life policies* may be *unauthorised persons* as such activities do not amount to *regulated activities* and so do not require *authorisation* under section 19 of the *Act*. However, the combination of the exemptions in Part V together with certain of the exemptions in Part IV (such as generic promotions – see ■ AUTH App 1.12.14G – and follow up communications – see ■ AUTH App 1.12.10G) should mean that it will often be possible for such *persons* to avoid any need to seek *approval* for their *financial promotions* from an *authorised person*.

1.14 Other financial promotions

1.14.1 G_{/1} The exemptions in Part VI apply to different types of *financial promotion*, and the exemption available may be based on a number of facts. These may be the identity of the maker of the *financial promotion*, the identity of the recipient of the *financial promotion*, the subject matter of the *financial promotion* or the nature of the *financial promotion* itself. Some of these exemptions apply to *non-real time financial promotions*, others to *solicited real time financial promotions* and others to *unsolicited real time financial promotions*. Many of the exemptions apply to more than one category of *financial promotion*. ■ AUTH App 1.36.7 contains a table showing which types of *financial promotion* are covered by each individual exemption.

1.14.2 G_{/1} ■ AUTH App 1.14.3G to ■ AUTH 1.14.42G describe some of the more significant exemptions contained in Part VI. See the *Financial Promotions Order* for full details of all the exemptions in Part VI.

One-off financial promotions (articles 28 and 28A)

1.14.3 G_{/1} Article 28 exempts *financial promotions*, other than *unsolicited real time financial promotions*, which are one-off in nature. Whether or not any particular *financial promotion* is one-off in nature will depend upon the individual circumstances in which it is made. Article 28(3) sets out conditions which, if all are met, are conclusive. Otherwise they are indicative. Even if none are met the exemption may still apply. This makes it clear that the overriding issue is whether the *financial promotion* is, in fact, a one-off. The conditions are that:

- (1) the *financial promotion* is made only to one recipient or to a group of recipients in the expectation that they would *engage in investment activity* jointly;
- (2) the product or service involved has been determined having regard to the circumstances of the recipient or recipients; and
- (3) the *financial promotion* is not part of an organised marketing campaign.

1.14.4 G_{/1} The FSA considers the effect of each of the conditions in ■ AUTH App 1.14.3G(1) to ■ AUTH App 1.14.3G(3) to be as follows.

- (1) The first condition requires the *financial promotion* to be made, so ruling out any *financial promotions* which are directed at *persons*. The effect of article 6(b) and (e) of the *Financial Promotion Order* is that a communication is made to a *person* when it is addressed to him and that *person* to whom the *financial promotion* is addressed is its recipient. This means that when one *person* addresses a *financial promotion* to another *person*, it will not be regarded as having been made to anyone else. So, in the case of a *real time financial promotion*, it is not made to any other *person* who may be present. And in the case of a *non-real time financial promotion*, it is not made to any other *person* who may read or hear it. If the *financial promotion* is addressed to more than one *person* they must be proposing to *engage in investment activity* jointly (see ■ AUTH App 1.14.6G).

- (2) The second condition requires the *financial promotion* to apply to the personal circumstances of the recipient so not benefiting a *financial promotion* which take no account of the personal circumstances of the recipient or recipients.
- (3) The third condition requires that the *financial promotion* must not be part of an organised marketing campaign. There is no definition of an organised marketing campaign but, in the FSA's view, it is appropriate to consider each of the words and their effect in this context:
 - (a) 'organised' suggests that the campaign is planned in advance and not something done on the spur of the moment;
 - (b) 'marketing' suggests an element of public promotion so as not to apply to anything of a personal or very limited nature even if it is promotional; and
 - (c) 'campaign' suggests that the *financial promotion* must be part of an overall plan having a common objective.

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In the FSA's opinion, the indicators referred to in ■ AUTH App 1.14.4G suggest that there are two essential elements of a one-off *financial promotion*. These are that it is tailored to the circumstances of the recipient and that it is individual in nature (in that it is not simply a personalised letter sent out as part of a general mailshot). Apart from this there is no need for the communication to be an isolated instance. For example, the fact that there may be a considerable number of communications made during negotiations for a transaction will not prevent each communication from being one-off. The FSA is of the view that none of the three conditions carries significantly more weight than the others. Each *financial promotion* must be assessed against the conditions on its merits. The FSA regards the following to be *financial promotions* which will meet the conclusive conditions provided, in each case, that the *financial promotion* is tailored to the personal circumstances of and addressed to the recipient.

- (1) Individual personal written communications or one to one conversations.
- (2) A response printed in a publication or website or given during a broadcast in response to an enquiry from a reader, viewer or listener.
- (3) A response given to a *person* who asks a question at a presentation or meeting.
- (4) A response to a question raised by another *person* using an internet chatroom or bulletin board.

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In the FSA's view, a group of recipients who may be *engaging in investment activity* jointly could include :

- (1) a married couple;
- (2) two or more *persons* who will invest jointly in a product (for example, a cohabiting couple who are not married or members of a family);
- (3) the directors of a *company* or partners in a firm;
- (4) members of a *group of companies*;
- (5) the participants in a joint commercial enterprise;
- (6) the members of an investment club; and

- (7) the managers or prospective managers of a *company* who are involved in a management buy-out or buy-in.

- 1.14.7** G_{/1} A *financial promotion* may fail to satisfy all of the indicators referred to in ■ AUTH App 1.14.4G because it is addressed to more than one recipient and they are not *persons* who will *engage in investment activity* jointly. In the FSA's view, such a *financial promotion* is capable of being one-off where the *persons* are to enter into the same transaction and the promotion is tailored to their individual circumstances. This may typically happen during negotiations for the sale of a *company* or the raising of corporate finance where a small number of parties are involved.
- 1.14.8** G_{/1} The fact that a *financial promotion* may be made following an organised marketing campaign does not mean that it must automatically be regarded as part of the campaign or that it cannot be one-off. For example, after a *person* has responded to a general promotion, an investment manager may make *financial promotions* to him and tailor them to his individual objectives. Such subsequent *financial promotions* can be one-off. Similarly, a *person* who provides corporate finance services may use an organised marketing campaign to find a potential investor or investee company. Any subsequent *financial promotions* made during negotiations for the deal may be one-off even though they may represent a series of communications to the same recipient. On the other hand, the situation is slightly different where an organised marketing campaign involves the sale of an investment product such as a *life policy*. There will be fewer instances where subsequent *financial promotions* to individual recipients will be capable of being one-off. For example, any *financial promotion* which has the basic elements of selling the product is likely to be part of an organised marketing campaign and will not be a one-off.
- 1.14.9** G_{/1} In the FSA's view, a *person* such as an investment manager or adviser is not conducting an organised marketing campaign purely because he regularly provides a particular client with *financial promotions* as part of his service. Neither is such a *person* conducting an organised marketing campaign purely because he may have several clients whose personal circumstances and objectives may suggest that a particular investment opportunity may attract them. If he considers the individual circumstances and objectives of each client before determining that the opportunity would be suitable for that client the *financial promotions* should be capable of being one-off.
- 1.14.10** G_{/1} In the FSA's view, a *person* will not be making one-off *financial promotions* simply by sending out a series of letters to a number of customers or potential customers where a few details are changed (such as the name and address) but the bulk of the letter is standard. Such letters would be likely to be part of an organised marketing campaign.
- 1.14.11** G_{/1} Article 28A was added by article 2 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 (SI 2001/2633). It exempts one-off *unsolicited real time financial promotions* provided that the *person* making the *financial promotion* believes on reasonable grounds:
- (1) that the recipient understands the risks associated with engaging in the investment activity to which the *financial promotion* relates; and
 - (2) (at the time the communication is made) that the recipient would expect to be contacted by him about the investment activity to which the *financial promotion* relates.
- 1.14.12** G_{/1} In the FSA's view, the article 28A exemption should provide scope for *persons* such as professional advisers to make *unsolicited real time financial promotions* in

various situations. For example, when approaching *persons* with whom their clients are proposing to do business or those *persons'* professional advisers. The exemption will not apply where the *financial promotions* are part of an organised marketing campaign (see ■ AUTH App 1.14.4(G)(3)). So, in cases where a professional adviser is to contact a number of *persons* on a matter which involves each of them it will be necessary for him to consider whether the approaches would be part of an organised marketing campaign. For example, where they are significant shareholders in a company for which an offer has been made. In the FSA's opinion, provided the professional adviser considers the circumstances of each recipient and tailors the *financial promotions* to them it should be possible for the *financial promotions* to be regarded as one-off. Ultimately, however, the matter depends on the precise circumstances in which the *financial promotions* are made.

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Whether or not it would be reasonable to believe that any person understands the risks associated with the investment activity covered in a financial promotion or would expect to be contacted about it must be judged on the particular circumstances. In the FSA's opinion, the exemption requires that the recipient has the required understanding of risk at the time the promotion is made to him. However, it would be reasonable to believe that a *person* understands the risk involved if:

- (1) he is understood to be a professional in relation to the investment activity to which the *financial promotion* relates;
- (2) he is advised about the risks by a *person* who is professionally qualified to give such advice; or
- (3) he has a position in a *company* which it is reasonable to suppose would require him to have such an understanding (such as a *person* who is in charge of a *company's* treasury function).

In the FSA's opinion, a *person* such as the managing director or finance director of a *company* that is seeking venture capital may reasonably be regarded as expecting to be contacted by or on behalf of a potential investor.

Overseas communicators (articles 30-33)

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There are a number of exemptions in the *Financial Promotion Order* relating to *financial promotions* sent into the *United Kingdom* by an overseas *communicator* who does not carry on certain *controlled activities* in the *United Kingdom*. These exemptions apply in addition to any other exemptions which may apply to any particular *financial promotion* by an overseas *communicator*.

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Article 30 exempts any *solicited real time financial promotion* made by an overseas *communicator* in the course of or for the purposes of certain *controlled activities* which he carries on outside the *United Kingdom*. This enables an overseas *communicator*, for example, to respond to an unprompted telephone enquiry made by a *person* in the *United Kingdom* or an enquiry which follows a *financial promotion* made by the overseas *communicator* and which was *approved* by an *authorised person*.

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In order to make an *unsolicited real time financial promotion*, an overseas *communicator* must rely on either article 32 or article 33. Article 32 provides an exemption for *unsolicited real time financial promotions* made by an overseas *communicator* to *persons* who were previously overseas and were a customer of his then. This is subject to certain conditions, including that, in broad terms, the

customer would reasonably expect to be contacted about the subject matter of the *financial promotion*. Article 33 is similar to a sophisticated investor exemption and applies where the overseas *communicator* has reasonable grounds to believe that the recipient is knowledgeable enough to understand the risks associated with the *controlled activity* to which the *financial promotion* relates. It is also necessary for the recipient to have been informed that he will not gain the protections under the *Act* in respect of the activity or of the making of *unsolicited real time financial promotions*, and whether he will lose the benefit of dispute resolution and compensation schemes. The recipient must also have signified clearly that he accepts the position after having been given a proper opportunity to consider the information. There is no definition of a proper opportunity for this purpose. In the *FSA's* opinion it is likely to require the recipient to have a reasonable time to reflect on the matter and, if appropriate, seek other advice. What is a reasonable time, will depend upon the circumstances of the recipient, but, in the *FSA's* opinion, it is unlikely that a time of less than 24 hours will be enough.

- 1.14.17 **G**_{/1} Article 31 exempts *non-real time financial promotions* made to previously overseas customers and subject to certain conditions. Again, to satisfy this exemption, the *communicator* must be based overseas and must be *communicating* with a *person* who was previously a customer of his while that *person* was overseas.

Nationals of EEA States other than the United Kingdom (article 36)

- 1.14.18 **G**_{/1} This exemption allows a *person* in another *EEA State* who lawfully carries on a *controlled activity* in that State to promote into the *United Kingdom*. The terms of the exemption are that the promotion must comply with the *financial promotion rules* in ■ COB 3. Care should be taken as any failure to satisfy any of the relevant requirements of ■ COB 3 may mean that this exemption is not satisfied and that the *financial promotion* may breach section 21 if it has not been *approved* and no other exemption applies to it. The *FSA* recommends that anyone seeking to rely on this exemption either seeks professional advice or contacts the *FSA* before *communicating* the *financial promotion*. This exemption does not apply to *unsolicited real time financial promotions*.

Joint enterprises (article 39)

- 1.14.19 **G**_{/1} Article 39 of the *Financial Promotion Order* exempts a *financial promotion* that:
- (1) is *communicated* by one participator or potential participator in a joint enterprise to another; and
 - (2) is in connection with or for the purposes of that enterprise.

A joint enterprise means, in general terms, arrangements entered into by two or more *persons* for commercial purposes related to a business that they carry on. The business must not involve a *controlled activity*. The term 'participant' includes other members of a *group* of which a participant is a member.

- 1.14.20 **G**_{/1} In the *FSA's* opinion;
- (1) it will not matter that a *person* enters into arrangements for investment or other purposes provided that he also enters them into for commercial purposes; and
 - (2) each participant must be carrying on the business in question in their own right.

This means that the sponsors or promoters of a *company* who arrange for private investors to become shareholders will not be setting up a joint enterprise simply because the *company* may intend to carry on a relevant business which is not a *controlled activity*. Examples of a joint enterprise include a special purpose *company* owned by the participants and set up to operate a commercial project or to hold property of some kind. The participants in joint enterprises of this kind would typically be businesses which are to undertake work on the project or property development and investment companies.

Certified high net worth individuals (article 48)

1.14.21 G_{/1} This exemption disappplies the restriction in section 21 of the *Act* from *non-real time financial promotions* or *solicited real time financial promotions* which are made to a certified high net worth individual and relate to certain *investments*. These *investments* must be either;

- (1) *shares* in or *debentures* of an unlisted *company*; or
- (2) *warrants, certificates representing certain securities, options, futures* or *contracts for differences* relating to *shares* in or *debentures* of an unlisted *company*; or
- (3) *collective investment schemes* investing predominantly in *shares* in or *debentures* of an unlisted *company*.

There is an additional requirement that the recipient must have no contingent liability so that the maximum he may lose is the amount he invests. The term ‘unlisted company’ is defined in article 3 of the *Financial Promotion Order*. This exemption is expected to be of help to unlisted *companies* seeking venture capital.

1.14.22 G_{/1} To be certified as a high net worth individual, the individual concerned must have earned at least £100,000 or have held net assets to the value of more than £250,000 throughout the financial year before the date of the certificate. In order to be current, the certificate must be signed and dated by the individual’s accountant or employer within twelve months of the date on which the communication is made. The *financial promotion* must not invite the recipient to *engage in investment activity* with the *person* who has signed the certificate. There is, however, nothing to prevent an accountant signing a certificate for an individual for whom he may be providing investment services of any kind. This is provided he does not seek to use the article 48 exemption to make *financial promotions* to the individual. The exemption can be used by associates or *group* members of the *person* who signs the certificate.

1.14.23 G_{/1} In addition, the *financial promotion* must contain certain information and the recipient must have previously (within the last 12 months) signed a statement in the terms in article 48(2)(b) of the *Financial Promotion Order*.

1.14.24 G_{/1} A *person* seeking to make a *financial promotion* to another *person* may wish to make enquiries of that *person* to establish whether he is certified. Unless another exemption applies or the *financial promotion* is *approved* by an *authorised person*, such enquiries will not be possible if the enquiry communication is an inducement or invitation to *engage in investment activity*. In the *FSA*’s view, a communication which is merely an enquiry seeking to establish that a *person* holds a current certificate will not itself be an inducement or invitation. Once it has been established

that the *person* qualifies as a certified high net worth individual *financial promotions* about the *controlled investments* in ■ AUTH App 1.14.21G may then be sent to him under article 48. ■ AUTH App 1.4.27G offers further *guidance* on this.

High net worth companies, unincorporated associations and trusts (article 49)

1.14.25 G_{/1} This exemption works on a different basis to that for high net worth individuals. There is no requirement for a certificate or statement to be signed. Instead, the *person* making the promotion must believe on reasonable grounds that the recipients are high net worth companies, unincorporated associations or trusts or be reasonably regarded as directing the *financial promotion* only at such *persons*. A high net worth company, unincorporated association or trust is a *person* who satisfies the conditions in article 49(2)(a) to (e) which, for the most part, involve the amount of assets held.

1.14.26 G_{/1} Article 49(4) gives the list of conditions which, if all are met, is proof that the *financial promotion* is directed at relevant *persons*. It is not necessary for all or any of the conditions to be met for a *financial promotion* to be regarded as directed at relevant *persons*. Ultimately the matter will be one of fact to be determined by taking account of the circumstances in which the *financial promotion* is made. In the FSA's opinion, it is not necessary for a *financial promotion*, to comply with the condition in article 49(4)(a) that there be an indication of the types of *person* to whom it is directed, to refer in detail to the terms of article 49(2). It will be enough that it is clear that the *financial promotion* is directed at *persons* to whom article 49 applies. *Persons* using article 49 will need, however, to consider the extent to which recipients of the *financial promotion* are likely to understand the indication. An appropriate approach may often be to refer to the *financial promotion* being 'directed at high net worth companies, unincorporated associations etc for the purposes of article 49' or similar.

Sophisticated investors (article 50)

1.14.27 G_{/1} To be a sophisticated investor, the recipient of a *financial promotion* must have a current certificate from an *authorised person* stating that he has enough knowledge to be able to understand the risks associated with the description of investment to which the *financial promotion* relates. The FSA considers that a 'description of investment' relates to a category of *investments* with similar characteristics. Examples are given below.

- (1) The *shares* in a private *company* are not the same 'description of investment' as shares in a plc as there will usually be certain significant distinctions. For instance, there will often be restrictions on the transfer of *shares* in a private *company*.
- (2) *Shares* traded on a market or exchange will be a different 'description of investment' to unlisted *shares*.
- (3) *Shares* which have similar characteristics will be of the same 'description of investment' irrespective of whether they are *shares of companies* in the same market or geographical sector.

The recipient must also have signed a statement in the terms in article 50(1)(b). The *financial promotion* must not invite or induce the recipient to *engage in investment activity* with the *person* who has signed the certificate. But it may invite or induce the recipient to *engage in investment activity* with an associate or *group* member of that *person*.

- 1.14.28** G_{/1} The exemption also requires that certain warnings are given to the potential investor. In this respect, article 50(3)(d) provides that the *financial promotion* must state that there is a significant risk of losing all monies invested or of incurring additional liability. In the FSA's view, these are alternative statements and whichever is the relevant statement should be included. If there is no risk of incurring additional liability the statement may simply say that there is a risk of losing the sum invested. This is a mandatory requirement, although the exemption under article 50 may be used to promote *investments* for which either statement would be inappropriate or potentially confusing (for instance if it is used to offer gilts). The FSA cannot fetter its discretion to decide individual cases on their merits. However, where a *person* seeks to rely on the article 50 exemption for a *financial promotion* which would otherwise satisfy the terms of article 50 but which omits the statement required under article 50(3)(d), on the grounds that it would be misleading to include it, the FSA would, generally, take no further action.

Associations of high net worth or sophisticated investors (article 51)

- 1.14.29** G_{/1} This exemption allows a *non-real time* or *solicited real time financial promotion* to be made to an association with a particular membership. Membership of this association must be reasonably believed to be wholly or predominantly certified high net worth individuals, high net worth companies or unincorporated associations or trusts, or sophisticated investors. The *financial promotion* must not relate to an *investment* under the terms of which a *person* can incur additional liability of more than his original investment. In each case, whether the membership of an association is predominantly made up of high net worth individuals, high net worth companies or unincorporated associations or trusts, or sophisticated investors will be a question of fact. The exemption may be expected to be likely to apply, for example, to *financial promotions* to business angel networks. In the FSA's view, the exemption allows for *financial promotions* to be made to the members of the association. It is not restricted to *financial promotions* made to the operator or secretariat of the association.

Common interest group of a company (article 52)

- 1.14.30** G_{/1} Article 52 concerns *non-real time* and *solicited real time financial promotions* about offers of *shares* or *debentures* of a *company*. The offers must be made only to or be reasonably regarded as only directed at certain *persons*. These *persons* must belong to an identified group of *persons* who, when the *financial promotion* is made, might reasonably be regarded as having an existing and common interest with each other and the *company*.
- 1.14.31** G_{/1} The exemption is subject to certain conditions. In broad terms, these are that the *financial promotion* must be accompanied by an indication:
- (1) that the directors or promoters of the *company* have taken all reasonable care to ensure that the *financial promotion* is true and not misleading;
 - (2) that the directors or promoters have not limited their liability;

- (3) that any *person* who is in doubt about the investment should consult an *authorised person*; and
- (4) that:
 - (a) the directors or promoters of the *company* have taken all reasonable care to ensure that potential investors have access to relevant information about the *company*; or
 - (b) any *person* considering investing in the *company* should regard his subscription as helping the *company* to meet its non-financial objectives and only secondarily, if at all, as an investment.

1.14.32 G /1 In line with other exemptions, article 52 contains indicators which, if all are met, mean that the *financial promotion* is directed at relevant *persons*.

1.14.33 G /1 Example of situations where article 52 is likely to apply include offers made by:

- (1) a club or association which is considering incorporation to its members;
- (2) a private school to the parents of its pupils; and
- (3) a *company* to its existing members or creditors (where the exemption in article 43 might also be expected to apply).

1.14.34 G /1 However, *persons* are not to be regarded as having a common interest with each other and a *company* simply because:

- (1) they would have such an interest if they became its members or creditors;
- (2) they all carry on a particular trade or profession; or
- (3) they have an existing business relationship with the *company* whether by being its clients, customers, contractors, suppliers or otherwise.

Sale of body corporate (article 62)

1.14.35 G /1 The exemption in article 62 of the *Financial Promotion Order* applies to any *financial promotion communicated* by or on behalf of a *body corporate*, a *partnership*, an individual or a group of connected individuals. The *financial promotion* must relate to a transaction which is one to acquire or dispose of *shares* in a *body corporate* and either:

- (1) it is the case that:
 - (a) the *shares*, in addition, where appropriate, to any *shares* already held by the buyer, amount to 50% or more of the voting *shares* in the *body corporate*; and
 - (b) the party or parties who act as seller is a *body corporate*, a partnership, a single individual or a group of connected individuals and the party or parties who act as buyer is also one or other of these (but not necessarily the same type as the seller); or

- (2) where the conditions in (1) are not met, but the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the affairs of the *body corporate*.

1.14.36 G_{/1} A group of connected individuals is defined in article 62(4) of the *Financial Promotion Order* as being a group of *persons* each of whom is (for sellers) or is to be (for buyers):

- (1) a director or manager of the *body corporate*;
- (2) a *close relative* of such a *person*; or
- (3) a *person* acting as trustee for a *person* as referred to in (1) or (2)

1.14.37 G_{/1} In the *FSA's* view, a main aim of the exemption (see ■ AUTH App 1.14.35G(1)) is to remove from the scope of section 21 a *financial promotion* concerning the sale of a corporate business by a *person* who, either alone or with others, controls the business to another *person* who, either alone or with others, proposes to control the business.

1.14.38 G_{/1} In any case where the conditions referred to in ■ AUTH App 1.14.35G(1) are not met, it will be necessary to consider the circumstances in which the transaction is to take place in order to determine whether its objective is the acquisition of day to day control (see ■ AUTH App 1.14.35G(2)). In situations where the 50% holding of voting *shares* test is not met it is still possible that the objective of a transaction could be the acquisition of day to day control. For instance, because the remaining shareholders represent a large number of small shareholders who it is reasonable to suppose will not regularly act in concert.

1.14.39 G_{/1} Where the nature of the parties test (see ■ AUTH App 1.14.35G(1)(b)) is not met and the purpose for which the *person* who is the buyer holds or proposes to hold the voting *shares* is considered, it may still be the case that the objective of the transaction is the acquisition of day to day control. This may typically be because there are two or more parties involved as buyer and they do not collectively represent a group of connected individuals as defined. For example, this may happen where the *shares* are to be held by one of the following *persons* who intends to acquire control either alone or with others:

- (1) a *person* (of either sex) with whom a *person* who is to be a manager or director cohabits;
- (2) a venture capital company which proposes to invest in the *company* and which is to provide a representative to act as a manager or director of the *company*; or
- (3) a private *company* used as a vehicle to hold *shares* by a *person* who is to be a manager or director of the *company* (or his *close relative*).

1.14.40 G_{/1} In the *FSA's* opinion, provided that the purpose of the transaction is for the buyer to acquire the necessary control, it is irrelevant who is the seller. The exemption specifically applies to *financial promotions* which are *communicated* on behalf of the parties or potential parties to the transaction. The *FSA* is aware that the Treasury has received comments about the scope of article 62. These are being considered but no decision has been taken on whether to propose any change. If the Treasury were minded to propose any change it would expect to consult publicly first.

Other issues

- 1.14.41** **G**_{/1} Several exemptions, including article 43 of the *Financial Promotion Order* (Members and creditors of certain bodies corporate), apply only in relation to relevant *investments* being *shares* or *debentures* in the *body corporate* or a member of its group, or *warrants* or *certificates representing certain securities* relating to such *shares* or *debentures*. In the *FSA's* view, an exchangeable *debt security* which is partly a *debenture* and partly an *option* is a relevant *investment* for these purposes.
- 1.14.42** **G**_{/1} The exemptions for bearer instruments (articles 41 and 42 of the *Financial Promotion Order*) relate to *financial promotions* made to or directed at *persons* entitled to bearer instruments. For clarity, the *FSA* takes the view that *persons* who hold bearer instruments through a clearing system such as Euroclear or Clearstream are *persons* entitled to those instruments for the purposes of articles 41 and 42.

1.15 Financial promotions by members of the professions (articles 55 and 55A)**Real time financial promotions by professional firms**

- 1.15.1** **G**_{/1} Article 55 of the *Financial Promotion Order* contains a specific exemption for *professional firms* allowing them to make *solicited* or *unsolicited real time financial promotions*. This is provided the *financial promotion* is made:
- (1) by a *person* who carries on a *regulated activity* without needing *authorisation* under the *Part XX exemption*; and
 - (2) to someone who has already (that is, before the *financial promotion* is made) engaged the *person* making the *financial promotion* to provide professional services (that is services which are not *regulated activities* and whose provision is supervised and regulated by a *Designated Professional Body*).
- 1.15.2** **G**_{/1} The article 55 exemption also requires that:
- (1) the *financial promotion* relates to an activity to which the *Part XX exemption* applies or which would be a *regulated activity* but for the exclusion in article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) which concerns activities which are a necessary part of professional services; and
 - (2) the activity to which the *financial promotion* relates would be undertaken for the purposes of, and be incidental to, the provision of professional services to or at the request of the recipient.
- 1.15.3** **G**_{/1} The *FSA* considers that, to satisfy the condition in ■ AUTH App 1.15.2G(2) that an activity be incidental to the provision of *professional services, regulated activities* cannot be a major part of the practice of the *professional firm*. The *FSA* also considers that the following further factors are relevant.

- (1) The scale of *regulated activity* in proportion to other professional services provided.
- (2) Whether and to what extent services that are *regulated activities* are held out as separate services.
- (3) The impression given of how the *professional firm* provides *regulated activities*, for example, through its advertising or other promotions of its services.

In the FSA's opinion, one consequence of this is that the *professional firm* cannot provide services which are *regulated activities* if they amount to a separate business to the provision of professional services. This does not, however, preclude the *professional firm* operating its professional business in a way which involves separate teams or departments one of which handles the *regulated activities*.

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One of the effects of the requirements in ■ AUTH App 1.15.2G concerns *financial promotions* which relates to an activity which is not a *regulated activity* as the result of an exclusion in the *Regulated Activities Order*. In this case, a *professional firm* using the *Part XX exemption* cannot make a *real time financial promotion* relying on article 55 of the *Financial Promotion Order* unless the exclusion is provided by article 67 of the *Regulated Activities Order*. Neither can a *professional firm* rely on article 55 to make *real time financial promotions*, in connection with the provision of professional services to an existing client, if the *financial promotions* are made to a third party. Third parties may be prospective counterparties, rather than a client. In such circumstances, another exemption would need to be available.

Non-real time financial promotions by professional firms

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Article 55A of the *Financial Promotion Order* was added by article 2(b) of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 (SI 2001/2633). It exempts *non-real time financial promotions* where the *financial promotion*:

- (1) is made by a *person* who carries on a *regulated activity* without needing *authorisation* under the *Part XX exemption* (referred to in ■ AUTH App 1.15.6G and ■ AUTH App 1.15.7G as 'Part XX activities'); and
- (2) contains a specified statement and is limited in its content to the matters referred to in ■ AUTH App 1.15.6G.

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A *financial promotion* made under article 55A must contain a statement in the following terms: "The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of [relevant designated professional body]. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide". The *financial promotion* may also set out the *Part XX activities* which the *person* is able to offer to his clients, provided it is clear that these are the incidental services to which the statement relates. In the FSA's view, the requirement that a *financial promotion* must contain a statement in the specified terms does not prevent minor changes to the text. This is provided they do not alter or otherwise change the meaning of the statement. For example, replacing "we" with the name of the firm or "because" with "as" or (where relevant) "members of" with "licensed by the" would be acceptable.

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The article 55A exemption should enable *professional firms* to issue brochures, websites and other *non-real time financial promotions* without any need for *approval* by an *authorised person*. This is provided the *financial promotion* does not also contain an invitation or inducement relating to *regulated activities* other than those covered by the *Part XX exemption*. In this respect, it should be noted that, unlike article 55, the article 55A exemption does not extend to activities which are excluded under article 67 of the *Regulated Activities Order*. The FSA takes the following views in relation to article 55A.

- (1) It is not necessary for the details of the Part XX activities to be set out in one place or adjacent to the statement. A brochure or website, for example, may contain details of Part XX activities in various places so long as it is made clear that they will be incidental investment activities as referred to in the statement. So, this only needs to be set out once in the brochure or website.
- (2) The inclusion of contact details would be regarded as part of the description of Part XX activities.
- (3) A *financial promotion* made under article 55A may be likely, on occasion, to result in the carrying on by the *professional firm* of activities which are excluded under the *Regulated Activities Order*. However, this does not mean that the *financial promotion* will fail to satisfy the terms of article 55A. There will be occasions where a *professional firm* will have to offer to provide services which may or may not involve Part XX activities or excluded activities. In the area of corporate finance, for example, a *professional firm* may offer its services in relation to the sale of an incorporated business or a substantial shareholding in such a business. It will not be clear whether the *professional firm's* services will be Part XX activities or excluded activities until the details of a proposed deal are known. Similarly, a *professional firm* may offer services which in some instances, will fall under the 'necessary' exclusion in article 67 of the *Regulated Activities Order* but, in others, will be Part XX activities. In practice, it will often be impossible for a *professional firm* to distinguish between Part XX activities and excluded activities at the preliminary stage of a brochure or website offering its services. In the FSA's view, the article 55A exemption will apply provided the only *regulated activities* held out in the brochure, website or other *non-real time financial promotion* are Part XX activities. It will, of course, be possible for a *professional firm* to make an offer involving excluded activities to a *person* who responds to a *financial promotion* issued under article 55A. But this is provided another exemption (such as the one-off *financial promotion* exemption (see ■ AUTH App 1.14.3G)) is available in respect of any subsequent *financial promotions*.

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Financial promotions concerning funeral plans

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Section 21 of the *Act* came into force for *financial promotions* about funeral plans on 1 January 2002. A *financial promotion* about funeral plans is subject to the restriction in section 21 of the *Act* if it relates to a pre-paid funeral plan of any kind where the provider of the plan carries on the *regulated activity* of entering into *funeral plan contracts* under article 59 of the *Regulated Activities Order* (see ■ AUTH 2.8.14). This is the case even if the actual plan being promoted is excluded under article 60 of the *Regulated Activities Order*. However, providers may choose only to enter into *funeral plan contracts* which are excluded under article 60 of the

Regulated Activities Order. If this is the case, any *financial promotion* relating to those plans will not be subject to the restriction in section 21 of the *Act*.

1.17 Financial promotions concerning agreements for qualifying credit

- 1.17.1 **G**_{/1} Section 21 will not apply to *financial promotions* concerning agreements for qualifying credit until a date in 2004 yet to be specified by the Treasury. The FSA will be consulting separately on *guidance* on this subject.

1.18 Financial promotions concerning the Lloyd's market

- 1.18.1 **G**_{/1} A *person* involved in *insurance business* written at Lloyd's may be making *financial promotions* when attracting another *person*:
- (1) to *effect* or *carry out contracts of insurance* written at Lloyd's (where the *controlled activity* which is the subject of the *financial promotion* is effecting and carrying out contracts of insurance);
 - (2) to have assets held under *funds at Lloyd's* (where the *controlled activity* may involve dealing in *securities* and *contractually based investments*, arranging deals in investments, managing investments or safeguarding and administering investments);
 - (3) to participate in particular *syndicates* at Lloyd's (where the *controlled activity* is advising on *syndicate* participation or arranging deals in *syndicate* participations or underwriting capacity);
 - (4) to participate indirectly in the Lloyd's market as a shareholder of a corporate *underwriting member* or a limited partner in a *limited liability partnership* which is an *underwriting member* (where the *controlled activity* is dealing in, arranging deals in or advising on *shares* or *units*); or
 - (5) to take out insurance which is written at Lloyd's (where the *controlled activity* is effecting a *contract of insurance*).
- 1.18.2 **G**_{/1} Any *persons* making *financial promotions* as referred to in ■ AUTH App 1.18.1G(3) and ■ AUTH App 1.18.1G (4) are likely to be *authorised persons*. As such they will be subject to ■ COB 3. Any *persons* making *financial promotions* as referred to in ■ AUTH App1.18.1G(1), ■ AUTH App1.18.1G (2) and ■ AUTH App1.18.1G (5) may not be *authorised persons* and, if so, will need to ensure that their *financial promotions* are *approved* by an *authorised person* or that a specific exemption applies (see ■ AUTH App 1.13).

1.19 Additional restriction on the promotion of life policies

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Article 10 of the *Financial Promotion Order* (Application to qualifying contracts of insurance) precludes any of the exemptions from applying to a *financial promotion* which invites or induces a *person* to enter into a *life policy* with a *person* who is not:

- (1) an *authorised person*;
- (2) an *exempt person* who is exempt in relation to *effecting* or *carrying out contracts of insurance* of the class to which the promotion relates;
- (3) a *company* with its head office or a *branch* or agency in another *EEA State* and which is entitled to carry on in that country the class of *insurance business* being promoted;
- (4) a *company* authorised in one of the following countries or states to carry on the class of *insurance business* being promoted :
 - (a) Guernsey;
 - (b) the Isle of Man;
 - (c) Pennsylvania;
 - (d) Iowa; or
 - (e) Jersey.

■ COB 3.13.1 imposes a similar restriction on *authorised persons* concerning their *communicating* or *approving financial promotions* in the precluded circumstances.

1.20 Additional restriction on the promotion of collective investment schemes

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Where *collective investment schemes* are concerned additional restrictions are placed on their promotion to ensure that only those which are regulated are promoted to the general public. This is achieved by a combination of sections 21 and 238 (Restrictions on promotion) of the *Act* as explained in ■ AUTH App 1.20.2G. A *regulated collective investment scheme* is:

- (1) an *authorised unit trust scheme*;
- (2) an *investment company with variable capital*;
- (3) a *scheme* recognised under section 264 of the *Act* (Schemes constituted in other *EEA States*).

- (4) a *scheme* recognised under section 270 of the *Act* (Schemes authorised in designated countries or territories); or
- (5) a *scheme* recognised under section 272 of the *Act* (Individually recognised overseas schemes).

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Section 21 precludes the promotion by *unauthorised persons* of *unregulated collective investment schemes* unless the *financial promotion* is *approved* by an *authorised person* or is exempt. Section 238 then precludes the promotion of an *unregulated collective investment scheme* by *authorised persons* except where:

- (1) there is an exemption in an order made by the Treasury under section 238(6);
- (2) the *financial promotion* is permitted under *rules* made by the FSA under section 238(5) to exempt the promotion, otherwise than to the general public, of *schemes* of certain descriptions; or
- (3) the *scheme* is a single property scheme and its promotion is exempt under regulations made by the Treasury under section 239 of the *Act* (Single property schemes).

In addition, section 240 of the *Act* (Restriction on approval of promotion) precludes an *authorised person* from *approving* a *financial promotion* for the purpose of section 21 if he would not be able to *communicate* it himself under section 238.

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The Treasury has made an order under section 238(6). This is the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 – SI/2633) ('the CIS Financial Promotion Order'). The overall effect of the CIS Financial Promotion Order is to ensure that *authorised persons* are able to promote an *unregulated collective investment scheme* at least as widely as an *unauthorised person* is allowed to do under section 21 without needing the *approval* of an *authorised person*. In general terms, the order contains exemptions equivalent to those in the *Financial Promotion Order* which are relevant to *units* in an *unregulated collective investment scheme*. *Guidance* in ■ AUTH App 1 relating to exemptions in the *Financial Promotion Order* will apply equally to those exemptions where they appear in the CIS Financial Promotion Order. The main exception to this relates to the exemption for one-off *financial promotions* in article 15 of the CIS Financial Promotion Order. That article provides conditions which, if met, are conclusive proof that a *financial promotion* is one-off. However, these do not include the condition that the identity of the product or service must be determined having regard to the recipient's circumstances (see ■ AUTH App 1.14.3G(2) and ■ AUTH App 1.14.4G(2)).

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The FSA has made *rules* under section 238(5) which allow *authorised firms* to *communicate* or *approve* a *financial promotion* for an *unregulated collective investment scheme* in certain specified circumstances. These circumstances are set out in ■ COB 3 Ann 5 and referred to in ■ COB 3.11. To date, the Treasury has not made an order exempting single property schemes under section 239.

1.21

Company statements, announcements and briefings

- 1.21.1** G_{/1} There is a general concern that the practice of *companies* issuing statements and giving briefings may involve a *financial promotion*. These arise sometimes as a result of requirements imposed by a listing authority or an exchange or market, ■ AUTH App 1.4.14G offers *guidance* on when such statements or briefings may amount to or involve an inducement to *engage in investment activity*. It indicates that whilst statements of fact alone will not be inducements, there may be circumstances where there is a promotional element which may amount to an inducement (typically to buy the *company's shares*). In the FSA's experience, it is rare for *company* statements or briefings to involve an invitation.
- 1.21.2** G_{/1} It is common practice for *listed companies* to brief analysts, usually at the time of the *company's* preliminary, interim and, if applicable, quarterly results and after the information has been issued to the market as a whole. Briefings may be made personally to a small or large number of analysts in a meeting or through a conference call. It is increasingly becoming the practice for *listed companies* to make their briefings available live to journalists and the general public on the basis that they may listen to or view, but not take part in, the briefing and any question and answer session. This is usually done through a conference call or a live broadcast (usually termed a webcast) through the *company's* website or the website of a specialist provider. Where such briefings include a *financial promotion* they must be *approved* by an *authorised person* (if they are *non-real time financial promotions*) or exempt.
- 1.21.3** G_{/1} ■ AUTH App 1.21.4G to ■ AUTH App 1.21.21G set out the FSA's views on the potential relevance of certain exemptions to *company* statements and briefings. The exemptions are referred to in the same order as the *Financial Promotion Order*. In the FSA's view, these exemptions (whether alone or, where applicable, in combination) should enable most statements and briefings which involve *financial promotions* to be made by the *company* concerned without the need for *approval*. In particular, the FSA considers that article 69 (see ■ AUTH App 1.21.17G) should ensure that *financial promotions* made during the course of analyst briefings by *listed* and AIM *companies* are exempt and do not require *approval*. Some but not all of these exemptions apply equally to *financial promotions* which are *communicated* by a third party (for instance, a public relations adviser) on behalf of its corporate client. Those exemptions which are not available to a third party in such circumstances are those contained in article 20A (see ■ AUTH App 1.21.6G), 59 (see ■ AUTH App 1.21.11G), and 69 (see ■ AUTH App 1.21.17G).

Article 17: Generic promotions

- 1.21.4** G_{/1} Any statement or briefing which did not identify the *company* as an *issuer of securities* (for example, by referring to its *securities*) and which does not identify any other particular *investment* or provider of *investments* or *investment services* will be exempt as a generic promotion (see ■ AUTH App 1.12.14G). In practice, it will be unlikely that such a statement or briefing would involve a *financial promotion* but the article 17 exemption may be useful where any doubt arises.

Article 19: Investment professionals

- 1.21.5** G_{/1} Where statements or briefings are only available to analysts who are, or who work for, *authorised persons* (including *overseas persons* who would need to be *authorised* if they were conducting their business in the *United Kingdom*), article 19 will exempt any *financial promotion* that may be made (see ■ AUTH App 1.12.21G). Furthermore, where a *financial promotion* is made in the course of an interactive

dialogue with an analyst and is addressed to him, the *financial promotion* will be regarded as having been made to that analyst irrespective of who else may hear or view it (article 6(b) of the *Financial Promotion Order* – see ■ AUTH App 1.6.9G). For example, where a representative of the *company* is responding to a particular question article 19 would then apply. This is not to say that every time a *company* representative answers a question his response, if it involves a *financial promotion*, will be addressed to the questioner for the purpose of article 6(b). This will depend upon the particular circumstances.

Article 20A: Promotion broadcast by company director etc

- 1.21.6 G_{/1} ■ AUTH App 1.12.32G contains detailed *guidance* on the exemption in article 20A. The exemption is capable of applying to *financial promotions* in a *company* statement or briefing where they are *communicated* through a webcast if the website is a regularly updated news or information service. For this to be the case, the website must be a service provided to *persons* who use it (so it must not, for example, simply be an advertising vehicle) and that service must be one of providing news or information which will be updated regularly. This is capable of applying to some corporate websites. For example, the website of a *company* may amount to a service of information about the company's activities, services and products which is regularly updated and the webcast may be seen as part of that service. Not all corporate websites will qualify, however, and each website must be considered on its merits. *Company* representatives seeking to use this exemption will need to bear in mind any restrictions on the making available of certain information to which they may be subject (for example, under *listing rules*).

Article 28 and 28A: One off promotions

- 1.21.7 G_{/1} Article 28 applies to one-off *non-real time* and *solicited real time financial promotions*. Article 28A applies to one-off *unsolicited real time financial promotions*. It is possible that articles 28 or 28A could apply to *financial promotions* in *company* statements or briefings if they were to be made other than to an analyst or journalist. In this respect, the comments made in ■ AUTH App 1.14.3G about one-off *financial promotions* are relevant.

Article 43: Members and creditors of certain bodies corporate

- 1.21.8 G_{/1} Article 43 applies to *non-real time* and *solicited real time financial promotions* made by a *company* ('C') to *persons* who, in broad terms, are:
- (1) members or creditors of C or a *group* member of C ('G');
 - (2) entitled to a relevant investment issued by C or G;
 - (3) entitled to become a member of C or G; or
 - (4) entitled to have transferred to them title to a relevant investment issued by C or G.

The *financial promotion* must relate only to relevant investments issued or to be issued by C or G or, in certain circumstances, another *person* (see ■ AUTH App 1.21.9G(2)). C and G must not be *open-ended investment companies*.

1.21.9 **G** A 'relevant investment' in article 43 means:

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- (1) *shares* or *debentures*; and
- (2) *warrants* and *certificates representing certain securities* relating to (1) and issued by G or a *person* acting on behalf of or under arrangements made with C.

Article 43 allows a *company* to *communicate a financial promotion* to its shareholders about rights issues or a cash offer by a third party for their *shares*. It also allows a *company* to *communicate* with its creditors about restructuring debt obligations. It does not, however, exempt *persons* who may make *financial promotions* on behalf of a *company*.

Article 47: Persons in the business of disseminating information

1.21.10 **G** Article 47 will exempt *financial promotions* in *company* statements or briefings where they are made to members of the press and may be combined with article 19 (Investment professionals). This means that *companies* will only need to look for other exemptions where the recipients of their *financial promotions* are *persons* other than analysts or journalists or both.

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Article 59: Annual accounts and directors' report

1.21.11 **G** Article 59 is capable of applying to *financial promotions* in *company* statements and briefings where they are accompanied by:

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- (1) the whole or any part of the annual accounts of the *company* (provided it is not an *open-ended investment company*); or
- (2) any report prepared and approved by the directors of such a *company* under section 234 and 234A of the Companies Act 1985 or corresponding legislation in Northern Ireland or in another *EEA State*.

In this respect, the *FSA* considers that the annual accounts (or part of them) or directors' report accompanies a *financial promotion* where it is made available to the recipients of the *financial promotion* at the same time. The *financial promotion* should refer to the accompanying material. For example, the accounts or report may be available on a *company's* website and referred to in a *financial promotion* on that website. Or they may be contained in or enclosed with a written communication (including an e-mail) or handed over during a meeting or discussion.

1.21.12 **G** Article 59 imposes certain conditions.

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- (1) The *financial promotion* must be an inducement and not be an invitation or amount to advice to acquire or dispose of an *investment*.
- (2) The inducement must not relate to any *investment* other than *shares* or *debentures* of the *company* making the *financial promotion* (or a member of its *group*) or *warrants* relating to or certificates representing such *shares* or *debentures*.
- (3) If the *financial promotion* contains any reference to past prices of or yields on the *company's securities* as referred to in (2), it must be accompanied by a

statement that past performance cannot be relied on as guide to future performance.

Article 67: Promotions required or permitted by market rules

1.21.13 G_{/1} Article 67 exempts any *financial promotion* other than an *unsolicited real time financial promotion* which relates to *shares, debentures, government and public securities, warrants or certificates representing certain securities* which are permitted to be traded or dealt in on a relevant market. A relevant market for the purposes of article 67 is one which meets the criteria in Part I of, or is specified in or established under the rules of an exchange specified in Parts II or III of, schedule 3 to the *Financial Promotion Order*. This includes *recognised investment exchanges* and *EEA regulated markets* which are *exempt persons* under article 36 of the *Exemption Order*, together with various other overseas markets. The *financial promotion* must, however, be required or permitted to be *communicated* by the rules of the market or by a body which either regulates the market or regulates offers or issues of *investments* to be traded on the market.

1.21.14 G_{/1} The reference to *financial promotions* which are permitted to be *communicated* relates, in the FSA's opinion, to something which is expressly permitted rather than simply not expressly prohibited. Article 67 itself does not specify any particular medium for *communicating* required or permitted material. So, it will be enough for the *financial promotion* to be part of a document which is itself required or permitted to be *communicated* (such as reports or financial statements). Market rules or usual market practice may require the *financial promotion* to be *communicated* in a particular form or by a particular medium. However, the exemption will still apply if the *financial promotion* is *communicated* in a different form or by a different medium provided that its substance is unchanged. But article 67 will not apply to a *financial promotion* simply because it is included in another document which is required or permitted where the *financial promotion* amounts to additional information to that which is required or permitted. Neither does article 67 specify what form permission can take. In the FSA's view, however, permission would need to be given either in rules or guidance applicable to the market in question.

1.21.15 G_{/1} Article 67 refers to an *investment* which is permitted to be traded or dealt in on a relevant market. In the FSA's opinion, this includes a situation where a class of *securities* is traded on a relevant market but the *financial promotion* relates to new *securities* of that class which have not yet themselves been issued or started trading. Where securities of that class have not yet been admitted to trading on a relevant market, article 68 may apply – see ■ AUTH App 1.21.16G.

Article 68: Promotions in connection with admission to certain EEA markets

1.21.16 G_{/1} Article 68 applies where the *financial promotion* relates to *securities* which have not yet been admitted to trading but for which application has been or is to be made. It exempts a *non-real time* or a *solicited real-time financial promotion* which a relevant *EEA* market requires to be *communicated* before admission to trading can be granted. A relevant *EEA* market for this purpose is a market with its head office in an *EEA State* and which meets the conditions in Part I of, or is specified in or established under the rules of an exchange specified in Part II of, Schedule 3 to the *Financial Promotion Order*. Article 68 also requires that the *financial promotion* be one:

- (1) which, if it were included in a prospectus issued in line with Part II of the Public Offers of Securities Regulations 1995, would be required to be *communicated* by those Regulations; and
- (2) which is not accompanied by any information other than that information which is required or permitted to be published by the rules of the relevant *EEA* market.

Article 69: Promotion of securities already admitted in certain markets

1.21.17 G_{/1} Article 69 is similar to article 59 in the conditions it imposes (see ■ AUTH App 1.21.12G). These are two main differences between article 69 and article 59.

- (1) Article 69 does not apply to *unsolicited real time financial promotions*.
- (2) The requirement in article 59 that the *financial promotion* be accompanied by accounts or a report is replaced in article 69. It is replaced by a requirement that *shares* or *debentures* of the *company* or its parent undertaking (or *warrants* relating to or certificates representing such *investments*) are permitted to be traded or dealt in on a relevant market (relevant market having the same meaning as in article 67 – see ■ AUTH App 1.21.13G).

1.21.18 G_{/1} Article 69 exempts *financial promotions* about 'investments issued by' a *company* or a member of its *group*. An issue arises about whether the term 'investments issued by' a *company* includes investments which are 'to be issued by' a *company*. In the FSA's view, there is a case for arguing that this is the effect although the matter is not beyond doubt. Article 69 replaces an earlier exemption made under section 58(3) of the Financial Services Act 1986 and which applied to investments which were to be issued. The FSA understands that article 69 was not intended to be narrower in scope than its predecessor. The FSA considers that the better view is that article 69 applies where investments are 'to be issued'.

1.21.19 G_{/1} In the FSA's opinion, *companies* whose *securities* are permitted to be traded or dealt in on a relevant market should be able to make good use of the article 69 exemption. But such *companies* will need to ensure that they meet the specific requirements in article 69(3) to (6). In very general terms, a *financial promotion* will comply with these requirements if:

- (1) the only reason it is a *financial promotion* is that it contains an inducement about certain *investments* issued by the *company* or a *group* member and which does not amount to advice to any *person* to acquire or dispose of such *investments*; and
- (2) should it contain any reference to past prices of or yields on the *company's investments*, it is accompanied by a statement that past performance cannot be relied on as a guide to future performance.

Article 71: Promotions included in listing particulars, etc

1.21.20 G_{/1} Article 71 applies to a *non-real time financial promotion* included in:

- (1) listing particulars;
- (2) supplementary listing particulars;

- (3) a prospectus approved under *listing rules* under section 84 or 87 of the *Act*;
- (4) a supplementary prospectus approved under *listing rules* made under section 81 of the *Act* (as applied by section 86 or 87); and
- (5) any other document required or permitted to be published by *listing rules* under part VI of the *Act*.

The comments in ■ AUTH App 1.21.14G about when something is required or permitted to be published apply also to (5).

General issues

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A requirement common to the exemptions in articles 59, 67 and 69 is that the *financial promotions* must not relate to *investments* other than those issued by the *company* or a member of its *group*. The *FSA* is aware that there is concern about comments made in *company* statements or briefings. This is that they may be held to be inducements to acquire or dispose of, or exercise rights conferred by, an *investment* issued by a third party. For example, traded options on or certificates representing the *company's shares*. ■ AUTH App 1.4 sets out the *FSA's* general views on when a *communication* is an inducement. It appears to the *FSA* that, for a *company* statement or briefing to involve an inducement to *persons* to, for example, exercise rights under a traded option written on or acquire certificates representing the *company's securities*, it must seek to persuade or induce *persons* specifically to do that. The mere fact that a *person* reading, hearing or viewing a *company* statement or briefing containing an inducement to acquire the *company's securities* may be influenced to exercise traded options which he holds is not enough to make it an inducement to exercise those rights.

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The Internet

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The Internet is a unique medium for *communicating financial promotions* as it provides easy access to a very wide audience. At the same time, it provides very little control over who is able to access the *financial promotion*.

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The test for whether the contents of a particular website may or may not involve a *financial promotion* is no different to any other medium. If a website or part of a website, operated or maintained in the course of business, invites or induces a *person* to *engage in investment activity*, it will be a *financial promotion*. The *FSA* takes the view that the *person* who caused the website to be created will be a *communicator*. So, any software engineers that may or may not have been involved in establishing the website, provided they have no interest in it other than being paid for its design, will not be *communicating financial promotions* contained in it. Similarly, an Internet services provider who merely manages a website for another *person* and who has no control over or responsibility for its contents will not be *communicating any financial promotion* in the site. An Internet service provider whose circumstances are such that he is *communicating financial promotions* for other *persons* may be able to use the exemption for mere conduits (see ■ AUTH App 1.12.18G).

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The Internet also allows hypertext links, where two different sites in the Internet can be connected almost instantaneously by simply clicking on the link. The FSA's views on the position of hypertext links (which should be read with the remainder of ■ AUTH App 1, especially ■ AUTH App 1.4 (Invitation or inducement)) are as follows.

- (1) A hypertext link may or may not be a *financial promotion* in itself. This will depend on the nature of the hypertext link and the context in which it is placed. However, taken in isolation, a hypertext link which is purely the name or logo of the destination will not be a *financial promotion* in its own right. More sophisticated links, such as banners or changeable text, may be *financial promotions*. This will depend upon the facts in each case.
- (2) The material on a host website which contains the hypertext link may in itself be a *financial promotion*. For example, it may contain text which seeks to encourage or incite *persons* to activate the link with a view to *engaging in investment activity*.
- (3) Website material which represents a directory of website addresses or e-mail addresses will not be a *financial promotion* in its own right. That is unless the material also contains an inducement to contact a named addressee with a view to *engaging in investment activity*.
- (4) The destination website (that is, the one that is reached through the hypertext link) may or may not be a *financial promotion*. This will depend upon the content of that website. Website operators are responsible for the contents of their website if it hosts or creates links to the websites of *unauthorised persons*. In most cases they will not be causing the *communication* of any *financial promotion* in those other websites and so will not be responsible for those websites complying with section 21. In some cases, however, the operator ('O') of a website which hosts a link to another website, may be causing the *communication* of a *financial promotion* on that other website. This will only arise when O has made arrangements with the operator of the other website under which O is to procure users of his site to access the link provided with a view to their *engaging in investment activity*.
- (5) An exemption may require certain indications to be made in a *financial promotion* on a website. In these cases, the requirement may be satisfied by putting information on separate pages which can be accessed through a link on the page, or one of the pages, which contains the *financial promotion*.

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Regulated activities

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Under section 19 of the *Act* (The general prohibition) no *person* may, by way of business, carry on a *regulated activity* in the *United Kingdom* unless he is authorised or exempt. The meaning of *regulated activity* is set out in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the *Regulated Activities Order*) (as amended). Any *person* who breaches section 19 of the *Act* commits a criminal offence for which the maximum penalty is two years' imprisonment and an unlimited fine.

1.23.2 G_{/1} Anyone who is carrying on a *regulated activity* is likely to make *financial promotions* in the course of or for the purposes of carrying on that activity. It is beyond the scope of this *guidance* to cover *regulated activities* as such (for a general guide see ■ AUTH 2). There are circumstances, however, where *persons* whose main aim is either :

- (1) to make *financial promotions* for their own purposes or on behalf of others; or
- (2) to help other *persons* to make *financial promotions*,

may find themselves conducting *regulated activities*. Such *persons* may typically include publishers or broadcasters, financial commentators, Internet service providers and website operators and telephone marketing companies.

1.23.3 G_{/1} The *regulated activities* which are likely to be conducted in the circumstances referred to in ■ AUTH App 1.23.2G are :

- (1) giving advice on investments (articles 53 (Advising on investments) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;
- (2) *making arrangements with a view to transactions in investments* (article 25(1) of the *Regulated Activities Order* (Arranging deals in investments)) - for example, where the *person* concerned makes arrangements that are intended to lead to a transaction by a third party; and
- (3) agreeing to carry on either (1) or (2) (article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity)).

1.24 Advising on investments

1.24.1 G_{/1} Under article 53 of the *Regulated Activities Order*, *advising on investments* covers advice which :

- (1) is given to a *person* in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
- (2) is advice on the merits of his (whether as principal or agent) *buying, selling, subscribing for or underwriting a particular investment* which is a *security* or a *contractually based investment* or exercising any right conferred by such an *investment* to *buy, sell, subscribe for or underwrite* such an *investment*.

1.24.2 G_{/1} The effect of advice being given in the circumstances referred to in ■ AUTH App 1.24.1G is that :

- (1) it must relate to an *investment* which is a *security* or a *contractually based investment*;
- (2) that *investment* must be a particular *investment*;
- (3) it must be given to *persons* in their capacity as investors or potential investors;

- (4) it must be advice (that is, not just information); and
- (5) it must relate to the merits of investors or potential investors (or their agents) *buying, selling*, subscribing for or underwriting (or exercising rights to acquire, dispose of or underwrite) the *investment*.

1.24.3

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Each of the aspects referred to in ■ AUTH App 1.24.2G is considered in greater detail in ■ AUTH App 1.25 to ■ AUTH App 1.29. In addition, under article 56 of the *Regulated Activities Order*, advising a *person* to become, or continue or cease to be a *member* of a particular Lloyd's *syndicate* is a *regulated activity*.

1.25

Advice must relate to an investment which is a security or contractually based investment

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For the purposes of section 53 of the *Regulated Activities Order*, a *security* or *contractually based investment* is any one of the following :

- (1) *shares*;
- (2) *debentures*;
- (3) *government and public securities*;
- (4) *warrants*;
- (5) *certificates representing certain securities*;
- (6) *units* in *collective investment schemes*;
- (7) *stakeholder pension schemes*;
- (8) *options*;
- (9) *futures*;
- (10) *contracts for differences*;
- (11) *life policies*;
- (12) *funeral plan contracts* (with effect from 1 January 2002);
- (13) rights to or interests in such *investments*.

1.25.2

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Article 53 does not apply to advice given on any of the following :

- (1) *deposit* or other bank or building society accounts;
- (2) contracts of general insurance or of long term insurance which are not *contractually based investments* (for example, most pure term and permanent health insurance);
- (3) mortgages or other loans;

- (4) National Savings products;
- (5) foreign exchange (or cash);
- (6) commodities (for example, gold);
- (7) real estate;
- (8) any other physical property capable of having investment potential (for example, works of art, racehorses) unless investment is made through a *collective investment scheme*;
- (9) interests under the trusts of an *occupational pension scheme* other than a *stakeholder pension scheme*.

1.26 The investment must be a particular investment

1.26.1 G_{/1} For the purposes of article 53 advice must relate to a particular *investment* – generic or general advice is not covered. Generic or general advice may, however, be a *financial promotion* (see ■ AUTH App 1.4).

1.26.2 G_{/1} Generic advice will not be caught by article 53. Examples of generic advice may include:

- (1) financial planning;
- (2) advice on the merits of investing in Japan rather than Europe;
- (3) advice on the merits of investing in investment trusts as opposed to unit trusts or unit-linked insurance; and
- (4) advice on the merits of investing offshore, or in fixed income rather than floating rate bonds.

1.26.3 G_{/1} In the FSA's view, guiding a *person* through a decision tree should not, of itself, involve advice within the meaning of article 53 (it should be generic advice). For example, helping a *person* to understand what the questions or options are and how to determine which option applies to his particular circumstances. But a recommendation that the *person* concerned should, if the results of using the decision tree so indicate, buy a stakeholder personal pension from a particular provider (or any other particular *investment*) would be advice for the purpose of article 53. An *unauthorised person* guiding another through a decision tree needs to make it clear that the decision tree aids generic decisions and that the *person* doing the guiding is not recommending any particular *investment*.

1.26.4 G_{/1} Examples of a particular *investment* include :

- (1) *securities* – shares in ABC plc, Treasury 10% 2001 stock, XYZ plc *warrants*;
- (2) *units* in *collective investment schemes* - ABC smaller companies fund, XYZ Growth Trust;

- (3) exchange-traded *derivatives* - LME Copper Grade A 3 months, LIFFE Japanese Government bond, ABC plc traded options;
- (4) contractual *investments*, for example, *futures* and other contracts having specified terms and conditions such as duration, volume, interest rate or price and which are to be entered into with a particular *person*;
- (5) *contracts of insurance* which are *contractually based investments* - these are both products and contractual *investments*; so a particular *investment* would include :
 - (a) the ABC Life Personal Pension or the XYZ Life Guaranteed Bond; or
 - (b) a contract having essential terms and provider specified – for instance, a 25 year with-profits low cost endowment contract covering husband and wife and to be issued by XYZ Life Plc.

1.27 Advice to be given to persons in their capacity as investors (on the merits of their investing as principal or agent)

1.27.1 G For the purposes of article 53, advice must be given to or directed at someone who either holds *investments* or is a prospective investor (or their agent).
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1.27.2 G Article 53 does not apply where the advice is given to *persons* who receive it as:
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- (1) an adviser who may use it to inform advice given by him to *persons* for whom he does not act as agent;
- (2) a journalist or broadcaster; or
- (3) an employer (for example, on setting up a pension scheme).

1.27.3 G Article 53 does not apply to advice given to a *person* (such as an independent financial adviser) who is acting as an agent for an investor if it does not relate to a transaction into which the *person* is to enter as agent for the investor.
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1.27.4 G Article 53 does apply where the recipient is someone who invests on behalf of other *persons* (whether as a principal or agent), such as :
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- (1) a trustee or nominee; or
- (2) a discretionary fund manager; or
- (3) an attorney or anyone else who enters into investment transactions as agent for investors,

where he receives the advice in that capacity.

1.27.5 G Advice will still be covered by article 53 even though it may not be given to or directed at a particular investor (for example, advice given in a periodical publication or on a website). The expression ‘investor’ has a broad meaning and will include institutional or professional investors.
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1.28 Advice or information

- 1.28.1** G_{/1} In the *FSA*'s view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of fact or figures.
- 1.28.2** G_{/1} In general terms, simply giving information without making any comment or value judgement on its relevance to decisions which an investor may make is not advice.
- 1.28.3** G_{/1} Information may often involve:
- (1) listings of *share* and *unit* prices;
 - (2) company news or announcements;
 - (3) an explanation of the terms and conditions of an *investment*;
 - (4) a comparison of the benefits and risks of one *investment* as compared to another;
 - (5) league tables showing the performance of *investments* of a particular kind against set published criteria;
 - (6) details of directors' dealings in the *shares* of their own companies;
 - (7) alerting *persons* to the happening of certain events (for example, XYZ shares reaching a certain price).
- 1.28.4** G_{/1} In the *FSA*'s opinion, however, such information may take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. For example:
- (1) a *person* may offer to provide information on directors' dealings on the basis that, in his opinion, were directors to buy or sell investors would do well to follow suit;
 - (2) a *person* may offer to tell a client when certain *shares* reach a certain value (which would be advice if the *person* providing the information has offered to do so on the basis that the price of the *shares* means that it is a good time to buy or sell them); and
 - (3) a *person* may provide information on a selected, rather than balanced, basis which would tend to influence the decision of the recipient.

1.29 Advice must relate to the merits (of buying or selling a particular investment)

- 1.29.1** **G** Advice must relate to the *buying* or *selling* of an *investment* – in other words, the pros or cons of doing so.
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- 1.29.2** **G** An explanation of the implications of, for example, exercising certain rights or the happening of certain events (such as death) need not involve advice on the merits of exercising those rights or on what to do following the event.
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- 1.29.3** **G** Neither does advice on the merits of using a particular stockbroker or investment manager in his capacity as such amount to advice for the purpose of section 53. This is because it is not advice on the merits of *buying* or *selling* an *investment*.
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- 1.29.4** **G** Advice in the form of rating issuers of *debt securities* as to the likelihood that they will be able to meet their repayment obligations need not, of itself, involve any advice on the merits of *buying*, *selling* or holding on to that issuer's stock.
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- 1.29.5** **G** Without an explicit or implicit recommendation on the merits of *buying* or *selling* an *investment*, advice will not be covered by article 53 if it is advice on :
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- (1) the likely meaning of uncertain provisions in an investment agreement;
 - (2) how to complete an application form;
 - (3) the value of *investments* for which there is no ready market;
 - (4) the effect of contractual terms and their commercial consequences;
 - (5) how to structure a transaction to comply with regulatory, competition and taxation requirements; or
 - (6) terms which are commonly accepted in the market.
- 1.29.6** **G** Advice as to what might happen to the price or value of an *investment* if certain events were to take place, however, may be covered by article 53 in some circumstances.
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1.30 Medium used to give advice or information

- 1.30.1** **G** With the exception of periodicals, broadcasts and other news or information services (see ■ AUTH App 1.31.2G), the medium used to give advice should make no difference to whether or not it is caught by article 53.
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- 1.30.2** **G** Advice can be provided in many ways including:
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- (1) face to face;
 - (2) orally to a group;
 - (3) by telephone;
 - (4) by correspondence (including e-mail);
 - (5) in a publication, broadcast or website; and

(6) through the provision of an interactive software system.

- 1.30.3** G_{/1} Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. The provider of the service will be giving advice for the purpose of article 53 only if the service results in something more than a generic recommendation, as with a paper version.
- 1.30.4** G_{/1} Advice in publications, broadcasts and websites is subject to a special regime – see ■ AUTH App 1.31.2G and ■ AUTH 7.
- 1.30.5** G_{/1} Some software services involve the generation of specific buy, sell or hold signals relating to particular *investments*. These signals are liable, as a general rule, to be advice for the purposes of article 53 (as well as *financial promotions*) given by the *person* responsible for the provision of the software. The exception to this is where the user of the software is required to use enough control over the setting of parameters and inputting of information for the signals to be regarded as having been generated by him rather than by the software itself.

1.31 Exclusions for advising on investments

- 1.31.1** G_{/1} The *Regulated Activities Order* contains a number of exclusions which prevent certain activities from being a *regulated activity*.
- 1.31.2** G_{/1} As respects article 53, the main exclusion relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54: Advice given in newspapers etc). The exclusion applies if the principal purpose of any of these is not to give advice covered in article 53 or to lead or enable *persons* to acquire or dispose of *securities* or *contractually based investments*. This is explained in greater detail, together with the provisions on the granting of certificates, in ■ AUTH 7.
- 1.31.3** G_{/1} It is also possible for advice to be excluded if it is given by a *person* in the course of carrying on a profession or business (other than a *regulated activity*). This is if it is reasonably to be regarded as necessary for him to give the advice to provide his professional or other services and he is not separately paid for giving the advice (article 67: Activities carried on in the course of a profession or non-investment business). This could arise in the context of advice given by *persons* such as :
- (1) a solicitor, accountant or tax adviser; or
 - (2) a debt counsellor; or
 - (3) an employment agency.
- 1.31.4** G_{/1} For example, it may be necessary for a *person* referred to in ■ AUTH App 1.31.3G(1) or ■ AUTH App 1.31.3G(2) to advise a client to sell all his assets for tax, legal or debt reduction reasons. However, it may not be necessary for him to recommend selling some *investments* and not others. Whether or not this is the case will depend on the circumstances in which the advice is given.

1.32 Arranging deals in investments

- 1.32.1** G_{/1} Under article 25 of the *Regulated Activities Order*, arranging deals in investments covers:
- (1) making arrangements for another *person* (whether as principal or agent) to *buy*, *sell*, subscribe for or underwrite a particular *investment* which is :
 - (a) a *security*; or
 - (b) a *contractually based investment*; or
 - (c) an *investment* of the kind specified by article 86, or article 89 so far as relevant to that article (Lloyd's *syndicate* membership and capacity and rights to or interests in such *investments*); or
 - (2) making arrangements with a view to a *person* who participates in the arrangements *buying*, *selling*, subscribing for or underwriting *investments* falling within ■ AUTH App 1.32.1G(1)(a) to (c) (whether as principal or agent).
- 1.32.2** G_{/1} Article 25(1) applies only where the arrangements bring about or would bring about the particular transaction in question. This is because of the exclusion in article 26. In the FSA's view, a *person* brings about or would bring about a transaction only if his involvement in the chain of events leading to the transaction is of enough importance that without that involvement it would not take place. The second limb (article 25(2)) is potentially much wider as it does not require that the arrangements would bring about particular transactions. It is this limb which is of potential relevance within the scope of this *guidance*.
- 1.32.3** G_{/1} In the course of their business, people such as publishers or broadcasters, Internet service providers, website operators or telephone marketing companies may provide services for authorised or *exempt persons* or other *persons* (such as *overseas persons*) who carry on *regulated activities*. This does not necessarily mean that any arrangements they make with such *persons* will fall within the scope of article 25(2). For that to be the case, the arrangements must be made with a view to the *authorised* or *exempt* (or overseas) *person* or that *person's* customers or counter-parties or any or all of them *buying* or *selling investments*. This means that a person making arrangements must take account of the purpose for which he makes them.
- 1.32.4** G_{/1} The ordinary business of a publisher or broadcaster can involve him in publishing or broadcasting *financial promotions* (for example, advertisements) on behalf of authorised or *exempt persons*. Journalists who write about *investments* or financial services may promote the services of an authorised or *exempt person*. In the FSA's opinion, such *persons* would not normally be regarded as making arrangements under article 25(2). This is the case even if any arrangements they may have made may lead their readers or viewers to *buy* or *sell investments* in response to the promotions. In the FSA's view, the publisher or broadcaster may normally be seen to be making arrangements with a view to publishing or broadcasting promotions which may include *financial promotions*. The same may apply to arrangements made by Internet website operators who may allow the promotion on their site of services including *financial promotions* through the setting up of hypertext links or the placing of banner advertisements.

- 1.32.5** G_{/1} The *Regulated Activities Order* contains an exclusion (article 27: Enabling parties to communicate) to bring a degree of certainty to this area. This applies to arrangements which might otherwise fall within article 25(2) merely because they provide the means by which one party to a transaction (or potential transaction) is able to *communicate* with other parties. In the FSA's view, the crucial element of the exclusion is the inclusion of the word 'merely'. So that, where a publisher, broadcaster or Internet website operator goes beyond what is necessary for him to provide his service of publishing, broadcasting or otherwise facilitating the issue of promotions, he may well bring himself within the scope of article 25(2).
- 1.32.6** G_{/1} For example, in the FSA's view a publisher or broadcaster would be likely to be making arrangements within the meaning of article 25(2) and be unable to make use of the exclusion in article 27 if :
- (1) he enters into an agreement with a provider of investment services such as a broker or product provider for the purpose of carrying their *financial promotion*; and
 - (2) as part of the arrangements, the publisher or broadcaster does one or more of the following :
 - (a) brands the investment service or product in his name or joint name with the broker or product provider;
 - (b) endorses the service, or otherwise encourages readers or viewers to respond to the promotion;
 - (c) negotiates special rates for his readers or viewers if they take up the offer;
 - (d) holds out the service as something he has arranged for the benefit of his readers or viewers.
- 1.32.7** G_{/1} It would also be an indicator that a publisher or broadcaster might be making arrangements falling within article 25(2) if he receives a commission or other form of reward based on the amount of regulated business done as a result of his carrying the promotion. This would be on the basis that the existence of the financial interest will inevitably have a bearing on the purpose for which the arrangements are viewed as having been made by him. However, the article 27 exclusion will apply in cases where there is such a reward provided the arrangements are made merely to allow the communication to be made.
- 1.32.8** G_{/1} So, the same considerations are liable to apply to a website operator or an operator of a similar service (such as an intranet or closed user electronic service) who is carrying banner advertising from, or otherwise setting up links to the sites of, *authorised or exempt persons*.
- 1.32.9** G_{/1} Other *persons* who may benefit from the exclusion in article 27 include *persons* who provide the means for someone to route an order to another *person*. A *person* providing such order routing services would not, in the FSA's view, be merely facilitating communication (of the orders) if he provides added value. This added value could be in the form, for example, of such things as formatted screens, audit trails, checking completeness of orders or matching orders or reconciling trades.
- 1.32.10** G_{/1} Companies providing telephone marketing and related services to investment firms will face similar issues. If their services are entirely passive – for example, answering telephone calls, sending out literature upon request or referring enquirers to representatives of their client – they may simply be regarded as making

arrangements with a view to their providing telephone answering services. On the other hand, where a telephone marketing company:

- (1) makes proactive calls to prospective customers of its clients; or
- (2) is expected proactively to raise the possibility, during a call made by the prospective customer, of a meeting with or visit by a representative of their client or of the caller being sent promotional literature,

the arrangements are liable to be made with a view to the company's client and its prospective customers *buying or selling investments*. So such arrangements will be likely to fall within article 25(2) unless another exclusion applies (such as that for introductions – see ■ AUTH App 1.33).

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The mere provision by a website operator of a bulletin board or chat room ought not to amount to making arrangements under article 25(2) unless making such arrangements is the specific purpose of the facility. However, operators of websites with such facilities will clearly need to be aware of potential implications (such as the service being used by *unauthorised persons* to give advice or make *financial promotions* or to make misleading statements with a view to manipulating market prices). They may wish to consider drawing such matters to the attention of *persons* who use the facility.

1.33

Introducing

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As with advice, there are various exclusions in the *Regulated Activities Order* which take certain arrangements out of the scope of article 25. Two of these are likely to be particularly relevant to *persons* who are mainly concerned with making or helping others to make communications.

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Article 29 of the *Regulated Activities Order* states that certain arrangements are not covered by article 25. These are arrangements made by an *unauthorised person* ('A'). The arrangements must be made for or with a view to a transaction which is or is to be entered into by another *person* (the client) with or through an *authorised person*. It must also be the case that:

- (1) the transaction is or will be entered into on advice given to the client by an *authorised person*; or
- (2) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from A on the merits of his entering into the transaction (or, if the client has sought such advice, A has declined to give it but has recommended that the client seek such advice from an *authorised person*).

For article 29 to apply, it is also necessary that, in return for making the arrangements, A does not receive from any *person* other than the client financial reward or other advantage, for which he does not account to the client, arising out of his making the arrangements (■ AUTH App 1.12.11G gives *guidance* on when a *person* will be regarded as having received reward from someone other than his client).

- 1.33.3** **G**_{/1} This exclusion may apply, for example, where a website operator, without offering any advice, sets up links to the sites of investment firms but does not receive any form of payment from any of the firms for doing so.
- 1.33.4** **G**_{/1} Of potentially greater significance is the exclusion in article 33 of the *Regulated Activities Order* which excludes arrangements where :
- (1) they are arrangements under which *persons* will be introduced to another *person*;
 - (2) the *person* to whom introductions are to be made is :
 - (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which he is exempt; or
 - (c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves him in engaging in certain activities; and
 - (3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* to which the arrangements relate.
- 1.33.5** **G**_{/1} In the FSA's view, article 33 will apply, for example, where *persons* are finding potential customers for independent financial advisers, advisory stockbrokers or independent investment managers. In this case, the introducer is allowed to receive a payment for making introductions. However, it will not apply where the introductions are made either to a *person* whose advice or management services would not be independent (for example, a product provider such as a life office or a manager of unit trust schemes) or for the purposes of execution-only dealing.
- 1.34** **The business test**
- 1.34.1** **G**_{/1} *Persons* who may be carrying on the activity of *advising on investments* or *making arrangements with a view to transactions in investments* will only require *authorisation* or exemption if they are carrying on those activities by way of business. This is the effect of section 22(1) of *the Act*. Under section 419 of the *Act*, the Treasury has the power, by order, to require activities which would otherwise be treated as carried on by way of business to be treated as not carried on by way of business and vice versa. The Treasury has used this power to restrict the business test when applied to *regulated activities* such as *advising on investments* or *making arrangements with a view to transactions in investments* to situations where a *person* is carrying on the business of engaging in those activities. This is the effect of article 3 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001.
- 1.34.2** **G**_{/1} In the FSA's view, for a *person* to be carrying on the business of *advising on investments* or *making arrangements with a view to transactions in investments*, he will usually need to be carrying on those activities with a degree of regularity. The *person* will also usually need to be carrying on the activities for commercial

purposes. That is to say, he will normally be expecting to gain a direct or indirect financial benefit of some kind. Activities carried on out of friendship or for altruistic purposes will not normally amount to a business. However, in the FSA's view, it is :

- (1) not necessary that a *person* be seeking to profit from carrying on activities; for example a company set up by a number of other companies operating in a particular area to provide research may simply charge to recover its costs but may still be regarded as carrying on its activities as a business; and
- (2) not necessarily the case that services provided free of charge will not amount to a business; for example, much investment advice is provided free of charge to investors but in the course of a business funded by commission payments; services (particularly advice, information or links) available on a website may also be free of charge to users of the site but be part of a business funded by advertising fees or sponsorship; and free newspapers may well represent a business for similar reasons.

1.35 Authorisation and exemption

- 1.35.1** G Any *person* who is contemplating carrying on the *regulated activities* of *advising on investments* or *making arrangements with a view to transactions in investments* by way of business will need *authorisation* or exemption. *AUTH* explains about the *authorisation* process and the procedures for obtaining *Part IV permission* and for the approval of individuals. Exemption would usually be obtained by a *person* entering into an agreement with an *authorised person* under section 39 of the *Act* and the Financial Services and Markets Act 2000 (Appointed Representative) Regulations 2001.

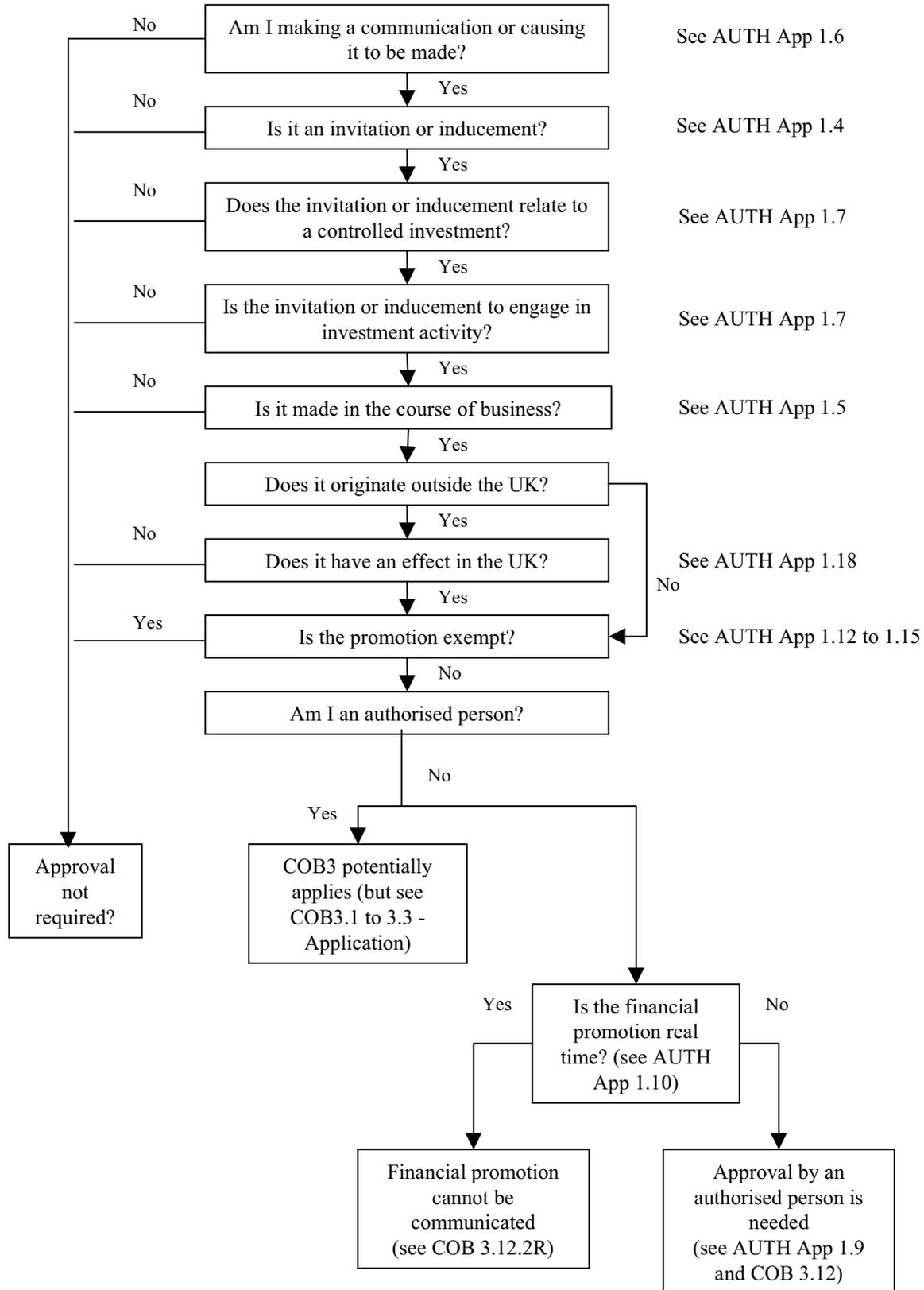
1.36 Illustrative tables

Financial Promotions: flowchart

- 1.36.1** G This flowchart sets out the matters which a *person* will need to consider to see if the restriction in section 21 of the *Act* applies to his communications. It is referred to in
- AUTH App 1.2.5G.

Financial promotions: flowchart

1.36.2 Financial Promotions - Flowchart



Controlled activities and controlled investments

1.36.3 **G** This table lists the activities that are *controlled activities* and the investments that
/1 are *controlled investments* under the *Financial Promotion Order*. It is referred to in
■ AUTH App 1.7.2G

1.36.4 **G** Table Controlled activities
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1. Accepting deposits.
2. Effecting and carrying out contracts of insurance.
3. Dealing in securities and contractually based investments.
4. Arranging deals in investments
5. Managing investments.
6. Safeguarding and administering investments.
7. Advising on investments.
8. Advising on syndicate participation at Lloyd's.
9. Providing funeral plan contracts (with effect from 1 January 2002).
10. Providing qualifying credit (with effect from a date to be announced).
11. Agreeing to do anything in 3 to 10 above.

1.36.5 **G** Table Controlled investments
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12. A deposit.
13. Rights under a contract of insurance.
14. Shares etc.
15. Instruments creating or acknowledging indebtedness (referred to in the Glossary as debentures).
16. Government and public securities.
17. Instruments giving entitlement to investments (referred to in the Glossary as warrants).
18. Certificates representing certain securities.
19. Units in a collective investment scheme.
20. Rights under a stakeholder pension scheme.
21. Options.
22. Futures.
23. Contracts for differences etc.
24. Lloyd's syndicate capacity and syndicate membership.
25. Funeral plan contracts (with effect from 1 January 2002).
26. Agreements for qualifying credit (with effect from a date to be announced).
27. Rights to or interests in anything falling under 12 to 25 above.

Application of exemptions to forms of financial promotion

1.36.6 **G** This table identifies the types of *financial promotion* to which each exemption in the
/1 *Financial Promotions Order* applies. It is referred to in ■ AUTH App 1.11.2G and ■
AUTH App 1.14.1G.

1.36.7 **G** Table Application of Exemptions to Forms of Promotions
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Financial Promotion Order		Applies to		
Article No.	Title and AUTH App 1 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
12	Communications to overseas recipients (1.12.2G)	* 1	*	*
13	Communications from customers and potential customers (1.12.9G)	*	*	*
14	Follow up non-real time communications and solicited real time communications (1.12.10G)		*	*
15	Introductions (1.12.11G)	*	*	
16	Exempt persons (1.12.12G)	* 2	* 3	* 3
17	Generic promotions (1.12.14G and 1.21.4G)	*	*	*
18	Mere conduits (1.12.18G)	*	*	*
19	Investment professionals (1.12.21G and 1.21.5G)	*	*	*
20	Communications by journalists (1.12.23G)			*
20A	Promotion broadcast by company director etc (1.12.23G and 1.21.6G)	*	*	*
22	Deposits : non-real time communications (1.13)			*
23	Deposits : real time communications (1.13)	*	*	
24	Relevant insurance activity : non-real time communications (1.13)			*
25	Relevant insurance activity : non-real time communications : reinsurance and large risks (1.13)			*
26	Relevant insurance activity : real time communications (1.13)	*	*	

Article No.	Title and AUTH App 1 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
28	One-off non-real time communications and solicited real time communications (1.14.3G)		*	*
28A	One-off unsolicited real time communications (1.14.11G)	*		
29	Communications required or authorised by enactments	*	*	*
30	Overseas communicators: solicited real time communications (1.14.15G)		*	
31	Overseas communicators: non-real time communications to previously overseas customers (1.14.17G)			*
32	Overseas communicators: unsolicited real time communications to previously overseas customers (1.14.16G)	*		
33	Overseas communicators: unsolicited real time communications to knowledgeable customers (1.14.16G)	*		
34	Governments, central banks etc		*	*
35	Industrial and provident societies		*	*
36	Nationals of the EEA States other than United Kingdom (1.14.18G)		*	*
37	Financial markets		*	*
38	Persons in the business of placing promotional material	*	*	*
39	Joint enterprises (1.14.19G)	*	*	*
40	Participants in certain recognised collective investment schemes		*	*
41	Bearer instruments: promotions required or permitted by market rules (1.14.42G)		*	*

Article No.	Title and AUTH App 1 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
42	Bearer instruments: promotions to existing holders (1.14.42G)		*	*
43	Members and creditors of certain bodies corporate (1.14.41G and 1.21.8G)		*	*
44	Members and creditors of open-ended investment companies		*	*
45	Group companies	*	*	*
46	Qualifying credit to bodies corporate	*	*	*
47	Persons in the business of disseminating information (1.21.10G)	*	*	*
48	Certified high net worth individuals (1.14.21G)		*	*
49	High net worth companies, unincorporated associations etc (1.14.25G)	*	*	*
50	Sophisticated investors (1.14.27G)	*	*	*
51	Associations of high net worth or sophisticated investors (1.14.29G)		*	*
52	Common interest group of a company (1.14.30G)		*	*
53	Settlors, trustees and personal representatives	*	*	*
54	Beneficiaries of trust, will or intestacy	*	*	*
55	Communications by members of professions (1.15.1G)	*	*	
55A	Non-real time communication by members of the professions. (1.15.5G)			*
56	Remedy following report by Parliamentary Commissioner for Administration	*	*	*

Article No.	Title and AUTH App 1 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
57	Persons placing promotional material in particular publications	*	*	*
58	Acquisition of interest in premises run by management companies		*	*
59	Annual accounts and directors' report (1.21.11G)	*	*	*
60	Participation in employee shares schemes	*	*	*
61	Sale of goods and supply of services		*	*
62	Sale of body corporate (1.14.35G)	*	*	*
64	Takeovers of relevant unlisted companies	*	*	*
65	Takeovers of relevant unlisted companies: warrants etc	*	*	*
66	Takeovers of relevant unlisted companies: application forms	*	*	*
67	Promotions required or permitted by market rules (1.21.13G)		*	*
68	Promotions in connection with admission to certain EEA markets (1.21.16G)		*	*
69	Promotions of securities already admitted to certain markets (1.21.17G)		*	*
70	Promotions in connection with listing applications		*	*
71	Promotions included in listing particulars etc			*
72	Promotions included in prospectus for public offer of unlisted securities (1.21.20G)			*
73	Material relating to prospectus for public offer of unlisted securities			*

Article No.	Title and AUTH App 1 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
74	Approval of communication prior to Order coming into force	* 4	* 4	*

¹ in limited circumstances only – see article 12(2) of the Financial Promotion Order

² for the purpose of article 16 (2) only

³ for the purpose of article 16 (1) only

⁴ although article 74 applies to real time communications it may be unlikely to do so in practice. This is because it relates to advertisements which are approved under section 57 of the Financial Services Act 1986 or communications approved in accordance with COB3. Such advertisements and communications are likely to be non-real time communications.

Annex B

Amendments to the Conduct of Business sourcebook

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

- COB 3.2.1
G
- (1)*Guidance* on that restriction is contained in *AUTH* App ~~{1}~~ (Financial promotion and related activities) and that *guidance* will be relevant in interpreting these *rules*. In particular, *guidance* on the meaning of:
- (a) “*communicate*” is in *AUTH* App ~~{1.6}~~ (Communicate);
- (b) “invitation or inducement” and “*engage in investment activity*” ... is in *AUTH* App ~~{1.4}~~ (Invitation and inducement) and *AUTH* App ~~{1.7}~~ (Engage in investment activity).
- COB
3.2.7G
- (2) ... *Guidance* on certain exemptions is contained in *AUTH* App ~~{1}~~ (Financial promotion and related activities).
- (3)
- (a) ...Such mailshots must meet the requirements of this chapter. *AUTH* App 1.14.3G (One-off financial promotions (articles 28 and 28A)) provides further *guidance* on the scope of the exemption in article 28.
- (b) ...In addition, a *firm* may include its name, address and telephone number in accordance with items 5(a) and (c). *AUTH* App 1.4.20G (Image advertising) provides *guidance* on when image advertising may involve a *financial promotion*.
- (c) ...In addition, a *firm* may include its name, address and telephone number in accordance with items 5(a) and (c). *AUTH* App 1.4.13G (Publication or broadcast of prices of investments (historic or live)) provides *guidance* on when the display of prices may involve a *financial promotion*.
- (4) ...But this exemption does not extend to the report and accounts of *ICVCs*, other types of *OEIC*, and *unit trust schemes*. *AUTH* App 1.21.11G (Article 59 : Annual accounts and directors' report) provides further *guidance* on the scope of the exemption in article 59.

- (5) ...will be exempt provided that the financial promotion is not communicated to persons inside the *United Kingdom* (see *COB 3.3* and *AUTH App 1.12.2G (Financial promotions to overseas recipients (article 12))*).
- (6) ...section 238(1) of the *Act* (Restrictions on promotion of unregulated collective investment schemes) (see *COB 3.11.4R* and *AUTH App 1.20 (Additional restriction on the promotion of collective investment schemes)*).
- COB 3.3.2G* (2) ...In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotions)) (see *COB 3.2.5R(2)* and *AUTH App 1.12.2G (Financial promotions to overseas recipients (article 12))* and the exemptions for overseas communicators (see *COB 3.2.5R(3)* and *AUTH App 1.14.14.G (Overseas communications (articles 30 to 33))*).
- COB 3.4.1G* (3) ...See further *COB 3.11* (Unregulated collective investment schemes) and *AUTH App 1.20 (Additional restriction on the promotion of collective investment schemes)*.
- COB 3.4.2G* (1) ...*COB 3.5.2G* provides a guide to the topics covered in this chapter. *AUTH App 1 (Financial promotion and related activities)* provides further detailed *guidance on the financial promotion regime under section 21 of the Act (Financial promotion)* which will be relevant in interpreting these *rules*.
- COB 3.5.4G* ...*Guidance* on the meaning of those expressions, which are based on article 7 of the *Financial Promotion Order*, is contained in *AUTH App [1.10]* (Types of ~~communication~~ financial promotion).
- COB 3.10.2G* ...*Guidance* on whether a *real time financial promotion* is solicited is contained in *AUTH App [1.10]* (Types of ~~communication~~ financial promotion).
- COB 3.11.1G* (5) *AUTH App 1.20 (Additional restriction on the promotion of collective investment schemes)* provides further *guidance on the restriction under section 238(1) of the Act (Restrictions on promotion)*.

COB
3.12.1G

- (1) ... (An overview of the main exemptions in the *Financial Promotion Order* is in COB 3 Ann 1: and further guidance is provided in AUTH App 1 (Financial promotion and related activities), in particular, AUTH App 1.9 (Circumstances where the restriction in section 21 does not apply).

COB
3.14.2G

... See AUTH App ~~{1.22 }~~ (The Internet) for further *guidance on financial promotions* on the internet...

Annex C

Amendments to the Professional Firms sourcebook

In this Annex, underlining indicates new text.

1.1.7G *Professional firms* should refer to *AUTH* App 1 (Financial promotion and related activities) for general *guidance* on financial promotion and to *AUTH* App 1.15 (Financial promotions by members of the professions (articles 55 and 55A)) for *guidance* on the exemptions which are specifically intended for *professional firms*.

Annex D

Amendments to the Glossary

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

non-real time financial promotion (in accordance with article 7(2) of the *Financial Promotion Order*) (as more fully described in *COB 3.5.5R* (“Real time” and “non-real time” financial promotions and *AUTH App 1.10 (Types of financial promotion)*)) a *financial promotion* that is not a *real time financial promotion*.

real time financial promotion (in accordance with article 7(1) of the *Financial Promotion Order* (as more fully described in *COB 3.5.5R* (“Real time” and “non-real time” financial promotions) and *AUTH App 1.10 (Types of financial promotion)*)) a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.

solicited real time financial promotion (in accordance with article 8 of the *Financial Promotion Order*) as more fully described in *COB 3.10.1R* (Meaning of “solicited” and “unsolicited” real time financial promotion) and *AUTH App 1.10 (Types of financial promotion)*) a *real time financial promotion* which is solicited...

unsolicited real time financial promotion (in accordance with article 8 of the *Financial Promotion Order*) (as more fully described in *COB 3.10.1R* (Meaning of “solicited” and “unsolicited” real time financial promotion) and *AUTH App 1.10 (Types of financial promotion)*)) a *real time financial promotion* which is not a *solicited real time financial promotion*.

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT No 6)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority alters the Conduct of Business sourcebook in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook (Powers exercised).
- B. The rule-making powers identified above are specified for the purpose of section 153(2) of the Financial Services and Markets Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 July 2002.

Amendment of the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended as set out in the Annex to this instrument.

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 6) Instrument 2002.

By order of the Board
16 May 2002

ANNEX

Amendments to the Conduct of Business Transitional Rules

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

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

2 Table COB TR 1

(1)	(2) Material to which the transitional provision applies: The COB provisions in Table COB TR 2 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Extra time provisions				
1.1	<i>ETPI</i>	R	Transitional Relief		

		<p><u>(1)</u> A <i>pre-N2 firm</i> will not contravene any of the provisions labelled <i>ETPI</i> in Table <i>COB TR 2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement, subject to any modification, wherever appropriate, to take account of the passing of the <i>Act</i>.</p> <p><u>(2)</u> Paragraph (1) does not apply to the following:</p> <p><u>(a)</u> (from 1 September 2002) <i>COB 6.1.1 R (5) to COB 6.1.1R (6) (Application)</i>;</p> <p><u>(b)</u> (from 1 September 2002) <i>COB 6.5.50R to COB 6.5.52R (Life policies : requests for quotations for surrender values)</i>;</p> <p><u>(c)</u> (from 1 September 2002) <i>COB 6.5.53R to COB 6.5.56R (Open market option)</i>.</p> <p><u>[Further exceptions to be added later, as described in row 1.1A.]</u></p>	<p><u>(1)</u> <i>commencement to until 30 June 2002, except as specified in (2) and (3) below;</i></p> <p><u>(2)</u> for <i>COB 9.3.105R, from commencement to 31 December 2002;</i></p> <p><u>(3)</u> for <i>COB 3.9.10R, COB 4.2.15E (7), COB 5.3, COB 5.7, COB 6.1 to 6.8, from commencement until a date yet to be specified.</i></p>	<p><i>commencement</i></p>
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1.1A	<u>ETPI (for COB 6.1 - 6.8)</u>	<u>G</u>	<p>(1) <u>The FSA is extending transitional relief for COB 6.1 to 6.8 and various other rules in COB, pending the outcome of the review of product disclosure and polarisation. As each of those reviews are completed, the transitional provisions will be revoked or modified to provide an appropriate transition into the new regime. Firms will be given notice of any revocation or modification as part of consultation on the new regime.</u></p> <p>(2) <u>Firms should be aware, however, that the FSA proposes to make rules, before the disclosure review is completed, to deal with the following matters:</u></p> <p>(a) <u>Stakeholder pensions: maintaining decision trees (see CP122);</u></p> <p>(b) <u>Projections for pension schemes or stakeholder pension schemes ; and</u></p> <p>(c) <u>Single pricing for collective investment schemes (see CP 131.</u></p> <p>(3) <u>The FSA envisages that, when the relevant rules are made, they will not benefit from the transitional relief set out in the COB Transitional Rules. For further information on the FSA's approach, firms should refer to the consultation papers mentioned above. If other interim changes to these rules are proposed, a similar approach is likely to be adopted.</u></p>	<u>commencement until a date yet to be specified.</u>	
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1.2	ETPs 1 to 9 TTPs 1 to 3 TSPs 1 to 7	G	It is for a <i>pre-N2 firm</i> to satisfy itself that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement. In order to benefit from the relief, a <i>firm</i> must ensure that the rule of its <i>previous regulator</i> which it proposes to comply with is substantially similar to the provision in <i>COB</i> to which it relates.	for <i>ETP 1</i> as for <u><i>COB TR1 1.1</i></u> ; for <i>ETP 2 to 9</i> and <u><i>TTP 1 to 3</i></u> commencement until <u>30 June 2002</u> ; indefinitely for <i>TSPs</i> <i>commencement to 30 June 2002</i> for <i>ETPs</i> and <i>TTPs</i> ; indefinitely for <i>TSPs</i>	<i>commencement</i>
			For the assistance of <i>firms</i> , the <i>FSA</i> has compiled tables of derivations indicating the rules of a <i>firm's previous regulator</i> that correspond to the provision in <i>COB</i> being transitioned. <i>Firms</i> may wish to refer to these tables but in doing so should understand that they are not intended to be exhaustive and are produced merely as a guide.		
			<i>Firms</i> are advised that should they wish to take advantage of the transitional provisions set out in this section, the onus is on the <i>firm</i> to be able to demonstrate that in any given case it has in fact complied with the <i>corresponding rules</i> of its <i>previous regulator</i> or, as the case may be, the former statutory requirement.		
1.3	ETPs 1 to 9 TTPs 1 to 3 TSPs 1 to 7	G	<i>Firms</i> will have noted from the wording of <i>COB TR11.1R</i> that they should treat the <i>corresponding rules</i> of their <i>previous regulator</i> as modified to the extent necessary to ensure that the provision can operate effectively notwithstanding the enactment of the <i>Act</i> . <i>Firms</i> will need to adopt a common sense approach in interpreting the <i>corresponding rules</i> of their <i>previous regulator</i> and modify them accordingly. For example, references in such rules to a <i>firm's previous regulator</i> should be read as if they referred to the <i>FSA</i> . Other modifications may not be as straightforward, such as where the concept of an indirect <i>customer</i> is not carried forward under the new legislation. In cases of difficulty, <i>firms</i> are encouraged to approach the <i>FSA</i> for its views.	for <i>ETP 1</i> as for <u><i>COB TR1 1.1</i></u> ; for <i>ETP 2 to 9</i> and <u><i>TTP 1 to 3</i></u> commencement until <u>30 June 2002</u> ; indefinitely for <i>TSPs</i> <i>commencement to 30 June 2002</i> for <i>ETPs</i> and <i>TTPs</i> indefinitely for <i>TSPs</i>	<i>commencement</i>

1.8	<i>ETP4</i>	G	<p>(1) An <i>ex-section 43 firm</i> will not contravene any of the provisions labelled <i>ETP4</i> in Table <i>COB TR 2</i> in relation to its section 43 business to the extent that, on or after <i>commencement</i>, it complies with (2).</p> <p>(2) For the purposes of <i>COB 4.1</i>, an <i>ex-section 43 firm</i> may treat its <i>client</i> (other than another firm) who was a <i>client</i> of the <i>firm</i> before <i>commencement</i> as a <i>market counterparty</i> in relation to its section 43 business until the date of expiry of a period of 12 months following commencement, <u>the transitional period</u>, by which date it must classify the <i>client</i> in accordance with <i>COB 4.1</i></p>	commencement to commencement plus 12 months until <u>30 November 2002</u>	
1.9	<i>ETP4</i>	G	An <i>ex-section 43 firm</i> that wishes to take advantage of the transitional relief provided by <i>COB TR1 1.8(1)</i> and (2) should continue to maintain the standard of care set out in paragraphs 31 to 37 of the London Code of Conduct (version June 1999) in relation to each of their clients. For these <i>clients</i> , the <i>FSA</i> will maintain the arbitration procedures set out in paragraph 120 of the London Code of Conduct for disputes arising during the <i>transitional period</i> .	commencement to commencement plus 12 months until <u>30 November 2002</u>	<i>commencement</i>
1.10	<i>ETP 5</i>	R	<p><u>Client Assets</u></p> <p>For the purposes of any of the provisions labelled <i>ETP5</i> in Table <i>COB TR 2</i>, the following will apply from <i>commencement</i> until the date of expiry of the <i>transitional period</i>:</p> <p>(a) any reference in <i>COB 9</i> to an <i>approved bank</i> must be treated as if it were a reference to an institution which satisfied the definition of “approved bank” under the <i>corresponding rules</i> of a <i>firm’s previous regulator</i>; and</p>	commencement to <u>until 30 June 2002</u>	<i>commencement</i>
			(b) any reference in <i>COB 9</i> to a <i>custodian</i> must be treated as if it were a reference to an institution which satisfied the definition of “custodian” under the <i>corresponding rules</i> of a <i>firm’s previous regulator</i> .		
1.11	<i>ETP6</i>	R	<p><u>No corresponding rules</u></p> <p>A <i>pre-N2 firm</i> need not comply with any of the provisions labelled <i>ETP6</i> in Table <i>COB TR 2</i> until the date of expiry of the <i>transitional period</i>.</p>	commencement to <u>until 30 June 2002</u>	<i>commencement</i>

1.12	<i>ETP7</i>	R	<p><u>Client money</u></p> <p>An <i>ex-section 43 firm</i> need not comply with the provisions labelled <i>ETP7</i> in Table <i>COB TR 2</i> in relation to its section 43 business until the expiry of a period of 12 months following <i>commencement</i>, provided it continues to comply with the requirements of the Grey Paper (version June 1999), as published by the <i>FSA</i>, relating to the segregation of money and other assets belonging to counterparties.</p>	<p>commencement to commencement plus 12 months until a date yet to be specified-</p>	<p><i>commencement</i></p>
1.13	<i>ETP8</i>	R	<p><u>Information about the firm</u></p> <p>(1) Subject to (2), a <i>pre-N2 firm</i> or an <i>ex-section 43 firm</i> will not contravene any of the provisions labelled <i>ETP8</i> in Table <i>COB TR 2</i> in relation to any written material it has produced before <i>commencement</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has provided information about itself, in any such material, in accordance with the <i>corresponding rule</i> of its <i>previous regulator</i>.</p> <p>(2) A <i>pre-N2 firm</i> which, before <i>commencement</i>, was an appointed representative under the Financial Services Act 1986, but has now become and <i>authorised person</i>, must, if it wishes to take advantage of the transitional relief in (1), take reasonable steps to ensure that it does not mislead customers as to its status as an <i>authorised person</i> in any of the written material in (1).</p>	<p>(<i>pre-N2 firms</i>):</p> <p>commencement to until 30 June 2002;</p> <p>(<i>ex-section 43 firms</i>):</p> <p>commencement to commencement plus 12 months until 30 November 2002-</p>	<p><i>commencement</i></p>
1.14	<i>ETP8</i>	G	<p>(1) The purpose of <i>COB TR2 1.13R</i> is to ensure that the <i>firm</i> does not incur unnecessary costs by having to withdraw or destroy written material produced before <i>commencement</i>. For the avoidance of doubt, where a <i>firm</i> prints a document on or after <i>commencement</i>, from a precedent held in electronic form, <i>ETP8</i> will apply.</p> <p>(2) A statement that the <i>firm</i> is a 'representative' of another <i>firm</i> is unlikely, on its own to mislead. But if written materials refer to the <i>firm</i> as an appointed representative, reasonable steps under <i>COB TR1 1.13 R (2)</i> could include notifying the <i>firm's private customers</i> of the change in its status to an <i>authorised person</i>; or modifying the <i>firm's</i> existing stationery.</p>	<p>(<i>pre-N2 firms</i>):</p> <p>commencement to until 30 June 2002;</p> <p>(<i>ex-section 43 firms</i>):</p> <p>commencement to commencement plus 12 months until 30 November 2002</p>	<p><i>commencement</i></p>
			<p>(2) A statement that the <i>firm</i> is a 'representative' of another <i>firm</i> is unlikely, on its own to mislead. But if written materials refer to the <i>firm</i> as an appointed representative, reasonable steps under <i>COB TR1 1.13 R (2)</i> could include notifying the <i>firm's private customers</i> of the change in its status to an <i>authorised person</i>; or modifying the <i>firm's</i> existing stationery.</p>		

1.15	<i>ETP9</i>	R	<p><u>Group business disapplication for ex-IMRO firms and ex-SFA firms</u></p> <p>This paragraph applies to a <i>pre-N2 firm</i> which immediately before <i>commencement</i> was a member of <i>IMRO</i> or <i>SFA</i>.</p>	<p><i>commencement</i> to <i>commencement</i> <u>30 June 2002</u> <u>until</u> <u>a date yet to be</u> <u>specified</u></p>	<i>commencement</i>
3.3	<i>TSP 2</i>	G	<p>(5) <u>A <i>pre-N2 firm</i> will comply with <i>COB TR1 3.2R(3)</i> if the <i>firm</i> gives written notification to the <i>private customer</i> as part of the <i>firm's</i> next routine communication to the <i>customer</i>. In most circumstances, the <i>FSA</i> expects that a period of between three and six months from <i>commencement</i> should give sufficient time for a <i>pre-N2 firm</i> to notify a <i>private customer</i> under this rule. For example, a <i>pre-N2 firm</i> might notify under <i>COB TR1 3.2R(3)</i> much sooner than six months after <i>commencement</i> when it provides <i>private customers</i> with risk warnings in respect of <i>warrants</i> and <i>derivatives</i> or non-readily realisable investments (<i>COB 5.4 Customers' understanding of risk</i>).</u></p>		
			<p>(6) <u>A <i>pre-N2 firm's</i> only routine communication with a <i>private customer</i> might occur more than six months after <i>commencement</i>. For example, a <i>long-term insurer</i> providing <i>customers</i> with the annual statement might only communicate with some <i>customers</i> (particularly '<i>dormant customers</i>') annually or less frequently. In such limited circumstances, a period of up to six months might be too restrictive an interpretation of the requirement to take reasonable steps to notify <i>private customers</i> as soon as practicable after <i>commencement</i>. This is exceptional and a period of up to six months from <i>commencement</i> will be sufficient in most cases.</u></p>		

			<p>(7) <u>The FSA wishes to minimise any unnecessary repetition or duplication of notifications flowing from COB TR1 3.2R(3). A pre-N2 firm acting under COB TR1 3.2R(3) may reasonably fulfil its notification obligation to a private customer through the pre-N2 firm's agent or intermediary who services the private customer and is authorised by the FSA, or through the pre-N2 firm's appointed representative who services the private customer and for whom the pre-N2 firm is responsible as principal under section 39 of the Act (Exemption). But a pre-N2 firm will retain responsibility for fulfilling the notification requirement in COB TR1 3.2R(3).</u></p>		
			<p>(8) <u>COB TR1 3.2R(3) requires notification in writing. This may be done by using electronic media, subject to COB 1.8 (Application to electronic media). The requirement will not be discharged, however, simply by publishing a notice in a national or local newspaper.</u></p>		
3.8	TSP6	R	<p><u>Notice and consents</u></p> <p>(1) <u>A pre-N2 firm will not contravene any of the provisions labelled TSP6 in Table COB TR 2 to the extent that it is able to demonstrate that, on or after commencement, it has continued to use or rely upon a valid notice, given to, or valid notice or consent which, before the expiry of the transitional period, was given to, given by or obtained from, a client or counterparty in accordance with the corresponding rule of its previous regulator, or, where applicable, the relevant former statutory instrument, in relation to an investment agreement concluded before the expiry of the transitional period.</u></p>	indefinitely	commencement

PERIODIC FEES (2002/2003) (No 2) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes the rules and gives the guidance in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
 - (2) section 157(1) (Guidance); and
 - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 June 2002.

Amendment of SUP

- D. SUP is amended as set out in Annex A to this instrument.

Amendment of PROF

- E. PROF is amended as set out in Annex B to this instrument.

Amendment of CIS

- F. CIS is amended as set out in Annex C to this instrument.

Amendment of REC

- G. REC is amended as set out in Annex D to this instrument.

Amendment of FREN

- H. FREN is amended as set out in Annex E to this instrument.

Amendment of AUTH

- I. AUTH is amended as set out in Annex F to this instrument.

Amendment of COMP

- J. COMP is amended as set out in Annex G to this instrument.

Citation

- K. This instrument may be cited as the Periodic Fees (2002/2003) (No 2) Instrument 2002.

By order of the Board
16 May 2002

ANNEX A

1. Amend SUP 20 Annex 1R, Part 1, as shown (underlining indicates new text and striking through indicates deleted text):

1 Table

Every firm must pay its periodic fees for this period as follows:

- (a) ~~Every~~ every firm whose periodic fee to its *previous regulator* for the previous financial year was equal to or **more than** £50,000 must ~~pay a sum on account of its periodic fee~~ as follows:

Date payable	Amount payable
30 April 2002	50% of the periodic fee payable <u>to its <i>previous regulator</i></u> for the previous financial year
<u>1 September 2002</u>	<u>The periodic fee payable under SUP 20.2.1R</u> <u>less</u> <u>any amount paid on 30 April 2002</u>

- (b) every firm whose periodic fee to its *previous regulator* for the previous financial year was less than £50,000 must pay as follows:

Date payable	Amount payable
<u>1 July 2002</u>	<u>The periodic fee payable under SUP 20.2.1R</u>

2. In SUP 20 Annex 1R, Part 2 delete the words “(This part will be made at a later date.)” and replace with;

- (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 *firm's* business, calculated as follows:
- (a) the relevant minimum fee; plus
 - (b) an additional fee calculated by multiplying the *firm's* tariff base by the appropriate rates applying to each tranche of the tariff base, as indicated.
- (2) A *firm* 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 *firm's* UK business separately from its non-UK business in the way described in Part 7 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 SUP 20.3 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
- (3) For a *firm* which has not complied with SUP 20.3.2R (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 £350.

Activity group (defined in Part 7)	Valuation date for tariff bases (defined in Part 7)	Fee payable (tariff bases defined in Part 7)	
A.1 Deposit acceptors	<p>For banks and firms with permission to issue e-money: Modified eligible liabilities, valued at:</p> <ul style="list-style-type: none"> for a <i>firm</i> which reports monthly, the average of the modified eligible liabilities for October, November and December 2001; for a <i>firm</i> which reports quarterly, the modified eligible liabilities for December 2001. <p>For credit unions: Modified eligible liabilities, valued at December 2001 or as disclosed by the most recent annual return made prior to that date.</p>	<p>Minimum fee (£m of MELs)</p> <p>if 0 - 0.5 fee is if >0.5 - 2 fee is if >2</p> <p>£ million of MELs</p> <p>0 - 10 >10 - 200 >200 - 2,000 >2,000 - 10,000 >10,000 - 20,000 > 20,000</p>	<p>Fee</p> <p>£150 £500 £1,000</p> <p>Fee (£/£m or part £m of MELs)</p> <p>0.00 41.4 41.2 41.0 40.8 40.4</p>
	<p>For building societies: Modified eligible liabilities, valued at the average of the modified eligible liabilities for October, November and December 2001.</p>	<p>The lower of:</p> <p>a) the fee calculated for <i>banks</i> above; and</p> <p>b) 140% of the General Charge paid by the building society (or in the case of a merger of two or more societies which occurs between 1 December 2001 and 31 March 2003, paid by each of them) to the Building Societies Commission in 2001/2 under SI 2001 No. 815.</p>	
A.2	This block does not apply for this period		
A.3 Firms conducting insurance activities subject only to prudential regulation	Annual gross premium income, valued at the period to which the most recent annual return relates [Note: for most <i>firms</i> this will be the 12 months ended 31 December 2001].	<p>£ million of GPI</p> <p>Minimum fee</p> <p>0 - 0.5 >0.5 - 2 >2 - 5 >5 - 20 >20 - 75 >75 - 150 > 150</p>	<p>Fee</p> <p>£375</p> <p>Fee (£/£m or part £m of GPI)</p> <p>0 1,860 1,720 1,580 500 430 60</p>
A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation	Adjusted annual gross premium income valued at the financial year ended in the calendar year ending 31 December 2001.	<p>£ million of AGPI</p> <p>Minimum fee</p> <p>0 - 1 >1 - 50 >50 - 1,000 >1,000 - 2,000 > 2,000</p>	<p>Fee</p> <p>£400</p> <p>Fee (£/£m or part £m of AGPI)</p> <p>0 720 650 430 290</p>

A.5 Managing Agents at Lloyd's	Active capacity, in respect of the 2002 Underwriting Year (as reported to the <i>Society of Lloyd's</i>)	<u>£ million of active capacity</u> Minimum fee 0 - 50 >50 - 150 >150 - 250 > 250	<u>Fee</u> £500 <u>Fee (£/£m or part £m of active capacity)</u> 0 46 39 11
A.6 The <i>Society of Lloyd's</i>	Not applicable		£1,090,547
A.7 Fund managers	For class C firms: funds under management, valued at 31 December 2001.	<u>Minimum fee (£m FuM)</u> Exactly 0 the fee is >0 the fee is <u>£ million of FuM</u> >0 - 10 >10 - 100 >100 - 2,500 >2,500 - 10,000 >10,000	<u>Fee</u> £0 £1,200 <u>Fee (£/£m or part £m of FuM)</u> 0.0 63.0 20.0 10.9 1.2
	For class B firms: funds under management, valued at 31 December 2001.	The fee calculated as for class C firms above less 15%.	
	For class A firms: funds under management, valued at 31 December 2001.	The fee calculated as for class C firms above less 50%.	
A.8	This block does not apply for this period		
A.9 Operators, Trustees and Depositories of collective investment schemes	Annual gross income, valued at the most recent financial year ended before 31 December 2001.	<u>Minimum fee (£m GI)</u> Exactly 0 the fee is >0 the fee is <u>£ million of GI</u> >0 - 1 >1 - 20 >20 - 500 >500 - 1,000 >1,000	<u>Fee</u> £0 £3,000 <u>Fee (£/£m or part £m of GI)</u> 0.0 1,530.5 1,240.0 1,060.0 798.0
A.10 Firms dealing as principal in investments	Number of traders as at 31 December 2001.	<u>No. of traders</u> Minimum fee 0 - 2 3 - 5 6 - 10 11 - 50 51 - 200 > 200	<u>Fee</u> £2,000 <u>Fee (£/trader)</u> 0 1,700 1,208 1,098 929 743

A.11 Execution-only arrangers, dealers or brokers	Annual commission or fee income, valued at the most recent financial year ended before 31 December 2001.	<u>£ million of income</u> Minimum fee 0 - 0.25 >0.25 - 1.25 >1.25 - 25 > 25 – 50 > 50	<u>Fee</u> £4,000 <u>Fee (£/£m or part £m of income)</u> 0 6,000 3,877 3,230 2,908
A.12 Advisory arrangers, dealers, or brokers (holding or controlling client money and/or assets)	Relevant <i>approved persons</i> as at 31 December 2001.	<u>Minimum fee (No. of persons)</u> Exactly 0 the fee is >0 the fee is <u>No. of persons</u> >0 - 1 2 - 4 5 - 10 11 - 25 26 - 100 101 - 1,000 > 1,000	<u>Fee</u> £0 £1,500 <u>Fee (£/person)</u> 0 830 413 287 154 115 77
For a <i>professional firm</i> in A.12 the fee is calculated as above less 20%.			
A.13 Advisory only firms and advisory, arrangers, dealers, or brokers (not holding or controlling client money and/or assets)	Relevant <i>approved persons</i> as at 31 December 2001.	<u>Minimum fee (No. of persons)</u> Exactly 0 the fee is BUT if the firm is A.13 Category (1) - the fee is OR if no. of persons >0 the fee is <u>No. of persons</u> >0 - 1 2 - 4 5 - 10 11 - 25 26 - 100 101 - 2,000 > 2,000	<u>Fee</u> £0 £1,450 £1,450 <u>Fee (£/person)</u> 0 742 711 678 618 556 517
For a <i>professional firm</i> in A.13 the fee is calculated as above less 20%.			
A.14 Corporate finance advisers	Relevant <i>approved persons</i> as at 31 December 2001.	<u>Minimum fee</u> Minimum fee <u>No. of persons</u> >0 - 1 2 3 - 4 5 - 10 11 - 100 101 - 200 > 200	<u>Fee</u> £1,300 <u>Fee (£/person)</u> 0 1,690 1,522 1,369 1,233 862 517
A.15	This block does not apply for this period.		
A.16 Pensions review levy firms	Not applicable.	90.5% of the pensions review levy amount paid to the PIA in 2001/2.	

A.17 Pensions review – SERPS adjustment firms	Not applicable	The tariff allocated to the <i>firm</i> set out in <i>PIA</i> rule 7.2.4 (Table A - SERPS Compensation Schedule).	
B Firms that have been designated as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996	Not applicable		£30,000

3. In SUP 20 Annex 1R, Part 3 delete the words “(This part will be made at a later date.)” and replace with;

(1) The following deductions apply:

Activity group (defined in Part 7)	Nature of deduction	Deduction
A.7	Financial penalties received	0.51% of the fee payable by the <i>firm</i> for the activity group (see Part 2)

4. In SUP 20 Annex 1R, Part 4 delete the words “(This part will be made at a later date.)” and replace with;

The provisions of Part 2 apply, except that the amount payable for each additional activity group is the greater of:

- (a) the minimum fee specified for the activity group; or
- (b) the fee calculated in accordance with Part 2 for that activity group using the relevant information supplied by the *firm* to the *FSA* in the course of its application for the projected valuation of the first year of the business to which the tariff applies.

5. In SUP 20 Annex 1R, Part 5 delete the words “(This part will be made at a later date.)” and replace with:

Activity group (defined in Part 7)	Percentage of tariff payable under Part 2 applicable to the <i>firm</i> subject to a minimum amount payable of £100 (unless specified below)
A.1	20% (for a firm operating on cross-border services basis only, 0% and the minimum sum is not applicable)
A.3	0% and the minimum sum is not applicable
A.4	75%
A.7, A.8 and A.9	95%
A.10, A.11, A.12 and A.13	90%

6. In SUP 20 Annex 1R, Part 6 delete the words “(This part will be made at a later date.)” and replace with:

Fee per transaction	Date payable	Method of payment
2 pence (including VAT)	First working day of each month	As specified in Part 1

7. In SUP 20 Annex 1R, Part 7 delete the table and replace with:

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.1 Deposit acceptors	<p>its <i>permission</i> includes <i>accepting deposits</i> or <i>issuing e-money</i>;</p> <p>BUT DOES NOT include any of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>. 	<p>MODIFIED ELIGIBLE LIABILITIES For Banks and firms with permission to issue e-money:</p> <p>Part 1: Liabilities In sterling: £2 + £3 + £4 + £5A + £5B + £6B + £6C + £6D + £6E + £6F + £6G + £6H + £6J + £7B + £7C + £7D + £7E + £7F + £7G + £7H + £7J + £8 + £10 + 60% of £11A + £44 plus In foreign currency, one-third of: E2 + E3 + E4 + E5A + E5B + E6B + E6C + E6D + E6E + E6F + E6G + E6H + E6J + E7B + E7C + E7D + E7E + E7F + E7G + E7H + E7J + E8 + E10 + 60% of E11A + E44 + C2 + C3 + C4 + C5A + C5B + C6B + C6C + C6D + C6E + C6F + C6G + C6H + C6J + C7B + C7C + C7D + C7E + C7F + C7G + C7H + C7J + C8 + C10 + 60% of C11A: less</p> <p>Assets In sterling: £21B + 60% of £22A + £23D + £23E + £23F + £30A + £30B + £31A + £31B + £32AA plus In foreign currency, one-third of: E21B + 60% of E22A + E23D + E23E + E23F + E30A + E30B + E31A + E31B + E32AA + C21B + 60% of C22A + C23D + C23E + C23F + C30A + C30B + C31A + C31B + C32AA</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p>Part 2: Non-resident office offset Provided that the conditions and criteria (including those relating to the time by which a Non-Resident Office Offset Form must have been received by the <i>FSA</i>) set out by the <i>FSA</i> in the Non-Resident Office Offset Form (and accompanying letter) were duly satisfied, the fee base of a <i>bank</i> that has submitted a Non-Resident Office Offset Form to the <i>FSA</i> in February 2002 is adjusted by deducting from the amount calculated in accordance with part 1 above, the amount obtained by deducting from item 'c' in the Non-Resident Office Offset Form the sum of £1,000 million. Non-Resident Offset Forms must have been completed in accordance with the instructions therein and the accompanying letter and, so far as applicable, in accordance with the requirements for completing Forms BT. Each item in line 45D of a Non-Resident Office Offset Form shall, if it would otherwise have been a negative number, be zero.</p>
		<p>Notes: 1) All references in the above formula are to entries on Form BT (i.e. the Balance Sheet Form completed to provide information required following the Banking Statistics Review 1997 and returned by banks to the Bank of England as required by the Banking of England Act 1998). 2) 'E' refers to assets and liabilities denominated in euro (as referred to in column 2 of Form BT) and 'C' refers to assets and liabilities denominated in currencies other than sterling and euro (as referred to in column 3 of Form BT). In accordance with Form BT, assets and liabilities in currencies other than sterling are to be recorded in sterling 3) The figures reported on the Form BT relate to business conducted out of offices in the <i>United Kingdom</i>..</p>
		<p>For credit unions: Deposits with the <i>credit union</i> (share capital) LESS the <i>credit union's</i> bank deposits (investments + cash at bank) Note: By definition all business done by <i>credit unions</i> is from offices in the <i>United Kingdom</i>.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p>For <i>building societies</i>:</p> <ul style="list-style-type: none"> • deposit liabilities (including debt securities up to five years original maturity) (i.e. the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for items B1.1+B1.2+B2.0a+B2.0b+B2.10+B2.13+ B2.14+B2.15+B2.16) <p>LESS amounts in respect of:</p> <ul style="list-style-type: none"> • sterling repo liabilities with the Bank of England (i.e. ONLY the amounts in sterling (in column 5) for item B2.5a) • balances held with the Bank of England (excluding cash ratio deposits) (i.e. the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for item B6.2a, less the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for item OW1.1) • market loans to banks, building societies (balances with and loans to, plus CDs, Commercial paper) (i.e. the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for items B6.3.a+B6.4.a+B6.4b+B6.5a+B6.5b+ B6.12a) • investments with banks and building societies (bonds, notes and other debt instruments up to five years original maturity) (i.e. the amounts in sterling (in column 1) and one-third of foreign currency referenced amounts (in columns 2 and 3) for items B6.6a1+B6.6a2+B6.10a1+B6.10a2) <p>Notes: All references in the above definitions are to entries in the MFS1 which is submitted monthly by all <i>building societies</i> to the <i>FSA</i>.</p>
A.2	This activity group does not apply for this period.	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.3 Firms conducting insurance activities subject only to prudential regulation</p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>; <p>BUT ONLY in respect of <i>specified investments</i> that are:</p> <ul style="list-style-type: none"> - <i>general insurance contracts</i>; or - <i>long-term insurance contracts</i> other than <i>life-policies</i>. 	<p>GROSS PREMIUM INCOME</p> <p>For insurers:</p> <p>The amount of <i>premiums</i> receivable required to be included in the documents required to be deposited under section 22(1) of the Insurance Companies Act 1982 (or <i>IPRU (INS) 9.6R</i>) in relation to the financial year to which the documents relate (or, where by reason of an order made under section 68 of the Insurance Companies Act 1982 (or such an order which has been carried forward after <i>commencement</i> under transitional provisions relating to written concessions in <i>SUP</i>, or a waiver) such amounts are not required to be included, the amount which would otherwise have been included).</p> <p>Less,</p> <p><i>premiums</i> relating to pension fund management business where the <i>firm</i> owns the investments and there is no transfer of risk.</p> <p>However, in the case of either:</p> <ul style="list-style-type: none"> a) a pure reinsurer carrying on <i>general insurance business</i> through a branch in the <i>United Kingdom</i>; or b) an <i>insurer</i> whose head office is not in an <i>EEA State</i> carrying on <i>general insurance business</i> through a branch in the <i>United Kingdom</i>; or c) a <i>non-EEA insurer</i> other than a <i>Swiss general insurer</i> which has <i>permission</i> to carry on <i>direct insurance business</i> and which has made a deposit in an <i>EEA state</i> other than <i>the United Kingdom</i> in accordance with section 9(1)(c) of the Insurance Companies Act 1982 (as it had effect in pursuance to section 9(2)(b) of that Act) or <i>IPRU(INS) rule 8.1(2)</i>, the amount only includes <i>premiums</i> received in respect of its <i>United Kingdom branch</i> business; and d) for a <i>Swiss general insurance company</i>, <i>premiums</i> include those relevant to the operations of the company's <i>United Kingdom branch</i>.

Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p><u>For friendly societies:</u> Either: a) the value of "contributions" as income under Schedule 7: Part I item 1(a) of the regulations for a <i>non-directive friendly society</i>, included within the income and expenditure account, or b) the value of "gross premiums written" under Schedule 1: Part I items I.1(a) and II.1.(a) of the regulations for a <i>directive friendly society</i> included within the income and expenditure account.</p> <p>Notes: 1) The references above are to the Friendly Societies (Accounts and Related Provisions) Regulations 1994 (SI 1994/1983). 2) In both a) and b) above only <i>premiums</i> receivable in respect of <i>United Kingdom</i> branch business are relevant.</p>
<p>A.4 Firms conducting insurance activities subject to both prudential and conduct of business regulation</p>	<p>its <i>permission</i> includes one or more of:</p> <ul style="list-style-type: none"> • effecting contracts of insurance; • <i>carrying out contracts of insurance</i>; • both in respect of <i>specified investments</i> including <i>life policies</i>; • <i>entering as provider into a funeral plan contract</i>. 	<p>ADJUSTED GROSS PREMIUM INCOME</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, 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, <i>premiums</i> relating to pension fund management business where the <i>firm</i> owns the investments and there is no transfer of risk.</p> <p>For each of the above, business transacted through independent practitioners will be divided by two in calculating the adjusted gross premium income.</p> <p>Notes: 1 Business conducted through a <i>marketing associate</i> should be excluded in reporting the <i>product provider's</i> <i>premium</i> income. 2 Only <i>premiums</i> receivable in respect of <i>United Kingdom</i> branch business are relevant.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.5 Managing agents at Lloyd's	its <i>permission</i> includes <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> .	<p>ACTIVE CAPACITY</p> <p>The capacity of the <i>syndicate(s)</i> under management in the year in question. This includes the capacity for <i>syndicate(s)</i> that are not writing new business, but have not been closed off in the year in question.</p>
A.6 The Society of Lloyd's	it is the <i>Society of Lloyd's</i> .	Not applicable
<p>GENERALLY, FOR FEE-BOCKS A.7 TO A.15 BELOW, ONLY THOSE REGULATED ACTIVITIES THAT ARE NOT LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHICH FEE-BLOCK(S) FEE-PAYERS BELONG TO.</p> <p>HOWEVER, IN THE CASE THAT ALL THE REGULATED ACTIVITIES WITHIN A FIRM'S PERMISSION ARE LIMITED TO NON-MAINSTREAM REGULATED ACTIVITIES, THEN THAT FIRM SHALL BE ALLOCATED TO FEE-BLOCK A.13 ALONE.</p>		
A.7 Fund Managers	<p>its <i>permission</i> includes <i>managing investments</i>.</p> <p>This activity group is subdivided into three classes:</p> <ul style="list-style-type: none"> - class A, where the funds managed by the <i>firm</i> belong to one or more <i>occupational pension schemes</i>; - class B, where: <ul style="list-style-type: none"> (a) the <i>firm</i> is not a class A firm; and (b) the <i>firm's permission</i> includes NEITHER of the following: <ul style="list-style-type: none"> • <i>safeguarding and administering of investments (without arranging)</i>; • <i>arranging safeguarding and administration of assets</i>; and (c) the <i>firm</i> EITHER: <ul style="list-style-type: none"> • has a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; OR • if it does not have such a <i>requirement</i>, only holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>; - class C, where the <i>firm</i> is not within class A or class B. 	<p>FUNDS UNDER MANAGEMENT</p> <p>The total value, in £ pounds, of all assets (see note (a) below) in portfolios which the <i>firm</i> manages, on a discretionary basis (see note (b) below), in accordance with its terms of business, less:</p> <ul style="list-style-type: none"> a) funds covered by the exclusion contained in article 38 (Attorneys) of the <i>Regulated Activities Order</i>; b) funds covered by the exclusion contained in article 66(3) (Trustees, nominees and personal representatives) of the <i>Regulated Activities Order</i>; c) funds covered by the exclusion contained in article 68(6) (Sale of goods or supply of services) of the <i>Regulated Activities Order</i>; • funds covered by the exclusion contained in article 69(5) (Groups and joint enterprises) of the <i>Regulated Activities Order</i>; and • 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 <i>firm</i> (and which <i>firm</i> will include the value of the assets in question in its own FuM total); any such deduction should identify the <i>firm</i> to which management responsibility has been delegated.

Activity group	Fee-payer falls in the activity group if	Tariff-base
		<p>Notes on FuM</p> <p>a) For the purposes of calculating the value of funds under management, “assets” means all assets that consist of or include any investment which is a <i>designated investment</i> or those assets in respect of which the arrangements for their management are such that the assets may consist of or include such investments and either the assets have at any time since 29 April 1988 done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.</p> <p>b) Assets managed on a non-discretionary basis, being assets that the <i>firm</i> has a contractual duty to keep under continuous review but in respect of which prior specific consent of the <i>client</i> must be obtained for proposed transactions, are NOT included as this activity is covered in those charged to fees in activity groups A.12 and A.13.</p> <p>c) In respect of collective investment schemes, “assets” means the total value of the assets of the scheme.</p> <p>d) For an <i>OPS firm</i>, the FuM should also be reduced by the value of the assets held as a result of a decision taken in accordance with article 4(6) of The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (investments in collective investment schemes or bodies corporate which have as their primary purpose the acquisition, directly, or indirectly, of “relevant investments”, as defined in that article).</p> <p>e) Only assets that are managed from an establishment maintained by the <i>firm</i> in the <i>United Kingdom</i> are relevant.</p>
A.8	This activity group does not apply for this period.	

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.9 Operators, Trustees and Depositaries of collective investment schemes</p>	<p>(1) its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> • <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> <p>AND</p> <p>(b) PROVIDED the <i>firm</i> is NOT one of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm in which the above activities are limited to carrying out corporate finance business;</i> • <i>a venture capital firm;</i> <p>OR</p> <p>(2) if the fee-payer has none of the <i>regulated activities</i> above within its <i>permission</i>, but ALL the remaining <i>regulated activities</i> in its <i>permission</i> are limited to carrying out trustee activities.</p>	<p>GROSS INCOME</p> <p><u>For operators (including ACDs and managers of unit trusts):</u></p> <p>Gross income from the activity relating to fee-block A.9 is defined as:</p> <ul style="list-style-type: none"> • the amount of the annual charge on funds invested in <i>regulated</i> or <i>unregulated collective investment schemes</i> received or receivable in the latest accounting period (this is calculated as a % of funds invested, typically 1% p.a.); <p>PLUS</p> <ul style="list-style-type: none"> • the front-end or exit charge levied on sales or redemptions of <i>collective investment schemes</i> (typically 4-5% of sales/redemptions) in that same accounting period; <p>PLUS</p> <ul style="list-style-type: none"> • any additional initial or management charges levied through a product wrapper such as a <i>PEP</i> or an <i>ISA</i>; <p>BUT EXCLUDING box management profits.</p> <p><u>For depositaries (including trustees of collective investment schemes and ICVC depositaries):</u></p> <p>The amount of the annual charge levied on funds in <i>regulated collective investment schemes</i> for which they act as <i>depositary</i> (typically a % of the total funds for which they act as <i>depositary</i>).</p> <p>Note: Only the gross income corresponding to <i>United Kingdom</i> business is relevant.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.10 Firms dealing as principal</p>	<p>its <i>permission</i> includes <i>dealing in investments as principal</i>; BUT NOT if one or more of the following apply:</p> <ul style="list-style-type: none"> • the above activity is carried on exclusively in respect of <i>life policies</i>; • the <i>firm</i> is acting exclusively as a matched principal broker; • the above activity is limited either to acting as an <i>operator</i> of a <i>collective investment scheme</i>, or to carrying out trustee activities; • the <i>firm</i> is a <i>corporate finance advisory firm</i>; • the above activity is otherwise limited to carrying out <i>corporate finance business</i>. • the <i>firm</i> is subject to a <i>limitation</i> to the effect that the <i>firm</i>, in carrying on this <i>regulated activity</i>, is limited to entering into transactions in a manner which, if the <i>firm</i> was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments). 	<p>NUMBER OF TRADERS</p> <p>Any <i>employee</i> or agent, who:</p> <ul style="list-style-type: none"> • ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FSA</i> in its fee-block A.10 (firms dealing as principal); and who, • as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.11 Execution-only arrangers, dealers or brokers</p>	<p>its <i>permission</i>,</p> <p>(a) includes one or more 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>dealing as principal in investments where the activity is carried on exclusively in respect of <i>life policies</i> or where the <i>firm</i> acts as a matched principal broker;</i> <p>(b) BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance;</i> • <i>carrying out contracts of insurance;</i> • <i>advising on investments (except pensions transfers and pension opt-outs);</i> or • <i>advising on pension transfers and pension opt-outs;</i> or • <i>accepting deposits;</i> <p>AND</p> <p>(c) PROVIDED the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> • <i>a corporate finance advisory firm;</i> • <i>a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;</i> • <i>a firm whose activities are limited to carrying out venture capital business;</i> • <i>a firm whose activities are limited to acting as an operator, depositary or trustee of a collective investment scheme, or trustee activities.</i> 	<p>COMMISSION OR FEE INCOME</p> <ul style="list-style-type: none"> • The commission or fee income derived from the activity (earned over the 12 months ending on the 31 December prior to the period to which the FSA's periodic fees relate). <p>Income received would include:</p> <ul style="list-style-type: none"> • Gross commission and brokerage fees: the total commission and brokerage earned by a <i>firm</i> in the conduct of agency broking before the deduction of commissions share or paid to third parties. <p>But for <i>firms dealing in investments as principal</i> that are exclusively <i>life policies</i>, commission or fee income will be deemed to be half the gross margin reported in the period referred to above.</p> <p>Note: Only the commission or fee income derived from <i>United Kingdom</i> business is relevant.</p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.12 Advisory arrangers, dealers or brokers (holding or controlling client money and/or assets)</p>	<p>its <i>permission</i>,</p> <p>(a) includes one or more 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>dealing as principal in investments where the activity is carried on as a matched principal broker;</i> <p>AND</p> <p>(b) AT LEAST one of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs);</i> • <i>advising on pension transfers and pension opt-outs;</i> • <i>advising on syndicate participation at Lloyd's;</i> <p>(c) BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance; or</i> • <i>carrying out contracts of insurance.</i> <p>AND</p> <p>(d) CAN HAVE one or more of the following:</p> <ul style="list-style-type: none"> • <i>safeguarding and administering of assets;</i> • <i>arranging safeguarding and administration of assets;</i> • the ability to hold and/or control <i>client money</i>: <ul style="list-style-type: none"> - that is, there is no <i>requirement</i> which prohibits the <i>firm</i> from doing this; - and provided that the <i>client money</i> in question does not only arise from an agreement under which <i>commission</i> is rebated to a <i>client</i>; <p>AND</p> <p>(e) PROVIDED the fee-payer is NOT any of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm</i>; • a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>; • a <i>firm</i> whose activities are limited to carrying out <i>venture capital business</i>; • a <i>firm</i> whose activities are limited to acting as an operator of a <i>collective investment scheme</i>; • a <i>firm</i> whose activities are limited to carrying out <i>trustee</i> activities. 	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake one, or more, of the following <i>customer functions</i>:</p> <p>CF21 <i>Investment adviser function;</i> CF22 <i>Investment adviser (trainee) function;</i> CF24 <i>Pension transfer specialist function;</i> CF25 <i>Adviser on syndicate participation at Lloyd's function; or</i> CF26 <i>Customer trading function</i></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.13 Advisory only firms and advisory, arrangers, dealers or brokers (not holding or controlling client money and/or assets)</p>	<p>(1) it is an <i>authorised professional firm</i> and ALL the <i>regulated activities</i> in its <i>permission</i> are limited to <i>non-mainstream regulated activities</i>;</p> <p>OR</p> <p>(2) its <i>permission</i> contains both:</p> <ul style="list-style-type: none"> • <i>making arrangements with a view to transactions in investments</i>; and • <i>accepting deposits</i>. <p>OR</p> <p>(3) its <i>permission</i>,</p> <p>(a) includes one or more 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>dealing as principal in investments</i> where the activity is carried on as a matched principal broker; <p>AND</p> <p>(b) AT LEAST one of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs)</i>; • <i>advising on pension transfers and pension opt-outs</i>; • <i>advising on syndicate participation at Lloyd's</i>; <p>(c) BUT NONE of the following:</p> <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>; • <i>safeguarding and administration of assets</i>; • <i>arranging safeguarding and administration of assets</i>; <p>AND</p> <p>(d) MUST EITHER:</p> <ul style="list-style-type: none"> • have a <i>requirement</i> that prohibits the <i>firm</i> from holding and/or controlling <i>client money</i>; OR • if it does not have such a <i>requirement</i>, only holds/controls <i>client money</i> arising from an agreement under which <i>commission</i> is rebated to a <i>client</i>; <p>AND</p>	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake one, or more, of the following <i>customer functions</i>:</p> <p>CF21 <i>Investment adviser function</i>;</p> <p>CF22 <i>Investment adviser (trainee) function</i>;</p> <p>CF24 <i>Pension transfer specialist function</i>;</p> <p>CF25 <i>Adviser on syndicate participation at Lloyd's function</i>; or</p> <p>CF26 <i>Customer trading function</i></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
<p>A.13 Advisory only firms and advisory, arrangers, dealers or brokers (not holding or controlling client money and/or assets)</p> <p>Continued...</p>	<p>(e) PROVIDED the fee-payer is NOT one of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm</i>; • a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>; • a <i>firm</i> whose activities are limited to acting as an <i>operator</i> of a <i>collective investment scheme</i>; • a <i>firm</i> whose activities are limited to carrying out <i>trustee</i> activities. <p>OR</p> <p>(4) its <i>permission</i>,</p> <p>(a) includes one or more of the following:</p> <ul style="list-style-type: none"> • <i>advising on investments (except pension transfers and pension opt-outs)</i>; • <i>advising on pension transfers and pension opt-outs</i>; • <i>advising on syndicate participation at Lloyd's</i>; <p>(b) BUT MUST NOT include:</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>dealing as principal in investments</i> where the activity is carried on as a matched principal broker; <p>AND</p> <p>(c) PROVIDED the fee-payer is NOT one of the following:</p> <ul style="list-style-type: none"> • a <i>corporate finance advisory firm</i>; • a <i>firm</i> for whom all of the applicable activities above are otherwise limited to carrying out <i>corporate finance business</i>; • a <i>firm</i> whose activities are limited to carrying out <i>venture capital business</i>; • a <i>firm</i> whose activities are limited to acting as an <i>operator</i> of a <i>collective investment scheme</i>; • a <i>firm</i> whose activities are limited to carrying out <i>trustee</i> activities. 	
<p>A.14 Corporate finance advisers</p>	<p>the <i>firm</i> is carrying on <i>corporate finance business</i>.</p>	<p>APPROVED PERSONS</p> <p>The number of <i>persons</i> approved to undertake the following <i>controlled function</i>:</p> <p>CF23 <i>Corporate finance adviser function</i></p>

Activity group	Fee-payer falls in the activity group if	Tariff-base
A.15	This activity group does not apply for this period.	
A.16 Pensions review levy firms	it was liable to pay the Pensions Levy to the <i>PIA</i> in 2001/2002.	Percentage share of the amount paid towards the <i>PIA</i> 's 2001/2002 pensions review Levy by fee-payers in fee-block A.16.
A.17 Pensions review - SERPS adjustment firms	It is subject to <i>PIA</i> rule 7.2.4 under the Designation of Pensions Review Provisions Instrument 2001.	Not applicable.
B	<i>Firms</i> that have been designated as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001, SI 2001/996.	Not applicable.

7. In SUP 20 Annex 1R, Part 8 delete the words “(This part will be made at a later date.)” and insert:

- (1) The amount of the periodic fee payable under SUP 20.6.1R is £1,000.

ANNEX B

1. Amend PROF 6, Ann 1R, Table 1 as shown (underlining indicates new text and striking through indicates deleted text):

Name of <i>designated professional body</i> (Periodic fees will be made at a later date.)	Amount payable	Due date
<u>The Law Society</u>	<u>£161,560</u>	<u>1 July 2002</u>
<u>The Law Society of Scotland</u>	<u>£19,100</u>	<u>1 July 2002</u>
<u>The Law Society of Northern Ireland</u>	<u>£23,060</u>	<u>1 July 2002</u>
<u>The Institute of Actuaries</u>	<u>£10,360</u>	<u>1 July 2002</u>
<u>The Institute of Chartered Accountants in England and Wales</u>	<u>£103,180</u>	<u>1 July 2002</u>
<u>The Institute of Chartered Accountants of Scotland</u>	<u>£18,500</u>	<u>1 July 2002</u>
<u>The Institute of Chartered Accountants in Ireland</u>	<u>£15,110</u>	<u>1 July 2002</u>
<u>The Association of Chartered Certified Accountants</u>	<u>£26,100</u>	<u>1 July 2002</u>
Any person seeking an order under section 326(1) of the <i>Act (Designation of professional bodies)</i>	£5,000	30 days after the order is laid before Parliament

ANNEX C

1. Amend CIS 18 Annex 1R, Part B as shown (underlining indicates new text and striking through indicates deleted text):

(This part will be made at a later date)

<u>Nature and purpose of fee</u>	<u>Payable by</u>	<u>Amount of fee</u>	<u>Umbrella scheme factor (Note 5)</u>
<u>Periodic fee for an ICVC</u>	<u>The authorised corporate director</u>	<u>£600</u>	<u>2</u>
<u>Periodic fee for an AUT</u>	<u>The manager</u>	<u>£600</u>	<u>2</u>
<u>Periodic fee for a scheme recognised under section 264 of the Act</u>	<u>The operator</u>	<u>£600</u>	<u>2</u>
<u>Periodic fee for a scheme recognised under section 270 of the Act</u>	<u>The operator</u>	<u>£600</u>	<u>2</u>
<u>Periodic fee for a scheme recognised under section 272 of the Act</u>	<u>The operator</u>	<u>£3,500</u>	<u>2</u>

ANNEX D

1. Amend REC 7 Annex 1R, Part 1 as shown (underlining indicates new text and striking through indicates deleted text):

Part 1 – Periodic fees for UK recognised bodies in relation to the period from 1 April 2002 to 31 March 2003.		
Name of UK recognised body (This part will be made at a later date.)	Amount Payable	Due Date
<u>COREDEAL Limited</u>	<u>£138,000</u>	<u>30 April 2002</u>
	<u>£24,000</u>	<u>1 September 2002</u>
<u>CRESTCo Limited</u>	<u>£206,500</u>	<u>30 April 2002</u>
	<u>£341,500</u>	<u>1 September 2002</u>
<u>ECCP</u>	<u>£264,000</u>	<u>1 July 2002</u>
	=	=
<u>The International Petroleum Exchange of London Limited</u>	<u>£181,000</u>	<u>30 April 2002</u>
	<u>£69,000</u>	<u>1 September 2002</u>
<u>Jiway Limited</u>	=	=
	=	=
<u>LIFFE Administration and Management</u>	<u>£39,500</u>	<u>30 April 2002</u>
	<u>£520,500</u>	<u>1 September 2002</u>
<u>The London Clearing House Limited</u>	<u>£70,500</u>	<u>30 April 2002</u>
	<u>£477,500</u>	<u>1 September 2002</u>
<u>The London Metal Exchange Limited</u>	<u>£175,000</u>	<u>30 April 2002</u>
	<u>£280,000</u>	<u>1 September 2002</u>
<u>The London Stock Exchange Limited</u>	<u>£70,500</u>	<u>30 April 2002</u>
	<u>£614,500</u>	<u>1 September 2002</u>
<u>OM London Exchange Limited</u>	<u>£163,000</u>	<u>30 April 2002</u>
	<u>£123,000</u>	<u>1 September 2002</u>
<u>virt-x plc</u>	<u>£76,500</u>	<u>30 April 2002</u>
	<u>£175,500</u>	<u>1 September 2002</u>
<u>Any other UK recognised investment exchange recognised as such by a <i>recognition order</i> made between 1 April 2002 and 31 March 2003</u>	<u>£150,000</u>	<u>30 days after the date on which the recognition order is made.</u>
<u>Any other UK recognised clearing house recognised as such by a <i>recognition order</i> made between 1 April 2002 to 31 March 2003</u>	<u>£250,000</u>	<u>30 days after the date on which the recognition order is made.</u>

2. Amend REC 7 Annex 1R, Part 2 as shown (underlining indicates new text and striking through indicates deleted text):

Part 2 – Periodic fees for recognised overseas bodies in relation to the period from 1 April 2002 to 31 March 2003.		
Name of recognised overseas body (This part will be made at a later date.)	Amount Payable	Due Date
<u>Cantor Financial Futures Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>Chicago Mercantile Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>Chicago Board of Trade</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>Eurex Zurich</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>NASDAQ</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>NASDAQ LIFFE, LLC Futures Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>New York Mercantile Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>New Zealand Futures and Options Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>Swiss Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>Sydney Futures Exchange</u>	<u>£9,000</u>	<u>1 July 2002</u>

<u>Wareterminbörse Hannover</u>	<u>£9,000</u>	<u>1 July 2002</u>
<u>Any other overseas <i>recognised body</i> recognised as such by a <i>recognition order</i> made between 1 April 2002 to 31 March 2003</u>	<u>£9,000</u>	<u>Date the application is made.</u>

ANNEX E

1. Amend FREN 1.2.2G as shown (underlining indicates new text and striking through indicates deleted text):

	Part of Handbook	Applicability to small friendly societies
	Supervision Manual (SUP)	... (o) <i>SUP 18 (Transfers of business)</i> <u>(p) SUP 20 (Fees Rules)</u> (q) (p) Appendix 1 (Prudential categories and sub-categories) (r) (q) Appendix 2 (Scheme of operations) ...

ANNEX F

1. Amend AUTH 4, Annex 1R, “Part 2 – Complexity Groupings” in the “Straightforward Cases” Table as follows (underlining indicates new text and striking through indicates deleted text):

Activity grouping	Description
A.3	<i>Friendly societies</i> only
A.4	<i>Friendly societies</i> only
A.12	Advisory arrangers, dealers or brokers (holding or controlling <i>client money</i> and/or assets)
A.13	<u>Advisory only firms and advisory</u> Advisory arrangers, dealers or brokers (not holding or controlling <i>client money</i> and/or assets)
A.14	Corporate finance advisers
A.15	Advisory only firms

2. Amend AUTH 4, Annex 1R, “Part 2 – Complexity Groupings” in the “Moderately Complex Cases” Table as follows (striking through indicates deleted text):

Activity grouping	Description
A.5	<i>Managing agents</i> at Lloyd's
A.7	Fund managers (holding or controlling client money and/or assets)
A.8	Fund managers (not holding or controlling client money and/or assets)
A.9	<i>Operators, trustees</i> and <i>depositories</i> of <i>collective investment schemes</i>
A.10	<i>Firms dealing as principal</i>
A.11	Execution only arrangers, dealers or brokers

ANNEX G

3. Amend COMP 13.6.9G as follows (underlining indicates new text and striking through indicates deleted text):

SUB-SCHEME	CONTRIBUTION GROUP (REFERENCES TO A1, A2 ETC ARE TO THE FSA FEE BLOCKS)	LEGAL BASIS FOR ACTIVITY (references are to articles of the <i>Regulated Activities Order</i>)	TARIFF BASE
Designated investment business	A7 – fund managers holding client money and/or assets	<i>Managing investments</i> (article 33), and either (a) holding client money; or (b) safeguarding and administering investments (article 36)	Funds under management
Designated investment business ...	A8 – fund managers not holding either client money and/or assets ...	<i>Managing investments</i> (article 33), but not (a) holding client money; or (b) safeguarding and administering investments (article 36) ...	Funds under management ...
Designated investment business ...	A13 – <u>advisory only</u> and brokers (excluding execution only brokers and corporate finance advisers) – not holding either client money or assets ...	Any of the following: (a) <i>dealing in investments as agent</i> (article 19); (b) <i>arranging (bringing about) deals in investments</i> (article 21(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 22(2)); with <i>permission to advise on investments</i> (article 49), <u>but not within A11, A12 or A14</u> ; but not to (i) hold <i>client money</i> ; and (ii) <i>safeguard and administer investments</i> (article 36). ...	Number of <i>approved persons</i> ...
Designated investment business ...	A15 – advisory only ...	Advising on investments (article 49), but not within A11 to A14 ...	Number of <i>approved persons</i> ...

SECURITISED DERIVATIVES CONDUCT OF BUSINESS INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority amends the Conduct of Business sourcebook and the Glossary 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 149 (Evidential provisions);
 - (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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 August 2002.

Amendments to the Conduct of Business sourcebook and the Glossary

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.
- E. The Glossary is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Securitised Derivatives Conduct of Business Instrument 2002.

By order of the Board
20 June 2002

Annex A

Amendments to the Conduct of Business sourcebook

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

COB 5.4.3A G A securitised derivative (as defined in the Glossary) is a derivative and COB rules relevant to derivatives therefore apply. Firms should note that the Glossary definition of securitised derivative is slightly different from the definition in chapter 24 of the listing rules. An instrument listed under that chapter, which is not an option or contract for differences, is not a securitised derivative for the purposes of COB.

COB 5.4.4 E The reasonable steps in COB 5.4.3 R should include the steps set out in COB 5.4.6 E to COB 5.4.10 E as appropriate, in relation to transactions in the following types of investment or activity:

- (1) *warrants and derivatives* (see COB 5.4.6E, COB 5.4.6A E or COB 5.4.6C E as appropriate);
- (2) *non-readily realisable investments* (see COB 5.4.7E);
- (3) *penny shares* (see COB 5.4.8E);
- (4) *securities* subject to stabilisation (see COB 5.4.9E);
- (5) *stock lending activity* (see COB 5.4.10E).

Risk warnings in respect of warrants and derivatives (other than retail securitised derivatives and certain EEA listed derivatives)

COB 5.4.6 E (1) In relation to a transaction in a *warrant* or *derivative* (other than a retail securitised derivative or an option or contract for differences to which COB 5.4.6C E applies), the *firm* should:

- (a) provide the *private customer* with the notice in COB 5 Ann 1E (Warrants and derivatives risk warning notice); and
- (b) require the *private customer* to acknowledge receipt of the notice and confirm acceptance of its contents, in writing.

(2) A *firm* need not undertake steps COB 5.4.6 E (1) (a) and (b) in respect of a *private customer* who is ordinarily resident outside the *United Kingdom*, if it has taken reasonable steps to determine that the *private customer* does not wish to receive the notice.

- (3) The notice in *COB 5 Ann 1E* (Warrants and derivatives risk warning notice) need not be sent in relation to the realisation of a *warrant* that is already held by the *private customer*, or of a *warrant* attached to another *designated investment*.

Risk warnings in respect of retail securitised derivatives

- COB 5.4.6A E (1) In relation to a transaction in a *retail securitised derivative*, the *firm* should provide the *private customer* with:
- (a) the notice in *COB 5 Ann 1E* (Warrants and derivatives risk warning notice); or
 - (b) a copy of the listing particulars prepared for the *securitised derivative* in accordance with chapter 24 of the *listing rules*, in a manner calculated to bring to the attention of the *private customer* the description of risk factors required by paragraphs 24.36 and 24.37 of the *listing rules* (Disclosure about risk factors); or
 - (c) a notice containing a clear, fair and adequate description of the *securitised derivative* which is to be the subject of the transaction, in a manner calculated to bring to the attention of the *private customer* the risks involved, in particular (and if applicable):
 - (i) that the *securitised derivative* gives rise to risks similar to those arising when an investor buys or sells an *option*;
 - (ii) that the *securitised derivative* is 'geared' or 'leveraged', which means that a relatively small movement in the price of the underlying instrument, whether favourable or adverse, could result in a larger movement in the price of the *securitised derivative*;
 - (iii) that the price of the *securitised derivative* may therefore be volatile;
 - (iv) that the *securitised derivative* has a limited life, and may expire worthless if the underlying instrument (such as a *share* or index) does not perform as expected;
 - (v) that, consequently, the *private customer* should not enter into the transaction unless he is prepared to lose all of the money he has invested, plus any *commission* or other *charges*;

(vi) that the *private customer* should satisfy himself that the *securitised derivative* is suitable for him, in the light of his circumstances and financial position, and if the *private customer* is in any doubt he should seek professional advice; and

(vii) a clear, fair and adequate description of any other relevant risks affecting the value, trading price, and realisation of the value of the *securitised derivative*.

(2) A *firm* should either:

(a) require the *private customer* to acknowledge receipt of the document provided in accordance with (1)(a), (b) or (c) and confirm acceptance of its contents, in writing; or

(b) be otherwise able to demonstrate that the *private customer* has received the document and had a proper opportunity to consider its terms.

(3) A *firm* need not undertake steps (1) and (2) in respect of a *private customer* who is ordinarily resident outside the *United Kingdom*, if it has taken reasonable steps to determine that the *private customer* does not wish to receive the notice.

COB 5.4.6B G (1) It is appropriate for a notice provided to a *private customer* in accordance with *COB 5.4.6A E* (1)(c) to explain, where applicable, the existence and extent of any factors that reduce the risks to which the *private customer* is exposed (for example, the fact that the *securitised derivative* is *listed*, or subject to some form of guarantee), but the *firm* should ensure that any such statement does not disguise, obscure or diminish the significance of the notice taken as a whole.

(2) The document provided to a *private customer* in accordance with *COB 5.4.6A E* (1)(b) or (c) may use another term (such as ‘covered warrant’) to describe a *securitised derivative*, if it is generally accepted market practice to do so.

(3) In relation to (1) and (2), *firms* are also reminded of the requirements of *COB 2.1* (Clear, fair and not misleading communication).

Risk warnings in respect of certain derivatives listed in other EEA States

COB 5.4.6C E In relation to an *option* or *contract for differences* which is included on the *official list* of an *EEA State* other than the *United Kingdom*, a *firm* should comply with *COB 5.4.6A E* if:

(1) the *investment* is not a *contingent liability investment*; and

- (2) (if it provides a right of exercise) the *investment* would comply with paragraph 24.7 of the *listing rules* (Method of exercising retail securitised derivatives), if it were listed on the *UK official list*.

This notice is provided ... you should be aware of the following points. (Include or delete as appropriate).

1. Warrants

A warrant ... transaction charges.

~~Some other instruments are also called warrants but are actually options (for example, a right to acquire securities which is exercisable against someone other than the original issuer of the securities, often called a 'covered warrant').~~

2 Off-exchange warrant transactions

Transactions in ... risks involved.

3 Securitised derivatives

These instruments may give you [a time-limited right (Note 1)] [an absolute right (Note 2)] to acquire or sell one or more types of investment which is normally exercisable against someone other than the issuer of that investment. Or they may give you rights under a contract for differences which allow for speculation on fluctuations in the value of the property of any description or an index, such as the FTSE 100 index. In both cases, the investment or property may be referred to as the "underlying instrument".

These instruments often involve a high degree of gearing or leverage, so that a relatively small movement in the price of the underlying investment results in a much larger movement, unfavourable or favourable, in the price of the instrument. The price of these instruments can therefore be volatile.

These instruments have a limited life, and may (unless there is some form of guaranteed return to the amount you are investing in the product) expire worthless if the underlying instrument does not perform as expected.

You should only buy this product if you are prepared to sustain a [total loss (Note 3)] [substantial loss (Note 4)] [loss (Note 5)] of the money you have invested plus any commission or other transaction charges.

You should consider carefully whether or not this product is suitable for you in light of your circumstances and financial position, and if in any doubt please seek professional advice.

Notes (these notes are not part of the notice):

- 1 Use for instruments such as covered warrants where there is some form of exercise required by the investor.
- 2 Use for instruments such as linked notes, or some certificates where there is some no form of exercise required by the investor.
- 3 Use for instruments such as covered warrants where the return payable to the investor is totally dependant upon the performance of the underlying instrument/s to which the product is linked and there is not another form of payment due to the investor (for example the repayment of capital).
- 4 Use for instruments such as linked notes where there is a form of return paid to the investor irrespective of the performance of the underlying instrument/s to which the product is linked, but the return is low.
- 5 Use for instruments such as linked notes where there is a form of return paid to the investor irrespective of the performance of the underlying instrument/s to which the product is linked, but the return is high but less than 100% of the amount paid for the product.

34. Futures

Transactions in .. as well as for you. Futures transactions have a contingent liability, and you should be aware of the implications of this, in particular the margining requirements, which are set out in paragraph 8 9.

45. Options

There are ...

56. Contracts for differences

Futures and options contracts can also be referred to as contracts for differences. These can be options and futures on the FTSE 100 index or any other index, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries the same risks as investing in a future or an option and you should be aware of these as set out in paragraphs 34 and 4-5 respectively. Transactions in contracts for differences may also have a contingent liability and you should be aware of the implications of this as set out in paragraph 8 9.

67. Off-exchange transactions in derivatives

It may...

78. Foreign markets

Foreign markets ...

89. Contingent liability investment transactions

Contingent liability ...

9~~10~~. Limited liability transactions

Before entering ...

~~10~~11. Collateral

If you ...

~~11~~12. Commissions

Before you ...

~~12~~13. Suspensions of trading

Under certain ...

~~13~~14. Clearing house protections

On many ...

~~14~~15. Insolvency

Your firm's ...

[name of firm]

[on duplicate for signature by private customer]

I/We have read and understood the risk warning set out above.

Date

[Signature of the customer]

[Signature of joint account holder]

Note to firms

Paragraphs 1-~~10~~15 may be deleted when they relate to particular kinds of business which will not be carried out with or for the customer.

~~Paragraphs 11-14 are mandatory and may not be deleted.~~

This notice may be incorporated as part of a two-way customer agreement, but the customer must sign separately that he has read and understood the risk warnings.

Annex B

Amendments to the Glossary

In this Annex, underlining indicates new text.

derivative a contract for differences, a future or an option.

(see also securitised derivative.)

retail securitised derivative a securitised derivative which is not a specialist securitised derivative; in this definition, a “specialist securitised derivative” is a *securitised derivative* which, in accordance with paragraphs 24.1(m) and 24.6 of the *listing rules*, is required to be admitted to listing with listing particulars which contain a clear statement on the front page that the issue is intended for purchase by only investors who are particularly knowledgeable in investment matters.

securitised derivative an option or contract for differences which, in either case, is listed under chapter 24 of the *listing rules* (including such an option or contract for differences which is also a *debenture*).

(see also COB 5.4.3A G for the treatment of a securitised derivative.)

**MARKET CONDUCT SOURCEBOOK
(SPECIALIST TOPICS AND FREQUENTLY ASKED QUESTIONS)
INSTRUMENT 2002**

Powers Exercised

- A. The Financial Services Authority alters the Market Conduct sourcebook in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 August 2002.

Amendments to MAR 1 (The Code of Market Conduct)

- C. MAR 1 is amended in accordance with Annex A to this instrument.

Amendments to MAR 2 (Price stabilising rules)

- D. MAR 2 is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as Market Conduct Sourcebook (Specialist Topics and Frequently Asked Questions) Instrument 2002.

By order of the Board
20 June 2002

Annex A

Amendments to MAR 1 (The Code of Market Conduct)

In this Annex, underlining indicates new text, except in the case of the two new Annexes to MAR 1, when the place that they go is indicated, but the new text is not underlined.

MAR 1.1.3G(3) the *behaviour* must be likely to be regarded by a *regular user* of the market as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in the position of the *person* in question. (see MAR 1.2 and MAR 1 Ann 4G (Frequently asked questions))

MAR 1.2.8G It may ... and the *SARs*. (See MAR 1 Ann 4G (Frequently asked questions))

MAR 1.2.11G The FSA ... be relevant. (See MAR 1 Ann 4G (Frequently asked questions))

MAR 1.8.2G For the ... *required or encouraged*. (See MAR 1 Ann 4G (Frequently asked questions))

MAR 1.8.8G Where the ... *market abuse*. (See MAR 1 Ann 4G (Frequently asked questions))

MAR 1.11.1G Section 118(1) of the *Act* defines *market abuse* as *behaviour* which amongst other things:

“occurs in relation to qualifying investments traded on a market to which this section applies”.

(See MAR 1 Ann 4G (Frequently asked questions))

Insert the following two Annexes after MAR 1 Ann 2G:

MAR 1 Annex 3G

Specialist topics

Scope of the market abuse regime
Scope of the market abuse regime for bonds
<p>If a <i>qualifying investment</i> (“QI”), for example a <i>security</i>, trades on a <i>prescribed market</i>, it falls within the scope of the regime (see <i>MAR 1.11.1G</i>). Any other <i>behaviour</i> “in relation to qualifying investments” traded on a <i>prescribed market</i> also falls within the scope of the <i>market abuse regime</i> (see <i>MAR 1.11.1G</i>). For example, bonds “traded on”, or traded subject to the rules of, Coredeal MTS or the London Stock Exchange (see <i>MAR 1.11.3G(2)</i>) are QIs traded on a <i>prescribed market</i>. Eurobonds which have at no time traded on an <i>RIE</i> do not fall within the scope of the regime.</p> <p>Bonds admitted to trading on a <i>prescribed market</i> but traded subject to the rules of a non-<i>prescribed market</i> may fall within the scope of the regime if they have previously traded on the <i>prescribed market</i>. However, if there is no ongoing market for a QI on a <i>prescribed market</i>, market participants are unlikely to rely on the <i>prescribed market</i> for price discovery. Equally, if there is no continuing market for the QI on the <i>prescribed market</i>, <i>behaviour</i> is unlikely to damage confidence in the <i>prescribed market</i> for that QI (<i>MAR 1.11.4G</i>).</p>

The scope of the regime for ‘grey market’ or ‘when issued’ trading (equities and bonds)

‘Grey market’ or ‘when issued’ trading in a *qualifying investment* on a *prescribed market* will usually be within the scope of the regime. Where a *prescribed market* has rules for ‘when issued’ trading in a *security* or *derivative* of that *security*, and trading in that *security* or *derivative* is subject to the rules of the *prescribed market*, it will also fall within the scope of the regime. This trading will fall within the “traded on” concept as this includes traded subject to the rules of a prescribed market (MAR 1.11.3G(2)). This will include ‘when issued’ trading on the London Stock Exchange in shares and on LIFFE in equity options. Where there is ‘grey market’ trading which is not subject to the rules of a *prescribed market*, the *behaviour* may be “in relation to the *qualifying investment*” when it is ultimately “traded on” the *prescribed market*.

Behaviour which occurs “in relation to a qualifying investment” traded on a *prescribed market* falls within the scope of the regime. This would include further offerings of *shares* by an issuer that has already issued *shares* which “trade on” a *prescribed market* (that is, an existing tranche is already traded on a *prescribed market*). For bonds, *behaviour* in relation to a bond being tapped which trades on a *prescribed market* would also be *behaviour* “in relation to a qualifying investment” traded on a *prescribed market*.

Any *behaviour* whose effect persists until the *security* is traded on an exchange will be *behaviour* in relation to that *security*. New issues by a previously unlisted issuer (for example, initial public offers (“IPOs”)) will not be “traded on” a *prescribed market* ahead of the issue, however they will fall within the scope of the regime if information which is disclosed about them before the *security* trades on a *prescribed market*, for example, in a prospectus, is false or misleading. So, if a false or misleading impression persists if and when the instrument is actually traded and thereby falls within the scope of the regime, that *behaviour* would fall within the scope of the regime. *Market abuse* may therefore be said to occur when the *security* trades on the *prescribed market*. Note too that if the price is false at the start of trading, and the *stabilising manager* knows or ought reasonably to know this, the *price stabilising rules* safe harbour may not be available (MAR 2.2.2G, MAR 2.3.8R).

MAR 1 Annex 4G

Frequently asked questions on the Code of Market Conduct

Structure of the Code	
Q1	Is behaviour in relation to share options and contracts for differences within the scope of the regime?
<p><i>Behaviour</i> in relation to <i>share options</i> falls within the scope of the regime if the subject matter of the <i>share options</i> is <i>shares</i> which trade on a <i>prescribed market</i> (see MAR 1.11.2G). <i>Behaviour</i> in relation to <i>contracts for differences</i> will also fall within the scope of the regime where that <i>behaviour</i> is in relation to a <i>qualifying investment</i>. (See MAR 1.11.6G to MAR 1.11.11G.)</p>	
Q2	How are the safe harbours (the ‘C’ provisions) in the Code applied? What status does the guidance in the Code have?
<p>The safe harbour provisions denoted as ‘C’ are conclusive and are descriptions of <i>behaviour</i> that does not amount to <i>market abuse</i> (section 118(8), section 119(2)(b) and section 122(1) of the <i>Act</i>). If a <i>person</i> behaves in a way that is described in the Code as <i>behaviour</i> that does not amount to <i>market abuse</i>, his <i>behaviour</i> will not amount to <i>market abuse</i>. The descriptions in the Code of <i>behaviour</i> which amounts to <i>market abuse</i> carry evidential weight and are denoted as ‘E’ (s119(2)(c) and s122(2) of the <i>Act</i>), that is they may be relied on in so far as they indicate whether or not that <i>behaviour</i> should be taken to amount to <i>market abuse</i>.</p> <p>The <i>guidance</i> provisions in the Code denoted as ‘G’ are issued under section 157 of the <i>Act</i>. Wherever <i>guidance</i> is used, it is not binding on those to whom the <i>Act</i> (and in this case the Code) applies, nor does it have evidential effect. It need not be followed to comply with a particular requirement. (See paragraphs 28 to 31 of the Reader’s Guide to the <i>Handbook</i> for a fuller discussion.)</p>	
Q3	If the FSA is not the regular user, who is, and how will you establish what the regular user expects?
<p>The <i>regular user</i> is neither a real person nor a group of real people. One does not establish the expectation of the <i>regular user</i> by taking a survey of actual market users. The test operates as an objective standard: just because ‘everyone does it’ does not necessarily make a particular practice acceptable. In practice, we may well speak to people from a market background to gauge what they as market participants consider the <i>regular user’s</i> expected standards would be, in a particular context. Initially we will have to form our own view about whether particular behaviour is acceptable. We are not the <i>regular user</i> but we do have to give <i>guidance</i> on the standards the <i>regular user</i> is likely to expect. Ultimately, the <i>Tribunal</i> will decide the standards the <i>regular user</i> expects.</p>	

Q4	<p>Why are so many Listing rules and Takeover Panel rules ‘safe harboured’ in the Code when only one exchange rule receives the same treatment?</p>
<p>Our overall philosophy for granting safe harbours has been to identify those rules that require or expressly permit certain <i>behaviours</i> or embody certain standards of care which, absent the safe harbour, could amount to <i>market abuse</i>. <i>MAR 1.2.8G</i> explains how the <i>regular user</i> would be likely to take into account compliance with the rules of <i>prescribed markets</i>, the <i>FSA</i> and the <i>Takeover Panel</i> in deciding whether a <i>person</i> observed the standard of <i>behaviour</i> expected in his or her position in relation to the market. <i>MAR 1.5.25C</i> is a safe harbour covering required reporting or disclosure to <i>prescribed markets</i>.</p>	
<p>Behaviour under the Code</p>	
Q5	<p>What examples are there where accepted practice is unacceptable? What will the FSA do when it identifies an accepted practice that falls below expected standards?</p>
<p>Please refer to <i>MAR 1.2.11G</i>.</p>	
Q6	<p>What is the position of an intermediary who executes an abusive transaction? When applying the market abuse regime to electronic broking and order-routing mechanisms, including voice brokers, are the standards expected of each type of intermediary equivalent?</p>
<p>Our main focus will be on the client who originated the transaction. The <i>regular user</i> is likely to consider a client who submits an abusive trade to an intermediary for execution as engaging in <i>market abuse</i>. But, in addition, the client may have <i>required or encouraged</i> the intermediary to engage in <i>market abuse</i> or the intermediary may have participated in the abuse (see <i>MAR 1.8.2G(1)</i>). The intermediary’s <i>behaviour</i> in executing the transaction for the client will not amount to either <i>requiring or encouraging</i> or <i>market abuse</i> (see <i>MAR 1.8.8G</i>) unless the intermediary knew or ought reasonably to have known that the originator of the transaction was engaging in <i>market abuse</i> (see <i>MAR 1.1.3G(3)</i> and <i>MAR 1.8.8G</i>).</p> <p>The <i>market abuse regime</i> does not impose any new positive obligations on intermediaries. They are already expected to comply with the applicable rules (such as the <i>Principles</i> and the <i>RIE</i> rules). The <i>regular user’s</i> assessment of <i>behaviour</i> by an intermediary would likely take into account compliance with applicable rules. So, the <i>regular user</i> would recognise differences in the standards of behaviour expected of different kinds of intermediaries.</p>	

Operational issues

Q7 | **When will the FSA investigate market abuse on a prescribed market and when will the operator of a prescribed market do it?**

We expect that the operator of a *prescribed market* will investigate and take enforcement action where:

- the misconduct is limited to the *prescribed market*;
- they have jurisdiction over all the *persons* concerned; and
- the operator's enforcement powers are sufficient to deal with the misconduct.

The operators of *prescribed markets* clearly have a continuing essential role as front-line regulators. We are not seeking to take over their role. It is likely that we will work together with the operators on some cases. In other cases, we will conduct the investigation and any subsequent enforcement action. We have a close working relationship with the operators and will discuss matters on a case-by-case basis, to decide which body is best placed to take each case forward. As we made clear in the Enforcement manual, we will co-ordinate action with the operators to ensure cases are dealt with effectively and fairly. The *FSA* and the operators published operating arrangement guidelines on 20 November 2001 which are available at www.fsa.gov.uk/pubs/other/market_conduct/index.html#mc (see also *ENF* 14.9 (Action involving other UK regulatory authorities)).

Q8	When will the FSA investigate market misconduct during a takeover bid?
<p>We recognise the importance of minimising disruption to the takeover bid process and expect parties to use all of the procedures for complaint to the <i>Takeover Panel</i> (“Panel”). We also expect that the Panel will investigate and take action, save in exceptional circumstances, during the course of a takeover bid (for full details see the Operating Guidelines document on www.fsa.gov.uk/pubs/other/market_conduct/index.html#mc). The exceptional circumstances in which we will consider action during the course of a takeover bid are:</p> <ul style="list-style-type: none"> • where the Panel asks us to use our powers to impose penalties, or our powers of injunction or restitution; • where the suspected misconduct falls within the misuse of information prohibition under the <i>market abuse regime</i> (section 118(2)(a) of the <i>Act</i>) or Part V of the Criminal Justice Act 1993 (insider dealing); • where the Panel is unable to investigate properly due to a lack of co-operation by the relevant <i>person</i>; • where a <i>person</i> has deliberately or recklessly failed to comply with a Panel ruling; • where the suspected misconduct extends to <i>securities</i> or a class of <i>securities</i> which may be outside the Panel’s jurisdiction; • where the suspected misconduct threatens or has threatened the stability of the financial system. <p>There is general <i>guidance</i> on the interaction between the <i>FSA</i> and other <i>UK</i> regulatory authorities, including the Panel, in the <i>Handbook</i> at <i>ENF</i> 14.9 (Action involving other UK regulatory authorities).</p>	
Q9	Will market participants have to wait for an enforcement action to find out if a behaviour is unacceptable?
Please refer to <i>MAR</i> 1.2.11G.	

Annex B

Amendments to MAR 2 (Price stabilising rules)

Insert the following new Annex after MAR 2 Ann 2G:

MAR 2 Annex 3G

Frequently asked questions on the price stabilising rules

Application	
Q1	<p>What does the sentence in MAR 2.1.4G "Other offers that may be regarded as public are offers to a section of the public, placements that are not essentially private and distributions" mean? If, for example, a public offer of shares is made in another jurisdiction and a private placement of GDRs is made in the United Kingdom, how could that placement of GDRs be "...not essentially private"?</p>
<p>The policy intends to exclude block trades of <i>securities</i> already in issue, not to limit genuine offers for the purposes of capital raising. The <i>guidance</i> given in the <i>MAR 2</i> sets this out. There is no universally accepted definition of "public offer", nor is it possible or desirable to give exact <i>guidance</i> on how many investors would be required to make an offer "public". It is clear from <i>MAR 2.1.3R(5)</i> that the public announcement element is critical; stabilisation of placements is only allowed after they are announced. If <i>firms</i> have concerns about a particular issue structure, they may wish to approach us for individual <i>guidance</i>.</p>	
Q2	<p>The rules state that the stabilisation safe harbour is available for offers of £15 million or more. Are there circumstances when the safe harbour would be available for offers smaller than £15 million? First, if the overallotment option raised the value above £15 million, would stabilisation be permitted? Secondly, if there are two offers of relevant securities, one of which is below £15 million, can they be combined for stabilisation purposes?</p>
<p><i>MAR 2.1.3R(4)</i> sets the limit at £15 million, and this replicates the limit under the Financial Services Act 1986. This refers to the amount to be raised and available for <i>offer</i>. <i>MAR 2.1.3R</i> and <i>MAR 2.4.2R(1)</i> state that an overallotment relates to <i>securities</i> that are not among those <i>offered</i> and so are not included in the £15 million limit. So the <i>offer</i> itself, distinct from the overallotment option, should indicate the value and the overallotment is clearly not included in this amount.</p> <p>If there is more than one <i>offer</i> of the same <i>relevant</i> or <i>associated securities</i> they will only be able to be combined for stabilisation purposes (that is, treated as a single <i>offer</i>) if one of the <i>offers</i> is for more than £15 million and if they are issued simultaneously or almost simultaneously. In these circumstances, all of the <i>securities</i> will be able to be supported by <i>price stabilising action</i>, provided that this is undertaken pursuant to the <i>price stabilising rules</i> in the case of all the <i>securities</i> subject to the <i>offer</i> (including all required disclosures). <i>Firms</i> should seek individual <i>guidance</i> on the ability to combine <i>offers</i> that are made almost simultaneously and the applicable <i>stabilising period</i> for each of the <i>offers</i>.</p>	

Record keeping: Territorial application

Q3 **The territorial application at MAR 2.1.6R(2) is for a firm’s business when “carried on from an establishment in the United Kingdom”. Under MAR 2.2.4R the safe harbour is available only if proper records are kept. The record-keeping requirement is a general rule, applicable only to authorised firms. Where does this leave passported firms operating out of, for example, Paris? Do they have to follow the record-keeping rules in MAR 2.7?**

MAR 2.2.4R only imposes the record-keeping requirement in MAR 2.3.2R on those *stabilising managers* that are obliged to keep those records. MAR 2.3.2R(3) makes it clear that only those *persons* to which MAR 2.7 applies have to meet the register requirements in MAR 2.7. The *rules* in MAR 2.7 (and the *rules* in MAR 2.6) are general *rules* made under section 138 of the *Act*. So, only a *firm* carrying on business from an establishment in the *United Kingdom* has to meet the requirements in the *rules* in MAR 2.6 and MAR 2.7 (see MAR 2.1.6R(2)). An *incoming EEA firm* must comply with these *rules* where this activity is undertaken in the *United Kingdom*, but if the activity is undertaken in its *Home State*, local record keeping rules apply. An *incoming EEA firm* that is carrying on stabilising activity, but only from an establishment abroad, does not have to meet the requirements in MAR 2.7 to get the safe harbour defences referred to in MAR 2.1.2G (see MAR 2.1.8G). So MAR 2.2.4R(2) and MAR 2.3.2R(3) are not only about whether the *person* concerned is *authorised*, but also whether, in the circumstances, the *person* is obliged to comply with the *rule*.

Please note that, in this FAQ, when we refer to general *rules* we are referring to those *rules* made under section 138 of the *Act*. The *rules* in MAR 2.1 to MAR 2.5 are *price stabilising rules* made under section 144 of the *Act* (Price stabilising rules).

Stabilising managers and agents

Q4 **The rules allow a single stabilising manager. How does this approach relate to agents?**

There must be one *person* that has the sole responsibility for ensuring compliance with the *United Kingdom price stabilising rules* (“the rules”). This *person* is referred to as the *stabilising manager*. The *stabilising manager* can delegate activities to an agent or agents, including agents in other jurisdictions. However, the *stabilising manager* must still maintain overall responsibility for managing and co-ordinating the stabilisation.

This requirement stems from:

- a) the definition of *stabilising manager* as “the single *person* responsible for *stabilising action* under MAR 2”; and
- b) MAR 2.6.4R, which requires each bid to be made or transaction effected by the *stabilising manager* himself or a *person* appointed on specified terms to act as an agent for the *stabilising manager*.

However, the rules do not prohibit different managers for different jurisdictions. We are aware, for example, that local stabilising rules in some overseas jurisdictions may require a local manager or that local expertise may be required in meeting those local rules. For an *offer* in an overseas jurisdiction, there is no requirement for an overseas manager to follow the rules unless he wants to obtain the benefit of the safe harbour defences referred to in MAR 2.1.2G. In such a case, there must be compliance with MAR 2.1 to

MAR 2.5, or with MAR 2.8. Further, if the overseas manager wants to use an agent in the *United Kingdom*, he should ensure that one *person* is identified as the *stabilising manager* for the purposes of the rules. That *stabilising manager* will take responsibility for compliance with MAR 2.6.4R, and so will take responsibility for the actions of any agents also undertaking stabilisation in the *United Kingdom*. If the *stabilising manager* is a *firm* (that is, an *authorised person*) the agent in the *United Kingdom* will not be able to benefit from the safe harbour if he makes a bid or effects a transaction during *stabilising action* unless he is appointed on terms complying with MAR 2.6.4R. (Note that in this scenario we envisage that the *stabilising manager* will be a *firm* or employed by a *firm* (see MAR 2.6.2R), but if he is not, we suggest that individual *guidance* is sought.)

Q5	The rules appear to impose a greater responsibility on the stabilising manager for agents' actions than those known to the normal laws of agency. If institutions cover themselves by introducing indemnity statements into contracts, would this mean the policy would be ineffective?
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We intend to ensure that responsibilities are clear but avoid setting specific *rules* in this area. In setting this policy, we envisaged that a contractual arrangement would govern the relationship between principal and agent (explicitly stating the limits of the agent). The contractual relationship between the *stabilising manager* and his agent could specify that the authority of the agent was limited to actions complying with the *rules*. However, the contract would also include the term outlined in MAR 2.6.4R(2)(b). This would make the *stabilising manager* as responsible to others for the acts or omissions of the agent as if they had been done by the *stabilising manager*. If the agent were to breach the *rules* then, even if it is acting outside the authority of the *stabilising manager*, the *stabilising manager* would be responsible to others for those actions. However, applying MAR 2.6.4R means that if the agent does, for example, breach the price limits, the *stabilising manager* will not automatically lose the safe harbour and be guilty of an offence to which the *rules* relate. The questions of whether the safe harbour has been lost and whether there has been such an offence, raise different issues. We would need to consider, for example, the steps taken by the *stabilising manager* in seeking to ensure that the agent did comply with the *rules*. Our policy here is not defeated by contractual arrangements resulting in the agent indemnifying the *stabilising manager*.

It is also relevant that MAR 2.6.4R applies only to a *stabilising manager* which is a *firm* (that is, an *authorised person*) operating from an establishment in the *United Kingdom*. If the contract fails to include the required term, there could be disciplinary consequences for the *firm*, though breach of MAR 2.6.4R(2)(b) does not result in civil liability in its own right (see MAR 2.1.9R).

Q6	MAR 2.6.5R prohibits stabilising managers from entering into principal trades in the relevant securities with their agent. Does the FSA mean to prohibit, for example, cases where the manager and the agent act together to short sell as part of ancillary stabilising action, but where the agent is more successful in the selling, and where the stabilising manager then covers the agent's short position? The rule suggests that this cannot now be done. Is this the intention?
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There are a number of issues to consider here.

Any *stabilising* or *ancillary action* taken by the *stabilising manager* or his agent must be taken with a view to supporting the market price of the *relevant securities* (MAR 2.2.3R and MAR 2.4.2R). By their nature, pre-arranged transactions between a principal and agent will not usually be taken with this view in mind. When drafting the *rule*, we wanted to prohibit the situation where, for example, an agent opened a short position to enable his principal to offload a net long position at less of a loss than would otherwise be the case.

In the specific example referred to in the question above, we would not consider the pre-agreed covering of a short position as prohibited behaviour where:

(a) it comes within the permitted range of *stabilising action* and is taken with a view to supporting the market price of the *relevant securities*; and

(b) it involves the agent effectively conducting transactions for the principal's book.

The *FSA* is aware that the application of *MAR 2.6.5R(1)* may raise issues for participants in the debt markets. The *FSA* is currently considering the issue and we anticipate amending this *rule* in the near future. In the meantime, we suggest that *firms* approach the *FSA* for individual *guidance* or a *waiver*.

It is also worth remembering that *MAR 2.6.5R* is a general *rule* (see *MAR 2.1.8G*). As such, *MAR 2.6.5R* is not relevant for the defences outlined in *MAR 2.1.2G*, so the transaction itself will not cause a *firm* to lose the safe harbour.

Q7

The price stabilising rules prohibit entering into transactions with agents during the stabilising period (MAR 2.6.5R(1)). For a large firm, it would be difficult to suspend all dealings with agents as they operate on several different levels and have numerous relationships. This would severely limit market activity. Can this be avoided by using Chinese walls?

We introduced this policy to avoid a person manipulating the price through dealings between the principal and its agent. This could arise, for example, if the agent were to sell at a price higher than the price at which another holder of the stock would be able to sell. The thrust of the policy behind the *rules* is to prevent activities inconsistent with one of the underlying concepts, which is support for the market price. This policy could be defeated if non-arms-length dealing between principal and agent were part of the process.

However, we do not intend that the policy should limit normal *market making* activities. To separate actions that are collusive from these normal *market making* activities, it is acceptable to the *FSA* for a *person* to use *Chinese walls* to maintain a separation of its activities as stabilising manager and its activities as *market maker*. *MAR 2.6.5R(2)* states that the prohibition in *MAR 2.6.5R(1)* does not apply where the stabilising manager could not have reasonably been expected to know the identity of the counterparty. The use of *Chinese walls*, to the extent that they will help keep the identity of one party from the other, will in our view enable the *market maker* to conduct its normal activities with its counterparties. It must be clear, however, that the *Chinese wall* is operated in line with the normal procedures in *COB 2.4.4R*. (This must also be the case for the agent if the agent is an *authorised person*. This may be more problematic if the agent is a small entity and if there is limited clarity of role in the relationship between the *stabilising manager* and *market maker*.)

The *firm* should ensure that it reviews its actions case by case to ensure that it is not engaging in *market abuse* and, where necessary, approach the *FSA* for individual *guidance*. Where the *stabilising manager* is limited to using agents that are affiliates of the *stabilising manager*, it should apply to us for individual *guidance* on a case by case basis.

Please note that this *rule* would usually only affect a limited number of transactions. The *rules* only apply for a limited set of conditions, that is, for dealings in *relevant* and *associated securities* during the *stabilising period*.

Depository receipts

Q8 **What is the policy reason for 'uniformity' of depository receipts ("DRs") as set out in the definitions, especially concerning numerical uniformity?**

We introduced the principle of uniformity to prevent stabilising of DRs that are complex products or which are in the form of an index, that is, those that are non-equivalent instruments. The definition of DR in article 80 of the *Regulated Activities Order* (which is one of the group of *securities* specified in *MAR 2.1.3R*), excludes receipts conferring rights for two or more *investments* issued by different *persons*. (There is a further definition in Schedule 2 to the Criminal Justice Act 1993, for the insider dealing provisions, which defines a DR as a certificate or record issued by or on behalf of someone who holds any *relevant securities* of a particular issue.) Given these definitions, the standard operation of *MAR 2.2.3R* is that a DR can, where it is a *relevant security* (that is, it is issued as part of the *offer*), be treated as in the definition of the *Regulated Activities Order*. The *rules* do not prohibit stabilising DRs of a different size or denomination to the *securities* they represent. These are still mutually interchangeable and uniform with the underlying *security*, and fall within the scope of the *rules*.

However, where a DR is not issued as part of the offer the definition in the *Glossary* of an *associated security* (that it is "...in all material respects uniform with the *relevant security* in terms of value, size and duration") applies. So, where an *associated security* is to be stabilised, it should not differ from the *relevant security* to any material extent. In our view, a DR that is a multiple of a *relevant security* is an *associated security* because it is still the same size in all material respects, as it is based on a *security* that is the same size. However, a DR that is a multiple of a *security* that is not the same size as a *relevant security* is not an *associated security*.

Price limits

Q9 **The pricing limits have a ceiling at the issue price, but *MAR 2.4.4R* allows ancillary action (under *MAR 2.4.2R*) which is not subject to the price limits. *MAR 2.4.2R(2)* allows for the closing out or liquidation of any position established under *MAR 2.4.2R(1)* by buying relevant or associated securities outside of the pricing rules. However, most of this ancillary action is likely in practice to take place in the grey market and most stabilising managers would be expected to obtain a greenshoe. In effect, any further action would be to close out the short, so circumventing the price limits. Is this correct? The only cases where the limits would apply would be in cases where (i) a short has not been established (that is, no overallotment) or (ii) where the short is closed out, but there is a need to stabilise further.**

A reminder of this issue was outlined in our Market Watch Newsletter No. 1 (September 2001) on our website at http://www.fsa.gov.uk/pubs/other/market_conduct/index.html#mc. Any short positions opened by a *stabilising manager* with the purpose of "circumventing" the price limits in *MAR 2.5* would take the *stabilising manager* out of the *stabilising action* safe harbour. A short position established by short sales or an overallotment must be established "with a view to supporting the price of the *relevant securities* by action under *MAR 2.2.3R*". Action can only be taken under *MAR 2.2.3R* if certain conditions are met, including the price limits in *MAR 2.5* (see *MAR 2.2.2G(4)*). A *stabilising manager* can only open a short position if it does so with a view to buying *relevant securities* in line with the price limits in *MAR 2.5*. In other words, at the time the short position or overallotment

position is taken, it must be taken by the *stabilising manager* with a view to taking action under MAR 2.2.3R (that is, purchasing *securities*) in line with the price limit *rules*.

If, at the time the short position is set up, the real intention is to circumvent the price limits, then that position is not being set up “with a view to supporting the price” of the *relevant securities*. Instead, the position is being taken with a view to avoiding the price limits.

With shorts created for price support, if it then transpires that it is not possible to cover the position in line with the price limit *rules*, the *stabilising manager* is able, without breaching the *rules*, to cover the position outside the price limits. There will also be economic pressures here given the costs of covering a short. Not applying the price limits to the covering purchases brings the covering of short positions within the safe harbour. So, the issue is: when does buying by a *stabilising manager* contrary to the price limit *rules* indicate that the *stabilising manager* did not take the position with a view to buying in line with the price limits? This would be a question of fact, to be decided in the circumstances of each case. However, an indication might be where the overallocation was so large in relation to the greenshoe facility available that it would make it probable that there might have to be closing out above the price limits.

**CREDIT UNIONS SOURCEBOOK AND
CONSEQUENTIAL AMENDMENTS (NO 2) INSTRUMENT 2002**

Powers exercised

A. The Financial Services Authority amends the Credit Unions sourcebook, the Supervision manual, the Compensation sourcebook and the Glossary 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 155(7) (Consultation);
- (3) section 156 (General supplementary powers);
- (4) section 157 (Guidance);
- (5) section 213 (The compensation scheme);
- (6) section 214 (General);

and of the following powers and related provisions in the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (the "Order"), having regard to section 13 of the Interpretation Act 1978 (Anticipatory exercise of powers):

- (5) article 9 (Designation of existing provisions to take effect as rules);
- (6) article 10 (Modification of existing provisions);
- (7) article 14 (Guidance on continued provisions); and
- (8) article 15 (Consultation on provisions prior to commencement).

New rules and guidance

B. The Financial Services Authority makes and alters rules (other than the provisions designated as continued provisions by paragraph D below) and gives and alters guidance (other than the guidance on continued provisions given in paragraph H below) with effect from 2 July 2002 in accordance with Annexes A, E and F to this instrument.

C. Sections 138, 156, 213 and 214 of the Act are specified for the purposes of section 153(2) of the Act (Rule-making instruments).

Continued provisions

D. The Financial Services Authority designates the provisions of:

- (1) the Credit Unions Act 1979;
- (2) the subordinate legislation made under that Act; and
- (3) the Industrial and Provident Societies Act 1965;

set out in Annex B to this instrument (the "existing provisions") for the purposes of article 9 of the Order.

E. In accordance with article 10 of the Order, the existing provisions are modified:

- (1) so as to be interpreted in accordance with, and apply subject to, the General provisions (GEN) module of the FSA's Handbook of rules and guidance;
- (2) by showing the words "credit union" in italic type in every place where they occur in the existing provisions (so as to have effect as a defined term in accordance with the General provisions); and
- (3) as set out in Annex C to this instrument;

and the existing provisions as so modified are the "continued provisions".

F. The continued provisions are to be treated as having effect under section 138 of the Act (General rule-making power).

G. The continued provisions are set out in Annex A to this instrument at:

- (1) CRED 7.3.5R;
- (2) CRED 7A.2.1R to CRED 7A.2.4R;
- (3) CRED 7A.3.1R to CRED 7A.3.2G;
- (4) CRED 7A.4.1R to CRED 7A.4.3R;
- (5) the table in CRED 7A Ann 1R (Table 1, headings and rows A to C, Table 2 and Table 3); and
- (6) CRED 14.10.10R and CRED 14.10.11R.

Guidance on continued provisions

- H. The Financial Services Authority gives the guidance in CRED 7A.1.2G, CRED 7A.2.3G, CRED 7A.3.2G, CRED 14.10.9G under section 157 of the Act and article 14 of the Order.

Rules and guidance subject to relevant prior consultation

- I. The Financial Services Authority, in making the rules referred to in column 1 of Annex D to this instrument, and also set out in Annex A to this instrument, relies upon article 15 of the Order.
- J. For the purposes of article 15(3) of the Order, relevant prior consultation complying with the requirements of section 5 of the Regulatory Reform Act 2001 is the consultation undertaken by HM Treasury in its consultation document entitled "Proposed amendments to the Credit Unions Act 1979" published on 15 October 2001, and the provisions in relation to which consultation took place are the provisions referred to in column 2 of Annex D to this instrument.
- K. The rules referred to in paragraph I above are set out in Annex A to this instrument at:
- (1) CRED 7A.2.5R to CRED 7A.2.8 R; and
 - (2) row (D) of Table 1 in CRED 7A Ann 1 R.

Commencement

- L. This instrument comes into force on 2 July 2002.

Citation

- M. This instrument may be cited as the Credit Unions Sourcebook and Consequential Amendments (No. 2) Instrument 2002.

By order of the Board
20 June 2002

Annex A Amendments to Handbook

In this Annex, underlining indicates inserted text and striking through indicates deleted text. Where an entire new chapter or annex is inserted into the Handbook, the place that it goes is indicated, but the text is not underlined.

Supervision manual

SUP 16.7.62R *A credit union must submit reports to the FSA in accordance with, and in the same format as, the forms contained in SUP 16 Ann ~~13~~14R, as set out in SUP 16.7.63R.*

SUP 16.7.63R Table: Financial reports required from a credit union (see SUP 16.7.62R)

Content of report	Form	Frequency	Due date
Key financial data	CQR	Quarterly	One <i>month</i> after quarter end
Annual audited statement <u>Extended financial data</u>	CYAR	Annually	Seven <i>months</i> after financial year end

SUP 16.7.63AG Guidance notes for the completion of the reports are contained in SUP 16 Ann 15G.

SUP 16.7.63BR The annual report required from a credit union by SUP 16.7.62R and SUP 16.7.63R must be made up for the same period as the audited accounts published by the credit union in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 (See CRED 14 Ann 1G).

SUP 16.7.63CG CRED 14.10.10R(2)(a) states that the audited accounts referred to in SUP 16.7.63BR are to be made up for the period beginning with the date of the credit union's registration or with the date to which the credit union's last annual accounts were made up, whichever is the later, and ending on the credit union's most recent financial year end.

- SUP 16 Ann 13R Delete *SUP 16 Ann 13R* (and its contents) created by the Credit Unions Sourcebook (Consequential Amendments) Instrument 2001.
- SUP 16 Ann 14R After *SUP 16 Ann 13R*, insert as *SUP 16 Ann 14R* the Quarterly Return (CQ) and Annual Return (CY) set out in Annex E to this instrument.
- SUP 16 Ann 15G After *SUP 16 Ann 14R*, insert as *SUP 16 Ann 15G* Guidance Notes - Quarterly Return (GN/CQ) and Annual Return (GN/CY) set out in Annex F to this Instrument
- SUP App 1 1.7 In Figure 1 (Determination of a firm's prudential category – general), in the fourth box down of the left hand column, line 1, after "*building society*" add "*credit union*".

Compensation sourcebook

- COMP 4.2.2.R Table Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)
- ...
- (1) *Firms* (other than a *sole trader firm*, a *credit union* or a *small business* whose *claim* arises out of a *regulated activity* for which they do not have *permission*)
- ...
- (7) *Directors* and *managers* of the relevant person in default. However, this exclusion does not apply if:
- (a) both of the following apply:
- (a*i*) the *relevant person in default* is a ~~*mutual association*~~ *mutual association* which is not a ~~*large large mutual association*~~; and
- (b*ii*) the *directors* and *managers* do not receive a salary or other remuneration for services performed by them for the *relevant person in default*, or
- (b) the *relevant person in default* is a *credit union*.
- ...

Credit Unions sourcebook

- CRED 7.3 ~~Funds held on trust for persons too young to be members~~
Borrowing and Financial risk management

- CRED 7.3.1R ~~Nothing in CRED 7.2.1R–CRED 7.2.3R applies to funds held on trust as mentioned in section 9(2) of the Credit Unions Act 1979. [Deleted]~~
- CRED 7.3.2G ~~Section 9(2) of the Credit Unions Act 1979 requires that *deposits* held on trust for persons too young to be members should be kept in a fund apart from the general funds of the *credit union* and invested only in the manner specified by statute. [Deleted]~~
- CRED 7.3.5GR ~~A *version 2 credit union* may borrow from any of the sources permitted under section 10 of the Credit Unions Act 1979 subject to the restrictions contained in that section. The borrowing of a *version 2 credit union* must not at any time exceed an amount equal to 50 per cent of the total shareholding in the *credit union*.~~
- CRED 7.3.6R Subordinated debt obtained by a *credit union* and forming part of its capital (see CRED 8.2.1R) does not count towards the borrowing limits under CRED 7.3.3R and CRED 7.3.5R.

After Chapter 7, insert the following new chapter:

Chapter 7A Shareholding

7A.1 Application and purpose

- 7A.1.1R This chapter applies to all *credit unions*.
- 7A.1.2G The purpose of this chapter is to provide for limits on holdings of shares and deposits, joint accounts, dividends and insurance cover (based on the aggregate value of shares and deposits).

7A.2 Members' shares

Maximum shareholdings

- 7A.2.1R A *credit union* must not permit a member to have or claim any interest in the shares of the *credit union* exceeding the greater of £5,000 and 1.5 per cent of the total shareholdings in the *credit union*.
- 7A.2.2R Where CRED 7A.2.1R or CRED 7A.2.6R would be breached in relation to a member of a *credit union* because of a reduction in the total shareholdings in the *credit union*, those *rules* must, in relation to him, have effect, as respects any shares which he had, or interest which he

claimed, immediately before the reduction, as if there were added at the end "at the time, or latest time, when he acquired shares, or an interest in the shares of the *credit union*."

7A.2.3G *CRED 7A.2.2R* makes it unnecessary for a member to reduce his shareholding merely because of a reduction in the total shareholdings of the *credit union*.

7A.2.4R For the purposes of *CRED 7A.2.1R* and *CRED 7A.2.2R*, the total shareholdings in a *credit union* at any time must be taken to be the total shareholdings as shown in the most recent annual return to have been sent to the *FSA* under *SUP 16.7.62R* (see *CRED 14.10.7G*).

Joint accounts

7A.2.5R Shares in a *credit union* must not be held in the joint names of more than two members.

7A.2.6R For the purpose only of the limit in *CRED 7A.2.1R*, the interest of a member in a joint account must be treated as 50 per cent of the shareholding in that account.

Dividends on shares

7A.2.7R A *version 1 credit union* must not:

- (1) pay different dividends on different accounts; and
- (2) pay dividends out of interim profits more than once a year.

7A.2.8G A *version 2 credit union* is permitted to:

- (1) pay different dividends on different accounts; and
- (2) pay dividends out of interim profits more than once a year.

7A.3 Deposits by persons too young to be members

7A.3.1R A *credit union* must not take deposits exceeding £5,000 from a person who is under the age at which, under section 20 of the Industrial and Provident Societies Act 1965, he may become a member of the *credit union*.

7A.3.2G Section 20 of the Industrial and Provident Societies Act 1965 provides that a person above the age of 16 may be member of a *credit union*.

7A.4 Insurance against fraud or other dishonesty

- 7A.4.1R A *credit union* must at all times maintain in force a policy of insurance complying with *CRED 7A.4.2R*.
- 7A.4.2R In order to comply with *CRED 7A.4.1R*, a policy of insurance subject to the exception in *CRED 7A.4.3R*:
- (1) must insure the *credit union* in respect of every description of loss suffered or liability incurred by reason of the fraud or other dishonesty of any of its officers or employees;
 - (2) must so insure the *credit union* up to the limits set out in *CRED 7A Ann 1R* in respect of any one claim, except that the liability of the insurer may be restricted to the amounts set out in *CRED 7A Ann 1R* in respect of the total of the claims made in any one year; and
 - (3) must not provide in relation to any claim for any amount greater than one per cent of the limits on any one claim set out in *CRED 7A Ann 1R* to be met by the *credit union*.
- 7A.4.3R From the losses and liabilities against which a policy complying with *CRED 7A.4.2R* must insure there must be excepted all loss suffered or liability incurred by a *credit union* other than direct pecuniary loss discovered during the currency of the policy of insurance or within 18 months of the date on which either the policy of insurance lapses, or the duties of the officer or employee concerned are terminated, whichever occurs first.

Annex 1R: Insurance against fraud or other dishonesty

1 Table Insurance cover required

	Column (1)	Column (2)	Column (3)
	Aggregate value of share subscriptions and other deposits received and not repaid (the "aggregate value")	Cover required in respect of any one claim	Cover required in respect of total claims made in any one year
Row (A)	Less than £10,000	The higher of £500 or 50	The higher of £1,000 or

		per cent of the aggregate value	100 per cent of the aggregate value
Row (B)	£10,000 to £100,000	The higher of £5,000 or 20 per cent of the aggregate value	100 per cent of the aggregate value
Row (C)	More than £100,000	The higher of £20,000 or 15 per cent of the aggregate value	The higher of £100,000 or 75 per cent of the aggregate value
Row (D)	More than £1,000,000	£150,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £2,000,000	£750,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £4,000,000

2 Table
 In relation to a *credit union* which, at the relevant date, has accepted and not repaid share subscriptions and other deposits of the aggregate value stipulated in column (1) of the table in this Annex, the limit in respect of any one claim is the amount appearing in the corresponding part of column (2); and the amount in respect of the total of claims made in any one year is the amount appearing in the corresponding part of column (3).

3 Table
 For the purposes of this Annex, "the relevant date" is either the date of inception or renewal of the policy of insurance, or such other date as the *credit union* determines, provided that the relevant date in each year subsequent to the first must be not more than one year after the relevant date in the preceding year.

CRED 9.1.7R "Total relevant liabilities" means the sum of:

- (1) unattached shareholdings in the *credit union*, and deposits by persons too young to be members of the *credit union*; and
- (2) liabilities (other than liabilities for shares, ~~and deposits held on trust for persons too young to be members of the *credit union*~~) with an original or remaining maturity of less than three *months* (including overdrafts and instalments of loans).

CRED 9.3.4R ~~Of the *deposits* held by a *credit union* on trust for *persons* too young to be members, the amount held as liquid assets must at all times be equal to at least 5%.~~
[Deleted]

CRED 9.3.5R ~~Of the *deposits* held by a *version 1 credit union* on trust for *persons* too young to be members, the amount held as liquid assets must not be below 10% on two consecutive quarter ends.~~
[Deleted]

CRED 9.3.6G ~~*CRED 9.3.4R—CRED 9.3.5R* reflect the fact that section 9(2) of the Credit Unions Act 1979 requires that *deposits* held on trust for *persons* too young to be members should be kept in a fund apart from the general funds of the *credit union* (see *CRED 7.3.2G*).~~
[Deleted]

CRED 9.3.11G For the purposes of clarity, funds serving liquidity purposes may be invested in the manner set out in ~~*CRED 7.1.4R—CRED 7.1.9R*~~ *CRED 7.2.1R* provided that the resulting assets satisfy the relevant requirements of this chapter.

CRED 13.1.1G This chapter applies to:

- (1) ~~a *person* applying, or considering applying, to the *FSA* to become a *registered only credit union*~~; [Deleted]
- (2) a *person* applying, or considering applying, to the *FSA* to become *authorised* as a *credit union* with a *Part IV permission to accept deposits*;
- (3) a *candidate*, but only as a matter of general relevance.

CRED 13.1.2G This chapter gives *guidance* about:

- (1) what it means to become a ~~*registered only credit union* and a *credit union*~~ with a *Part IV permission to accept deposits*;
- (2) the application procedures for persons wishing to become ~~a *registered only credit union* and a *credit union*~~;
- (3) the procedures by which an applicant can obtain approval for *persons* to perform *controlled functions* under the *approved persons* regime; and
- (4) the *FSA*'s decision making procedures for *Part IV permission*

and *approved persons* applications.

- CRED 13.2.1G Registration and becoming *authorised* as a *credit union* are two distinct but linked statutory processes. The Credit Unions Act 1979 sets out the statutory requirements for registration and the *Act* sets out the statutory requirements relating to *authorisation*. ~~The FSA would normally expect these two processes to be undertaken simultaneously as part of a single combined application. However where appropriate, the FSA is willing to consider granting registration before making a decision about *authorisation* where the applicant would find this helpful. Where the FSA grants registration before making a decision about *authorisation* there can be no assumption on the part of applicants that the FSA will grant a *Part IV permission*.~~ Section 1 of the Credit Unions Act 1979 as amended provides that a credit union may not be registered unless it has applied to the FSA for a *Part IV permission to accept deposits*, and the FSA shall not issue an acknowledgment of registration to a credit union unless it also proposes to give the credit union such a permission. If it does issue an acknowledgment, it should determine any outstanding application for a *Part IV permission to accept deposits* as soon as reasonably possible thereafter.
- CRED 13.3.1G ~~The registration process leads to the formation of a *registered only credit union*, as an *industrial and provident society*, under the Credit Unions Act 1979. On registration, it a credit union becomes a special type of *industrial and provident society*, which is a *body corporate* with limited liability.~~
- CRED 13.3.2G ~~Registration does not allow a *registered only credit union* to undertake *deposit* taking activities. Whether or not *accepting deposits* is a *regulated activity* under the *Act* depends on the use to which the *money* is put. The activity is caught if *money* received by way of *deposit* is lent to others or if any other activity of the *person* accepting the *deposit* is financed wholly (or to a material extent) out of the capital, or interest on, *money* received by way of *deposit*.~~
[Deleted]
- CRED 13.3.3G ~~Where the FSA has granted registration before making a decision about *authorisation* the *registered only credit union*~~ A credit union must become *authorised* under the *Act* (see CRED 13.5 - CRED 13.8) before it can undertake the activity of *accepting deposits*.
- CRED 13.4.2G ~~Where the FSA has agreed to consider granting an application for registration before making a decision about an application for a *Part IV permission*~~

- (1) ~~it will look to make its determination within three months of receipt of the application. Where information or documents required to be submitted as part of the application are not provided, or the FSA requires additional information, it may take longer to complete this process;~~
- (2) ~~it may want to meet with the applicant as part of the registration process although, normally, it would not expect to do so;~~
- (3) ~~the applicant may withdraw its application for registration (and Part IV permission at any time before the application for registration is granted or refused, by giving written notice to the FSA.~~

[Deleted]

CRED 13.6.2G

- ...
- (4) details of the individuals to be involved in the running of the *credit union*, particularly those performing one or more controlled functions for whom approved persons status will be required (see CRED 6.3); ~~and~~
 - (5) a statement from two directors of the applicant 's committee of management confirming, to the best of their knowledge, the completeness and accuracy of the information supplied; and
 - (6) confirmation of insurance against fraud or other dishonesty (see CRED 7A.4.1R – CRED 7A.4.3R).

CRED 13 Ann 1G Annex 1: Requirements of Registration

1 Table The requirements of registration under the Industrial and Provident Societies Act, as set out in the Credit Unions Act 1979 and referred to in CRED 13.4.1G.

...
~~That on registration there will be in force, in relation to the credit union, a policy of insurance against fraud.~~ Credit Unions Act 1979, s.15

CRED 14.3.4G A *credit union* is also under an obligation to appoint an auditor under the Friendly and Industrial and Provident Societies Act 1968, but a single auditor may be appointed for both purposes (See CRED 14 Ann 1G).

CRED 14.10.6G Table This table belongs to CRED 14.10.5G

Content of report	Form	Frequency	Due date
Key financial data	CQR	Quarterly	One <i>month</i> after quarter end

CRED 14.10.8G Table This table belongs to CRED 14.10.7G

Content of report	Form	Frequency	Due date
<u>Annual audited statement</u> <u>Extended financial data</u>	CYAR	Annually	Seven <i>months</i> after financial year end

Accounts and audit

CRED 14.10.9G *Credit unions* are required by the Friendly and Industrial and Provident Societies Act 1968 to publish audited accounts. CRED 14 Ann 1G contains further information about these requirements.

CRED 14.10.10R (1) Every *credit union* must send to the FSA a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 (See CRED 14 Ann 1G).

(2) The accounts must:

(a) be made up for the period beginning with the date of the *credit union's* registration or with the date to which the *credit union's* last annual accounts were made up, whichever is the later, and ending on the *credit union's* most recent financial year end; and

(b) accompany the annual return submitted to the FSA under SUP 16.7.62R (see CRED 14.10.7R), unless they have been submitted already.

CRED 14.10.11R Every *credit union* must supply free of charge to every member or

person interested in the funds of the *credit union* who applies for it a copy of the latest audited accounts of the *credit union* sent to the FSA under CRED 14.10.10R.

CRED 14 Ann 1G At the end of CRED 14, insert the following new Annex:

Annex 1: Accounts and audit - Friendly and Industrial and Provident Societies Act 1968

Introduction

1. The Friendly and Industrial and Provident Societies Act 1968 applies to industrial and provident societies in general. The following is an outline of the main provisions relating to *credit unions*, which are a special type of industrial and provident society.

Books of account

2. Section 1(1) of the Friendly and Industrial and Provident Societies Act 1968 provides that every *credit union* is to:
 - (1) cause to be kept proper books of account with respect to its transactions and its assets and liabilities;
 - (2) establish and maintain a satisfactory system of control of its books of account, its cash holdings and all its receipts and remittances.

General provisions as to accounts and balance sheets

3. Section 3 of the Friendly and Industrial and Provident Societies Act 1968 provides that every revenue account and balance sheet of a *credit union* is to give a true and fair view.

Publication of accounts

4. Section 3A of the Friendly and Industrial and Provident Societies Act 1968 provides that a *credit union* is not to publish any revenue account or balance sheet unless:
 - (1) it has been signed by the *credit union's* secretary and two members of its committee;
 - (2) it has been previously audited by the auditors;

- (3) it incorporates a report by the auditors as to whether the revenue account and balance sheet give a true and fair view.

Re-appointment and removal of qualified auditors

5. Section 5(1) of the Friendly and Industrial and Provident Societies Act 1968 provides that a qualified auditor appointed to audit the accounts and balance sheet for the preceding year of account is to be re-appointed as auditor for the current year of account unless:
 - (1) a resolution has been passed at a general meeting appointing somebody instead of him or providing expressly that he is not to be re-appointed; or
 - (2) he has given notice of his unwillingness to be re-appointed; or
 - (3) he is ineligible for appointment for the current year of account; or
 - (4) he has ceased to act as auditor by reason of incapacity.

Obligation to appoint auditors

6. Section 4 of the Friendly and Industrial and Provident Societies Act 1968 provides that a *credit union* is to appoint a qualified auditor or auditors to audit the accounts and balance sheet unless:
 - (1) the aggregate of the receipts and payments in respect of the preceding year of account did not exceed £5,000;
 - (2) the number of members at the end of the preceding year did not exceed 500; and
 - (3) the aggregate value of assets at the end of that year did not exceed £5,000.
7. If all these conditions apply, the *credit union* may appoint two or more lay auditors (subject to any direction given by the *FSA*).

Qualified auditors

8. Section 7 of the Friendly and Industrial and Provident Societies

Act 1968 provides that no person is a qualified auditor unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989, that is to say a person who is registered with one of the five supervisory bodies recognised under the Companies Act 1989:

- (1) the Institute of Chartered Accountants in England and Wales;
- (2) the Institute of Chartered Accountants in Scotland;
- (3) the Institute of Chartered Accountants in Ireland;
- (4) the Chartered Association of Certified Accountants; and
- (5) the Association of Authorised Public Accountants.

Restrictions on appointment of auditors

9. Section 8 of the Friendly and Industrial and Provident Societies Act 1968 provides that none of the following persons is to be appointed as auditor of a *credit union*:
 - (1) an officer or servant of the *credit union*;
 - (2) a person who is a partner of, or in the employment of, or who employs an officer or servant of the *credit union*.

Auditors' report

10. Section 9(2) of the Friendly and Industrial and Provident Societies Act 1968 provides that the audit report is to state whether the revenue account and the balance sheet comply with the requirements of the Friendly and Industrial and Provident Societies Act 1968 and the Industrial and Provident Societies Act 1965 and whether in the opinion of the auditors:
 - (1) the revenue account gives a true and fair view of the income and expenditure of the *credit union* as a whole for that year of account; and
 - (2) the balance sheet gives a true and fair view either of the assets and current liabilities of the *credit union* and the resulting balances of its funds or of the state of affairs of the *credit union* (as the case may require) as at the end of that year of account.

11. Section 9(4) of the Friendly and Industrial and Provident Societies Act 1968 provides that it is the duty of the auditors to make such investigations as will enable them to form an opinion as to:
 - (1) whether the *credit union* has kept proper books of account in accordance with section 1(1)(a) of the Friendly and Industrial and Provident Societies Act 1968;
 - (2) whether the *credit union* has maintained a satisfactory system of control over its transactions in accordance with section 1(1)(b) of the Friendly and Industrial and Provident Societies Act 1968;
 - (3) whether the revenue account and other accounts to which the report relates, and the balance sheet are in agreement with the books of account of the *credit union*.

12. Section 9(4) of the Friendly and Industrial and Provident Societies Act 1968 also provides that if the auditors are of the opinion that the *credit union* has failed to comply with section 1(1)(a) or (b) of the Friendly and Industrial and Provident Societies Act 1968, or if the revenue account, the other accounts and the balance sheet are not in agreement with the books of account of the *credit union*, the auditors are to state that fact in their report.

CRED 15.1.1G 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 :

- (1) ~~registered only credit unions;~~ [Deleted]
- (2) *credit unions*, with respect to their activities of accepting deposits; and
- (3) approved persons of *credit unions*, as set out in *CRED 6* (The Approved persons regime).

CRED 15.2.1G The *FSA's* has a number of investigation and enforcement powers ~~are provided for~~ in the Industrial & and Provident Societies Act 1965, the Friendly and Industrial & and Provident Societies Act 1968; and the Credit Unions Act 1979 ~~and~~, although its main powers derive from the Act.

- CRED 15.2.2G For ease of reference:
- (1) Annex 1 to this chapter (*CRED 15 Annex 1G*) contains a table of the *FSA*'s investigation and enforcement powers under the Industrial & Provident Societies Act 1965, the Friendly and Industrial & Provident Societies Act 1968 and the Credit Unions Act 1979; and
 - (2) Annex 2 to this chapter (*CRED 15 Annex 2G*) contains a table of the main relevant investigation and enforcement powers under the *Act*, showing where they are considered in the Enforcement manual (*ENF*).
- CRED 15.2.3G Some of the *FSA*'s powers listed in *CRED 15 Annex 1G* are similar to the powers listed in *CRED 15 Annex 2G*. For example, the *FSA* has information gathering and investigation powers under both the Industrial & Provident Societies Act 1965, as extended by the Credit Unions Act 1979, and the *Act*. These different powers enable the *FSA* to investigate and enforce the different requirements imposed on ~~registered-only credit unions~~ and *credit unions* by legislation.
- CRED 15.2.4G In appropriate circumstances, the *FSA* may need to consider which power to use, and whether to use powers, from one or more of the Acts. ~~The appropriate~~ Which power or powers are appropriate will vary according to the circumstances of the case. Where the *FSA* is exercising its investigation and enforcement powers, it will normally explain to the ~~registered-only credit union~~, *credit union*, individual or other *persons* concerned under which power, or powers, it is acting.
- CRED 15.2.5G However, it is the responsibility of ~~registered-only credit unions~~, *credit unions* and individuals, or other persons connected to them to ensure that their actions comply with the requirements of the legislation and, ~~for credit unions~~, the *FSA*'s rules, at all times. ~~Registered-only credit unions~~, *Credit unions* and those involved with them can contact their usual supervisory contact at the *FSA* about the general use of the *FSA*'s investigation and enforcement powers.
- CRED 15.3.1G There are a number of principles underlying the *FSA*'s approach to the exercise of its investigation and enforcement powers in relation to ~~registered-only credit unions~~ and *credit unions*:
- (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 ~~registered only credit unions and~~ credit unions;

- (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
- (3) the *FSA* will seek to ensure fair treatment when exercising its investigation and enforcement powers; for example, the *FSA*'s decision making process for regulatory enforcement cases generally gives an opportunity for both written and oral representations to be made, and also provides for a facility for mediation in certain disciplinary cases.

CRED 15.3.2G The investigation and enforcement powers available to the *FSA* form part of the regulatory toolkit it will use to meet its *regulatory objectives* of protecting *consumers*, promoting public awareness, maintaining confidence in the *financial system* and reducing *financial crime*. Where a *credit union*, or an individual, has failed to comply with the requirements of the Industrial & ~~and~~ Provident Societies Act 1965, the Friendly and Industrial & ~~and~~ Provident Societies Act 1968, the Credit Unions Act 1979, the *Act*, the *FSA*'s *rules*, or other relevant legislation (for example, the Criminal Justice Act 1993 and the ~~Money-L~~Money Laundering Regulations 1993), it may be appropriate to deal with this without the need for formal disciplinary or other enforcement action.

CRED 15.3.4G Where the *FSA* has concerns about ~~a registered only credit union~~, a *credit union*, or an individual, it will normally discuss its concerns with them before considering the use of its investigation and enforcement powers. However, the *FSA* may take action without discussing its concerns with a *credit union* in urgent cases or in cases where the interests of consumers might otherwise be put at risk.

CRED 15.4.1G ~~The *FSA*'s enforcement powers are exercised in, and or reviewed by, the criminal courts, the civil courts and the *Tribunal*. For example, the *FSA* has power to prosecute particular offences in the criminal courts, it may seek to obtain *injunctions* in the civil courts, and its powers to impose disciplinary sanctions under the *Act* are subject to referral to the *Tribunal*.~~

[Deleted]

CRED 15.4.2G The *FSA*'s enforcement powers in the Industrial & ~~and~~ Provident Societies Act 1965, the Friendly and Industrial & ~~and~~ Provident Societies Act 1968, the Credit Unions Act 1979 and the *Act* can be grouped into three broad categories, based on the type of procedure

that applies to their use. The three broad categories are:

- (1) regulatory enforcement powers, which the *FSA* must exercise by ~~administration~~ statutory notice procedures (see *CRED* 15.4.3G and 15.4.5G);
- (2) civil enforcement powers, which the *FSA* must exercise by making application to the civil courts (see *CRED* 15.4.4G and 15.4.5G); and
- (3) criminal prosecution powers, which the *FSA* must exercise by bringing proceedings in the criminal courts (see *CRED* 15.4.4G and 15.4.5G).

CRED 15.4.3G When the *FSA* exercises its regulatory enforcement powers, the ~~administration~~ statutory notice procedure it must follow varies depending on the type of action to be taken and the provisions of the relevant legislation.

- (1) If the *FSA* is using its regulatory enforcement powers under the *Act*, it must give the reasons and various notices required by the *Act* and, in all cases, allow the *person* receiving the notice an opportunity to make representations. The *FSA*'s decision making procedures for notices to be given by the *Act* are set out in *DEC*. *CRED* 16 provides an overview of *DEC*.
- (2) If the *FSA* is using its regulatory 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, it will have regard to the Principles set out in *CRED* 3 and will, so far as appropriate, provide a process that is consistent with that in *DEC*.

CRED 15.4.5G (1) If the *FSA* is considering using its regulatory enforcement, civil enforcement or criminal prosecution powers under the *Act*, it will apply the policies on the use of those powers set out in *ENF*.

- (2) If the *FSA* is considering using its regulatory enforcement, civil enforcement or criminal prosecution powers under the Industrial & and Provident Societies Act 1965, the Friendly and Industrial & and Provident Societies Act 1968 and the Credit Unions Act 1979, it will, to the extent appropriate, apply the policies on the use of similar powers under the *Act* (as set out in *ENF*).

Annex 1: Enforcement Powers

1 Table Table of powers under Industrial and Provident Societies legislation and the Credit Unions Act 1979

...

SUSPENSION OF OPERATIONS

~~Power to issue a Direction suspending the operations of a credit union~~ ~~Credit Unions Act 1979, s.19~~

~~Power to vary or revoke a Direction suspending the operations of a credit union~~ ~~Credit Unions Act 1979, s.19~~

...

2.1 Detailed contents of *CRED*

2.1.1 Table

...

7 Investment and borrowing

...

~~7.3 Funds held on trust for persons too young to be members~~
Borrowing and Financial risk management

...

7A Shareholding

7A.1 Application and purpose

7A.2 Members' shares

7A.2.1 Maximum shareholdings

7A.2.5 Joint accounts

7A.2.7 Dividends on shares

7A.3 Deposits by persons too young to be members

7A.4 Insurance against fraud or other dishonesty

Ann 1 Insurance against fraud or other dishonesty

...

14 Supervision

...

14.10 Reporting requirements

14.10.9 Accounts and audit

Ann 1 Accounts and audit - Friendly and Industrial and Provident Societies Act 1968

...

17 Complaints handling procedures for credit unions

17.1 Application and purpose

CRED Schedule 2

Notification requirements

...

2 Table Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>CRED</i> 14.120.5R	Quarterly Return	Quarterly return form <u>Key financial data</u>	End of quarter <u>end</u>	1 <i>month</i> after quarter event <u>end</u>
<i>CRED</i> 14.120.7R	Annual Return	Annual Return <u>Extended financial data</u>	End of financial year <u>end</u>	7 <i>months</i> after financial year end <u>end</u>
<u><i>CRED</i></u> <u>14.10.10R</u>	<u>Audited accounts</u>	<u>Revenue account and Balance sheet</u>	<u>Financial year end</u>	<u>Until submission of Annual Return</u>

CRED Schedule 4

Powers exercised

G

1 Table

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the rules in *CRED*:

- (1) Section 138 (General rule-making power);
- (2) Section 149 (Evidential provisions); ~~and~~
- (3) Section 156 (General supplementary powers)-; and
- (4) The following articles of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501):
 - (a) article 9 (Designation of existing provisions to take effect as rules); and
 - (b) article 10 (Modification of existing provisions).

The following powers in or under the *Act* ~~has~~ have been exercised by the *FSA* to give *guidance* in *CRED*:

(1) Section 157(1) (Guidance): ; and

(2) Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501).

CRED Schedule 7

Consolidated schedule of releases

~~Schedule 7~~

~~Consolidated schedule of releases~~

~~1 Table~~

~~This schedule will list by serial number each release containing amendments made to CRED since it was first published. Since CRED is being published for the first time, there are no entries in this schedule.~~

~~[Deleted]~~

Glossary

consumer

(1) ...

(d) ... before commencement);

(e) (in relation to the FSA's power to make general rules) a person within the extended definition of consumer in article 4 of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501) (Application of definition of "consumer" to customers of credit unions before commencement);

...

registered only credit union

~~a body corporate registered under the Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act 1979, which is not an *authorised person*.~~

version 1 credit union

~~a credit union whose Part IV permission includes a requirement (whether for all or for particular purposes) that it must not lend more than £10,000 in excess of a member's shareholding; in this definition ...~~

Annex B

Continued provisions

The following provisions of the Credit Unions Act 1979 are designated under paragraph D of the Credit Unions Sourcebook and Consequential Amendments (No.2) Instrument 2002.

Provision	(Notes)	Subject matter
section 5(3)	(1)	limit on member's shareholding
section 5(4A)	(2)	servicing for reduction in total shareholding
section 5(10)	(3)	annual assessment of total shareholdings
section 9(1)	(4)	limit on juvenile deposits
section 10(1) – words repealed by article 2(7)of the Order, beginning " but the amount so borrowed ..."	(3)	limit on total borrowings
section 15 (1)	(5)	insurance against fraud or other dishonesty
section 15(2) excluding paragraph (d)		

The following provisions of subordinate legislation made under the Credit Unions Act 1979 are designated under paragraph D of the Credit Unions Sourcebook and Consequential Amendments (No.2) Instrument 2002.

Regulations	Provisions designated
The Credit Unions (Insurance against Fraud etc.) Regulations 1980	Article 3 Article 4(2) Article 4(3) Schedule

The following provisions of the Industrial and Provident Societies Act 1965 are designated under paragraph D of the Credit Unions Sourcebook and Consequential Amendments (No.2) Instrument 2002.

Provision	Notes	Subject matter
Section 39(1)	(3) (6) (7)	Submission of annual return to FSA
Section 39(2)	(6)	Period covered by return
Section 39(5)		Members' entitlement to copy of return

(1) amended by S.I.1996/1189

(2) inserted by S.I.1996/1189

(3) inserted by S.I. 1996/1189 and amended by S.I.2001/2617

(4) amended by S.I. 1989/2423, S.I.2001/811 and S.I.2001/2617

(5) amended by the Insurance Companies Act 1982 (c.50), Schedule 5, S.I. 2001/2617 and S.I. 2001/3649

(6) amended by the Friendly and Industrial and Provident Societies Act 1968 (c.55),Schedule 1;

(7) amended by S.I.1996/1738.

Annex C

Modification of Continued Rules

<p>Each of the provisions of the Credit Unions Act 1979 , or subordinate legislation made under it , or of the Industrial and Provident Societies Act 1965 set out below is modified , in the manner shown , under paragraph 4 of the Credit Unions Sourcebook and Consequential Amendments (No.2) Instrument 2002</p>	
<p>Credit Unions Act 1979</p>	
Section 5(3) – member's shareholding	<p>Re-number the provision as 7A.2.1R. Insert at the beginning the words "A <i>credit union</i> must not permit ". Delete, after the words " a member " , the words " of a credit union shall not " and substitute the word "to".</p>
Section 5(4A) – saving for reduction in total shareholding	<p>Re-number the provision as 7A.2.2R. Delete the words " subsection (3) above " and substitute "CRED 7A.2.1R or CRED 7A.2.6R " Delete the words "that subsection shall" and substitute "those <i>rules</i> must "</p>
Section 5(10) – annual assessment of total shareholding	<p>Re-number the provision as 7A.2.4R. Delete the words "subsection (3) above " and substitute "CRED 7A.2.1R and CRED 7A.2.2R". Delete the word "shall" and substitute the word "must". Delete the words " audited balance sheet " and substitute " annual return" . Delete the words " Authority under section 39 of the 1965 Act (annual returns) " and substitute " FSA under SUP 16.7.62R (See CRED 14.10.7 G)"</p>
Section 9(1) – limit on juvenile deposits	<p>Re-number the provision as 7A.3.1R. After the opening words " A credit union " , delete the word "may" and substitute " must not ". Delete the words " up to a total of " and substitute " exceeding". Delete the words "by virtue of " and substitute "under". Delete the words "1965 Act" the first time it occurs and substitute " Industrial and Provident Societies Act 1965". Delete the words beginning " and nothing " to the end of the sentence.</p>
Section 10(1) – words repealed by article 2(7) of the Order, beginning " but the amount so borrowed ..." – limit on total borrowings.	<p>Re-number the provision as 7.3.5R. Delete the words " but the amount so borrowed and not repaid shall " and substitute " The borrowing of a <i>version 2 credit union</i> must " . Delete the words " in the aggregate one half of the total paid up share capital " and substitute " an amount equal to 50 per cent of the total shareholding in the <i>credit union</i> " .</p>
Section 15 – Insurance against fraud and other dishonesty Subsection(1)	<p>Re-number as 7A.4.1R. Delete the words from the beginning of the subsection to "of this section ; and " Delete the word "shall" (in the second place where it occurs) and</p>

	<p>substitute "must".</p> <p>Delete the word "such " , and the words after "policy " (in the second place where it occurs) to the end of the sentence.</p> <p>Insert after that word "policy" the words " of insurance complying with CRED 7A.4.2R".</p>
Subsection (2) (excluding paragraph (d))	<p>Re-number as 7A.4.2R.</p> <p>Delete the words " this section" in the introductory words of the subsection and substitute "CRED 7A.4.1R". After the words " policy of insurance " insert "subject to the exception in CRED 7A.4.3R ".</p> <p>Re-number paragraph (a) as (1).</p> <p>Delete the words "subject to such exceptions as may be prescribed, " in paragraph (a) .</p> <p>Re-number paragraph (b) as (2).</p> <p>Delete the words "a limit of not less than £20,000(or such other figure as may be prescribed)" in paragraph (b) and substitute " the limits set out in CRED 7A Ann1 R ".</p> <p>Delete the words "an amount of not less than £100,000 (or such other figure as may be prescribed)" in paragraph (b) and substitute " the amounts set out in CRED 7A Ann1 R ".</p> <p>Re-number paragraph (c) as (3).</p> <p>Delete the words ", except with the consent in writing of the FSA ," in paragraph (c).</p> <p>Delete the words "the limit referred to in paragraph (b) above" in paragraph (c) and substitute " the limits on any one claim set out in CRED 7A Ann 1R ".</p> <p>Delete the word " ; and " at the end of paragraph(c).</p>
Credit Unions (Insurance against Fraud etc.) Regulations 1980	
Article 3	<p>Re-number as 7A.4.3R.</p> <p>Delete the words " ,under sub-paragraph (a) of section 15(2) of the Act , a policy of insurance " and substitute " a policy complying with CRED 7A.4.2R ".</p> <p>Delete the words " in order to comply with section 15 of the Act".</p> <p>Delete the word "shall" (in the first place where it occurs) and substitute "must".</p> <p>Delete the words "shall first occur " and substitute "occurs first".</p>
Article 4(2)	<p>Re-number as Table 2 in 7A. Ann 1R.</p> <p>Delete the words " the Schedule to these regulations " and substitute "this Annex "</p> <p>Delete the words " amount prescribed in place of the said amount of £20,000 " and substitute " the limit in respect of any one claim " .</p> <p>Delete the words " prescribed in place of the said amount of £100,000 " and substitute " in respect of the total of claims made in any one year ".</p> <p>Delete the word "thereof" in both places where it appears.</p>
Article 4 (3)	<p>Re-number as Table 3 in 7A. Ann 1R.</p> <p>Delete the words " this regulation " and substitute " this Annex, ".</p> <p>Delete the words " in paragraph (2) shall be " and substitute the word</p>

	<p>"is".</p> <p>Delete the word "a" (in the first place where it occurs) and substitute "the".</p> <p>Delete the words " providing a credit union with the cover required by section 15 of the Act ".</p> <p>Delete the words " may determine" and insert " determines".</p> <p>Delete the word "always".</p> <p>Delete the word " shall " the second time it occurs , and substitute "must".</p>
Schedule	<p>Number the rows of the table A,B and C</p> <p>Insert the words " (the " aggregate value ")" at the end of the heading to column(1).</p> <p>Insert the words "Cover required in respect of " before the heading to column(2) , and delete the parentheses.</p> <p>Insert the words " Cover required in respect of " before the heading to column (3), and delete the words "of the" and the parentheses.</p> <p>Delete the words " of share subscriptions and other deposits received and not repaid " in the column (2) and column (3) entries in rows A,B and C.</p> <p>Delete the character "%" in each place where it occurs , and substitute "per cent".</p>
Industrial and Provident Societies Act 1965 – section 39 , annual returns	
Section 39(1)	<p>Re-number as 14.10.10 (1) R.</p> <p>Delete the words "registered society shall " and substitute " <i>credit union</i> must". " Delete "Authority" and substitute "FSA ".</p> <p>Delete the words " a return , together with " , paragraphs (a) and (b) of subsection (1) , and subsections (1A) and (1B) , and substitute " a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968.(See CRED 14 Ann 1 G)."</p>
Section 39(2)	<p>Re-number as 14.10.10 (2) R.</p> <p>Delete "said return shall" in the introductory words , and substitute "accounts must".</p> <p>In paragraph (c) , delete "subject to subsections (3) and (4) of this section, " and " under this Act".</p> <p>In paragraph (c) ,delete the words " return was " and substitute " accounts were " , and delete the word "society " twice , and substitute " <i>credit union</i> " .</p> <p>Immediately before sub-paragraph (i) insert the words "on the <i>credit union's</i> most recent financial year end ."</p> <p>Re-number paragraph (c) as 14.10.10(2)(a)</p> <p>Delete sub-paragraphs (i) and (ii).</p> <p>Insert new paragraph 14.10.10 (2)(b) " accompany the annual return submitted to the FSA under SUP 16.7.62 R (see CRED 14.10.7R), unless they have been submitted already."</p>
Section 39(5)	<p>Re-number as 14.10.11 R.</p> <p>Delete " registered society " and (in two places) "society " and substitute in each case " <i>credit union</i> " .</p> <p>Delete the word "shall" and substitute "must".</p> <p>Delete " return " and substitute " audited accounts " .</p> <p>Delete " under this section " and substitute " sent to the FSA under</p>

	CRED 14.10.10 R ."
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Annex D
Rules and Guidance
Subject to relevant prior consultation

Rule or Guidance	Existing provision	Subject matter
CRED 7A.2.5R CRED 7A.2.6R	Credit Unions Act 1979 Section 5(3)	Limit on joint shareholding
CRED 7A.2.7R CRED 7A.2.8G	Credit Unions Act 1979 Section 14	Differential and interim dividends
CRED 7A Ann1R, Table 1, row (D)	Schedule to the Credit Unions (Insurance against Fraud etc.) Regulations 1980	Insurance against fraud or other dishonesty

Annex E
Quarterly Return (CQ) and Annual Return (CY)



Credit Union – Quarterly Return (CQ)

As at:

Name

Credit Union Limited

FSA Firm Reference Number

Membership

Number of members at the end of the quarter

Number of juvenile depositors at the end of the quarter

Complainants contact point

Have there been any changes to the single contact point for complainants at the *credit union*. If there have please provide their details below:

Print Name

Address

Daytime Contact Telephone Number

Signature

(This signatory must be an *approved person*.)

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have read the Guidance Notes to this form.

As an *approved person*, I also verify that the Supervisory (Internal Auditing) Committee has carried out a *bank* reconciliation, as part of their internal audit during the quarter, which is independent of the *bank* reconciliation carried out by the treasury team each month.

Print Name

Date

Signature

Daytime Contact Telephone Number

Please note: 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 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the *FSA* and to tell the *FSA* immediately if materially inaccurate information has been provided. SUP 16.3.11R requires an authorised person to submit reports containing all the information required. APER 4.4.6E provides that, where an approved person is responsible for reporting matters to the *FSA*, failure to inform the *FSA* of materially significant information of which they are aware is a breach of Statement of Principle 4. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FSA*. Do not assume 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 there is any doubt about the relevance of information, it should be included.

Share capital

Total shares

£

1A

Loans to members

Total loans to members

1B

Bad debts written off

1C ()

Interest receivable

1D

Total net liabilities

1E

Provision for doubtful debt

Specific

1F

General

1G

Credit union liabilities

Borrowings from other credit unions

2A

Authorised overdrafts

2B

Committed facilities received

2C

Other borrowings

2D

Total borrowings

2E

Borrowings as % of total shares

2F %

Income and expenditure

Total income

3A

Total expenditure

3B

Total assets

4A

Total liabilities

4B

Credit union capital

Audited reserves

General

5A

Other

5B

Interim net profit/(loss)

5C

Subordinated debt

5D

Total capital

5E

Arrears analysis

3 months to 12 months

6A

Number

Net liabilities

6D

Over 12 months

6B

6E

Total

6C

6F

Liquidity ratio

Liquid assets

Cash and bank balance

Investments (realisable within 8 days)

Unused committed facilities

Unused overdrafts

Total liquid assets

	£
7A	<input type="text"/>
7B	<input type="text"/>
7C	<input type="text"/>
7D	<input type="text"/>
7E	<input type="text"/>

Relevant liabilities

Unattached shares / juvenile deposits

Liabilities

(with an original or remaining maturity of less than 3 months)

Authorised overdrafts

Other liabilities / borrowings

Total relevant liabilities

7F	<input type="text"/>
7G	<input type="text"/>
7H	<input type="text"/>
7I	<input type="text"/>

Liquidity ratio

7J	<input type="text"/> %
----	------------------------

Large exposures

Largest net exposure

As % of capital

Aggregate total of large net exposures

As % of capital

8A	<input type="text"/>
8B	<input type="text"/> %
8C	<input type="text"/>
8D	<input type="text"/> %

Large version 1 and version 2 credit unions

Risk adjusted capital ratio

Total capital

Net provision or 1% of total assets whichever is the lower

Total risk adjusted capital

Total assets

Risk adjusted capital ratio

9A	<input type="text"/>
9B	<input type="text"/>
9C	<input type="text"/>
9D	<input type="text"/>
9E	<input type="text"/> %



Credit Union – Annual Return (CY)

Name and address of credit union

FSA Firm Reference Number

The credit union's financial year end was / /

Please indicate whether the credit union has a version 1 requirement or version 2 requirement by ticking the appropriate box.

Version 1

Version 2

The credit union is affiliated to

Number of members at the financial year end (A1) Qualifying

(A2) Non-qualifying

Number of juvenile depositors at the financial year end (A3)

Have you attached a copy of the audited accounts for the period covered by this return?

Yes/No
Delete as appropriate

Name of credit union's computer software system (if any) (A4)

Name of credit union's bankers

Number of staff members at financial year end who are paid for by the credit union

(A5) Full Time

(A6) Part Time

Number of staff members at financial year end who are paid for by other organisations

(A7)

Are any of the paid staff members approved persons?

Yes/No

Delete as appropriate

Fidelity bond insurance

Policy issued by

Date of inception of policy or last renewal (A8)

/ /

Date of expiry of policy (A9)

/ /

Amount of cover in respect of:

Any one claim (A10)

£

All claims made in any one year (A11)

£

Were any claims made on the policy during the period covered by the return? (A12)

Yes/No

Delete as appropriate

Signatures

Member of the committee of management

Signature

Name in Block Capitals

Secretary of the *credit union*

Signature

Name in Block Capitals

Please note: 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 15.6.1R and SUP 15.6.4R require 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. SUP 16.3.11R requires an authorised person to submit reports containing all the information required. APER 4.4.6E provides that, where an *approved person* is responsible for reporting matters to the FSA, failure to inform the FSA of materially significant information of which he is aware is a breach of Statement of Principle 4. 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 there is any doubt about the relevance of information, it should be included.

Balance Sheet

£

Assets

Fixed assets

1A

Current assets

Investments – Banks and Building Societies

1B

Investments – Securities

1C

Investments juvenile deposits

1D

Due from members for loans

 Secured

1E

 Unsecured

1F

 General provision for doubtful debts

1G

 Specific provision for doubtful debts

1H

Due from other credit unions

1J

Cash and bank balances

1K

Other debtors

1L

Prepaid expenses

1M

Other assets

1N

Total assets

1P

Liabilities

Juvenile deposits

2A

Borrowings from credit unions

2B

Bank loans

2C

Authorised overdrafts

2D

Grants

2E

Other creditors and accruals

2F

Corporation tax

2G

Interest to juvenile depositors

2H

Applications

2J

Other (specify)

2K

Total liabilities

2L

Net assets (1n – 2l)

2M

Credit union capital & reserves

General reserve

2N

Other reserves

2P

Subordinated debt (over 4 years remaining)

2Q

Subordinated debt (4 years or less remaining)

2R

Total Capital

2S

Members' share balances

2T

Total capital and share balances

2U

Revenue account

Income

Entrance fees
Interest from members' loans
Bank Interest
Other investment income
Profit on sale of investment and assets
Bad debts recovered
Admin charges for juvenile deposits
Grants
Donations
Insurance commission
Annual membership fees
Ancillary service charges
Other (specify)

£

3A	
3B	
3C	
3D	
3E	
3F	
3G	
3H	
3J	
3K	
3L	
3M	
3N	

Total income

3P	
----	--

Expenditure

Admin expenses
Auditors remuneration
Fidelity bond insurance
Management expenses
Bad debt provision
Bad debts written off
Bank charges
Interest charged (on borrowings)
Loss/revaluation on investments/assets
General insurance
LP/LS insurance
FSA fees
Trade association membership dues
Other (specify)

4A	
4B	
4C	
4D	
4E	
4F	
4G	
4H	
4J	
4K	
4L	
4M	
4N	
4P	

Total expenditure

4Q	
----	--

Income less expenditure

4R	
----	--

Profit/(loss) for year before taxation

5	
---	--

less taxation

6	
---	--

Profit/(Loss) after tax:

7	
---	--

Transferred to appropriation account

Appropriation account

Profit/(loss) after tax

(Transferred from revenue account)

Transfer to general reserve

(Loss to be transferred to general reserve)

Transfer to other reserve

Transfer from general reserve

Transfer from other reserve

Transfer to applications

£

8A	
8B	()
8C	()
8D	
8E	
8F	

Applications

Transfer from appropriation account

Transfer as % of profit after tax

Dividend

Rate of dividend

Rebate of interest

Rate of interest rebate

Donations

9A	
9B	%
9C	()
9D	%
	%
9E	()
9F	%
9G	()

Reserves

General reserve

Opening balance

Transfer from appropriation account

Transfer as % of profit after tax

Transfer from other reserves

Transfer to appropriation account

Transfer to other reserves

Closing balance

10A	
10B	
10C	%
10D	
10E	()
10F	()
10G	

Other reserves

Opening balance

Transfer from appropriation account

Transfer as % of profit after tax

Transfer from general reserve

Transfer to appropriation account

Transfer to general reserve

Closing balance

11A	
11B	
11C	%
11D	
11E	()
11F	()
11G	

Notes to accounts

Membership

Beginning of year	12A	
Added during Year	12B	
Ceased during Year	12C	()
Total members	12D	
Non qualifying at end of year	12E	
% Non qualifying	12F	%

Shareholdings

Opening balance	13A	
Shares in (including dividends)	13B	
Share withdrawn (including transfers)	13C	()
Closing balance	13D	
Average member share balance	13E	
Value of unattached shares	13F	

£

Loans to members

Opening balance	14A	
Loans made to members	14B	
Interest receivable	14C	
Total repayments (interest and capital)	14D	()
Bad debts written off	14E	()
Closing balance	14F	
Number of loans (at financial year end)	14G	
Total net liabilities	14H	

Arrears analysis

	Number	Net liabilities
3 months to 12 months	15A	
Over 12 months	15B	
Total	15C	

Provision for members' doubtful debt

General provision

Balance at beginning of year	16A	
Increase in year	16B	
Written off during year	16C	()
Decrease in year	16D	()
Balance at end of year	16E	

Specific provision

Balance at beginning of year	16F	
Increase in year	16G	
Written off during year	16H	()
Decrease in year	16J	()
Balance at end of year	16K	

Fixed assets

£

Opening cost	17A	
Additions at cost	17B	
Original cost of disposals	17C	()
Opening depreciation	17D	()
Depreciation charge in year	17E	()
Depreciation eliminated on disposals	17F	
Net book value	17G	

Investments

Due from other credit unions

Opening balance	18A	
Transfer to other credit unions during year	18B	
Repaid by other credit unions during year	18C	()
Capital written off	18D	()
Closing balance	18E	
Return on investment	18F	%

Investments – Bank and Building Societies

Opening balance	19A	
Invested during year	19B	
Withdrawn during year	19C	()
Closing balance	19D	

Investments – Securities

Opening balance	20A	
Investments purchased during year	20B	
Investments sold during year	20C	()
Losses/Capital written off	20D	()
Closing balance	20E	

Cash and Bank balance

Opening balance	21A	
Increase/(decrease)	21B	
Closing balance	21C	

Debt Liabilities

£

Borrowings from other credit unions

Opening balance

22A

Amount received

22B

Interest charged for year

22C

Repayments (capital and interest)

22D

Closing balance

22E

Date of final repayment

22F

Bank Loans

Opening balance

23A

Amount of loan received

23B

Interest charged for year

23C

Repayments (capital and interest)

23D

Closing balance

23E

Date of final repayment

23F

Other borrowings

Opening balance

24A

Amount of loan received

24B

Interest charged for year

24C

Repayments (capital and interest)

24D

Closing balance

24E

Date of final repayment

24F

Subordinated Debts

Opening balance

25A

Received during year

25B

Interest charged for the year

25C

Repaid during year (capital and interest)

25D

Closing balance

25E

Authorised overdrafts

Maximum limits

26A

Charges incurred during year

26B

Date term expires

26C

Max amount drawn during year

26D

Committed facilities

Maximum limit

27A

Charges incurred during year

27B

Date term expires

27C

Max used during year

27D

Grants

Opening balance

28A

Received during year

28B

Applied during year

28C

Closing balance

28D

Date grants expire

28E

Liquidity ratio

Liquid assets

Cash and bank balance

Investments (realisable within 8 days)

Unused committed facilities

Unused overdrafts

Total liquid assets

29A	
29B	
29C	
29D	
29E	

Relevant liabilities

Unattached shares

Liabilities (with an original/ remaining maturity of less than 3 months)

Authorised overdrafts

Other liabilities / borrowings

Total relevant liabilities

30A	
30B	
30C	
30D	

Liquidity ratio

30E		%
-----	--	---

Large exposures

Largest net exposure

As % of capital

Aggregate total of large net exposures

As % of capital

£

31A	
31B	%
31C	
31D	%

Large version 1 and version 2 credit unions

Risk adjusted capital ratio

Total capital

Net provision or 1% of total assets whichever is the lower

Total risk adjusted capital

Total assets

Risk adjusted capital ratio

32A		
32B		
32C		
33D		
32E		%

Auditor's statement

In my opinion, the information contained in the balance sheet and revenue account of the Annual Return has been completely and accurately extracted from the audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968.

Registered auditor

Signature	<input type="text"/>
Name	<input type="text"/>
Tel.no.	<input type="text"/>
Date	<input type="text" value="/ /"/>

Address

Only in the extremely limited circumstances permitted by section 4 of the Friendly and Industrial and Provident Societies Act 1968, may the statement be signed by lay auditors (two).

Lay auditors (two)

Signature	<input type="text"/>
Name	<input type="text"/>
Occupation	<input type="text"/>
Address	<input type="text"/>
Date	<input type="text" value="/ /"/>

Signature	<input type="text"/>
Name	<input type="text"/>
Occupation	<input type="text"/>
Address	<input type="text"/>
Date	<input type="text" value="/ /"/>

Annex F
Guidance Notes on Quarterly Return (GN/CQ) and Annual Return (GNCY)

GN/CQ



**Guidance Note for completion of
Credit union - Quarterly Return (CQ)**

Contents	
General information	
Front cover	
Share capital	
Loans to members	
Credit union liabilities	
Income and expenditure	
Credit union solvency	
Arrears analysis	
Liquidity ratio	
Large exposures	
Large version 1 and version 2 credit unions	
Risk adjusted capital ratio	

General information

The Quarterly Return (CQ) is to be completed by all *credit unions* in Great Britain as at end March, end June, end September and end December. This form should be completed using the accruals-based accounting method.

Please read *CRED* in conjunction with these reporting instructions.

Send the fully completed Quarterly Return (CQ) to **The Financial Services Authority** in accordance with *SUP* 16.3.6R – *SUP* 16.3.13R (See *CRED* 14.10.4G) **within one calendar month** after the quarter to which it relates. Failure to do so is a breach of your regulatory requirements, as laid down in *CRED*, and may result in your *credit union* being subject to *FSA* sanctions.

Page numbers that appear in the text of these Guidance Notes refer to the pages of the Quarterly Return (CQ), not to the pages of this Guidance Note (GN/CQ).

Words in italics denote defined terms which can be found in the Glossary to the main *FSA Handbook*.

"*CRED*" means the Credit Unions Sourcebook.

"*SUP*" means The Supervision Manual (part of the main *FSA Handbook*)

"*APER*" means the Approved Person Manual (part of the main *FSA Handbook*)

'CUA 1979' means the Credit Unions Act 1979.

If there is no figure to be entered in the box please insert "nil" or "N/A" as appropriate.

Care should be taken to avoid errors. The *approved person* who signs the Front Page of the Quarterly Return (CQ) should initial any alterations to entries. Correction fluid should **not** be used in correcting entries.

All information should be legible, especially the name of the persons signing the Quarterly Return (CQ).

If you have any questions, please contact one of the following numbers:

020 7676 0104
020 7676 1096
020 7676 0282
020 7676 0352

Membership

Indicate in the appropriate boxes the number of persons currently in each category.

"Member" refers to a member (qualifying or non-qualifying) over the age of 16, who can save up to £5,000 or 1.5 per cent of the assets of the *credit union*, whichever is the greater. [A qualifying member is a person who fulfils the membership qualification: a non-qualifying member is a person who no longer fulfils the membership qualification, having once done so.]

"Juvenile depositor" refers to a depositor under the age of 16 (a person too young to be a member), who can save up to a maximum of £5,000, but cannot take out a loan from the *credit union*.

Complainants contact point

CRED 17.6.9R states that a *credit union* must inform the *FSA* of any changes to the single contact point within the *credit union* for complainants. If there have been any changes to your complainants contact point since your last submission to the *FSA* you will need to provide the new details in the boxes provided.

Signature

The Quarterly Return (CQ) states that the signatory must be an *approved person*. The signatory should not be an officer on the Supervisory Committee or an officer approved for the *non-executive director function*. This means that the person signing the Quarterly Return (CQ) will hold an approved function on the committee of management or that of the *chief executive function*. The criteria for *approved persons* are set out in *CRED* Chapter 4 (Senior management arrangements, Systems and Controls) and Chapter 6 (The Approved persons regime).

The *approved person* will also be verifying that the Supervisory (Internal Audit) Committee has carried out a bank reconciliation, as part of their internal audit during the quarter, which is independent of the bank reconciliation carried out by the treasury team each month. The purpose of carrying out an independent bank reconciliation is to safeguard the assets of your *credit union* and to ensure that the committee of management is carrying out its duties in accordance with your *credit union's* rules, relevant legislation and regulatory requirements. This will include verification of the "Cash and *bank* balances" that appear on Page 3 of the Quarterly Return (CQ) under **7A**.

Any corrections to entries should be initialled by the signatory.

Send in the Quarterly Return (CQ) with an original signature, not a photocopy.

Share capital - page 2

1A Total shares

The total amount of money held by your *credit union*, at the quarter end, relating to shares paid in by adult members.

This figure should take account of all changes made during the quarter.

Loans to members - page 2

1B Total loans to members

The total amount outstanding at the quarter-end on all loans to adult members (irrespective of when such loans were made). It will exclude any loans written off during the period.

1C Bad debts written off

The total amount of loans written off during the quarter should be entered into this box.

These are delinquent loans that your *credit union* believes are likely to be irrecoverable and may therefore be written out of the accounts. Writing off loans does not prevent your *credit union* continuing to seek repayment.

1D Interest receivable

The total amount of Interest receivable on loans and other investments during the quarter should be entered into this box.

1E Total net liabilities

The total net liabilities on all loans. To determine the total net liabilities please refer to "Arrears Analysis" at 6 below.

Provision for doubtful debt

Please note: CRED 10.5.4G states that in order to comply with CRED "it will be necessary for a *credit union* to review its provisioning requirements frequently (that is, at least monthly)".

Below we set out the minimum requirements your *credit union* will need to meet. However, your *credit union* may need to make additional provisions to reflect the risks and/or potential risks bad debts will have on the *credit union*.

1F Specific

Provision for doubtful debt – specific, refers to the provisions that your *credit union* has actually made to cover loans in arrears as laid down in CRED. CRED (10.5.2R) states that your *credit union* should make the following specific provisions:

- 35% on all net liabilities on loans which are over 3 months and up to 12 months in arrears.
- 100% provision on all net liabilities on loans which are over 12 months in arrears

The net liability on a loan is calculated as follows:

(Total loan + outstanding interest) - Shares

Where a member's shares exceed the net liabilities on the loan, there is no liability and it can be excluded from provisioning.

1G General

Provision for doubtful debt – general, refers to the provisions that your *credit union* has actually made to cover potential doubtful debts, in the future. As laid down in CRED, these are loans which:

- are currently not in arrears; or
- are up to and including 3 months in arrears.

Your *credit union* should make a 2% provision for the net liabilities of all these loans – all loans which are not covered by the specific provisions above at **(1F)**.

The net liability on a loan is calculated as follows:

(Total loan + outstanding interest) - Shares

Where a member's shares exceed the net liabilities on the loan, there is no liability and it can be excluded from provisioning.

Your *credit union* will still wish to enforce a strict policy of chasing loans arrears that are fully covered by shares (and therefore not subject to our provisioning requirements). Whilst many *credit unions* automatically make share to loan transfers to offset any missed payments (when a member falls behind with their loan repayments), you need to be aware of the impact, if any, such a policy may have on your *credit union*.

Credit union liabilities - page 2

Chapter 7 (Investments and borrowing) of CRED sets out the criteria for *credit unions*.

CRED 7.3.3R states that "the borrowings of a *version 1 credit union* must not exceed, except on a short term basis, an amount equal to 20% of the shareholding in the *credit union*". Short-term is defined as not more than "the end of two consecutive quarters" (CRED 7.3.4E).

2A Borrowings from other credit unions

The total closing balances of all loans received by your *credit union* from other *credit unions* at the end of the quarter.

However, subordinated debt does not fall into this group.

2B Authorised overdrafts

The total closing balances of all authorised overdrafts used by your *credit union* from *banks* at the end of the quarter.

The figure to be reported here is the figure drawn down and not the agreed limit on the overdraft facility.

2C Committed facilities granted

A committed facility is a committed line of credit, other than an overdraft, from a *bank*. These are funds immediately available from a *bank* and constitute a loan.

The total closing balances of all committed facilities used by your *credit union* from *banks* at the end of the quarter.

The figure to be reported here is the figure drawn down and not the agreed limit on the committed facility.

2D Other borrowings

The total closing balances of all other borrowings (not covered by **2A**, **2B** or **2C** above) received by your *credit union* at the end of the quarter. This will include all subordinated debts which do not count towards Capital Requirements - please refer to details at **5D** for guidance.

Whilst the majority of *credit unions* will not have subordinated debts, those that do should take into account the following when working out how much of any subordinated debts count towards other borrowings:

Years to maturity	Amount of subordinated debt counting towards other borrowings
More than 4	Nil
Less than and including 4 but more than 3	20%
Less than and including 3 but more than 2	40%
Less than and including 2 but more than 1	60%
Less than and including 1	80%

Subordinated debts are loans to the *credit union* where the lender has agreed to rank behind everyone else, if the *credit union* fails, in terms of recovering their money. The loan should have an original term of over five years.

2E Total borrowings

This figure is calculated using the following formula:

$$2A + 2B + 2C + 2D = 2E$$

2F Borrowings as % of total shares

To determine this ratio your *credit union* will use the following formula:

$$\frac{\text{Total borrowings (2E)}}{\text{Total shares (1A)}} \times \frac{100}{1}$$

Income and expenditure - page 2

Income and expenditure should be calculated using the accruals based accounting method.

3A Total income

The total income generated by your *credit union* during the financial year to date (YTD). Total income may include:

- entrance fees;
- interest receivable on loans;
- interest on investments; and
- grants released during the financial year to date (YTD).

However, this is not an exhaustive list.

3B Total expenditure

The total expenditure by your *credit union* during the financial year to date (YTD). We advise *credit unions* to make provision here for known expenses such as audit fees and other known fees payable by the *credit union* for the financial year. The purpose of this is to offset any fluctuation in your *credit union's* solvency/capital position, especially in the first quarter of the *credit union* financial year when many expenses fall due.

- Provisions for anticipated tax and dividends are required by *CRED* 8.2.1R. Tax is usually payable on any interest received on *bank* accounts or investments (unless it clearly stipulates that the investment is exempt from taxation).
- Provisioning will be made pro rata on a monthly or quarterly basis.

If you have any questions regarding the tax your *credit union* will need to pay you should consult your local Inland Revenue office.

4A Total assets

The total assets of your *credit union* that appear on the Balance Sheet of the relevant monthly financial statement. It may include the following:

- Investments
- Investments of juvenile *deposits*
- Total loans to members
- Cash and *bank* balances

This is not an exclusive list. Your *credit union* will need to refer to its relevant Balance Sheet.

Please note: Unused overdrafts should not be included when calculating the total assets of your *credit union*.

4B Total liabilities (including Reserves)

The total liabilities of your *credit union*, that appear on the Balance Sheet of the relevant Monthly Financial Statement of your *credit union*. It may include the following:

- Total shares of members
- Reserves
- Juvenile savings
- Total borrowings at **2E** above

This is not an exclusive list. Your *credit union* will need to refer to its relevant Balance Sheet.

Credit union capital - page 2

CRED states that the following is to be included in calculating Capital:

- audited reserves;
- interim net profits;
- subordinated debts; and
- initial capital.

Please refer to *CRED* 8.2.1R.

Please note: "Negative reserves and any interim net losses must be deducted from capital", (*CRED* 8.2.2R)

5A Audited reserves - general

Amount held by your *credit union* in general reserve, as laid down at *CRED* 8.3.5R.

A *credit union* is required to transfer at least 20% of its net profits to general reserve each year, until such time as general reserve reaches 10% of total assets. This transfer would usually take place at the financial year end. It is likely that your auditor at the financial year end will advise you on how much you should transfer.

5B Audited reserves - other

Money that your *credit union* has set aside out of net profits (in accordance with *CRED* 8.3.5R) - for example, a "revenue reserve" for unforeseen circumstances.

This will include initial capital which has not yet been spent.

Please refer to Chapter 8 of *CRED*. This figure will be negative if your *credit union* has an accumulated deficit from previous years. "Audited reserves – other" should not be confused with a bad debt "reserve" or provision for bad debts. Please insert "nil" if no other audited reserves are held by your *credit union* other than a general reserve.

5C Interim net profits/(loss)

This figure relates to the unaudited profit or loss of your *credit union*, which will appear on the Balance Sheet of your *credit union* accounts. The figure relates to the

financial year to date (YTD) figures. To work out the profit or loss of your *credit union* you will use the following formula:

$$3A - 3B = 5C$$

Please ensure that the Interim net profits / (loss) of your *credit union* has taken account of anticipated expenditure covered under "Total expenditure" at **3B** above. The reason your *credit union* should take account of proposed dividends and other anticipated expenditure are two fold.

- Firstly, as mentioned at **3B** above, it is to offset any fluctuation in your *credit union's* solvency/capital position, especially in the first quarter of the year when many expenses fall due. Historically, many *credit unions* trade at a loss in the first quarter of every financial year – what will your *credit union* do to overcome this?
- Secondly, whilst *credit unions* may make healthy profits throughout the year, at the financial year end many *credit unions* transfer the statutory minimum of 20% of profits into reserves. The remainder is often redistributed to members in the form of a dividend. Therefore, not to take account of anticipated dividends would mean that the solvency (which takes account of profits) of your *credit union* would be artificially exaggerated throughout the year.

5D Subordinated debt

Subordinated debts in 5D are loans where the lender has agreed to the terms set out on *CRED* 8.2.1R. They are loans to the *credit union* where the lender has agreed to rank behind everyone else, if the *credit union* fails, in terms of recovering their money. The loans should have an original term of over five years.

Whereas your *credit union* is permitted to raise subordinated debt from a variety of sources, it cannot automatically include subordinated debts when calculating the capital ratio. To be included in the calculation of capital, subordinated debt has to meet the rules laid down in *CRED* (8.2.1R). You will need to refer to this when calculating subordinated debt. Some of the main conditions are listed below:

- When the loan is issued it should have a maturity date of not less than five years;
- The conditions attached to the loan should state that the claims of the subordinated creditors rank behind those of all unsubordinated creditors including the *credit union's* shareholders;
- The subordinated debt should not become due and payable before its final maturity date agreed with the creditor (in writing) except in the event of default by non-payment of any interest or principal under the debt agreement or the winding-up of the *credit union*.

Provided the subordinated debt meets the rules laid down in Chapter 8 (Capital requirements) of *CRED*, the following formula will need to be used in writing down your *credit union's* subordinated debt:

Years to maturity	Amount of loan counting towards capital
More than 4	100%
Less than and including 4 but more than 3	80%
Less than and including 3 but more than 2	60%
Less than and including 2 but more than 1	40%
Less than and including 1	20%

5E Total Capital

Total capital is calculated using the following formula:

$$5A + 5B + 5C + 5D = 5E$$

Information for version 1 credit unions

Credit unions should be solvent (maintain a positive net worth) at all times. If your *credit union* does not meet this requirement or may not meet it at a date in the future, you should inform your lineside supervisor (person at FSA dealing with your *credit union*) immediately, so that we can work with you on ways to resolve the situation.

Whilst the Quarterly Return (CQ) asks your *credit union* for total capital (which includes reserves, interim net profit/ (loss), subordinated debts and initial capital) you will need to be aware that all *version 1 credit unions* "must at all times maintain a positive amount of capital", (CRED 8.3.1R) - in other words "a positive net worth". This means that "bad and doubtful debts must be taken into account in establishing whether a *credit union* is maintaining a positive amount of capital", (CRED 8.3.4G).

Although we do not ask for this, specifically, on the Quarterly Return (CQ), we are able to work it out from the information already given. Your *credit union* will need to be aware of how we work out the total net worth of your *credit union*. In calculating the total net worth of your *credit union* you will need to take the following into consideration:

Total Capital	£
Actual provision for doubtful debt - specific	£
Minimum provision for doubtful debt - specific	£
Actual provision for doubtful debt - general	£
Minimum provision for doubtful debt - general	£

Total capital

This is the same figure that appears at **5E** on the Quarterly Return (CQ).

Actual provision for doubtful debt - specific

These are the provisions that your *credit union* has actually made to cover loans in arrears as laid down in CRED. It is the same figure that appears at **1F** on the Quarterly Return (CQ).

Minimum provision for doubtful debt - specific

Minimum specific provisions are based on all actual net liabilities on loans which are over 3 months in arrears. (Please refer to Arrears analysis below for further details)

The formula for working out minimum specific provisions is as follows:

Arrears Analysis		Number	Net Liabilities
A	3 months to 12 months		£
B	Over 12 months		£
C	Total	(A + B)	£

The above arrears are based on net liabilities

Minimum specific provision		
35% of A (arrears - 3 months to 12 month)		£
100% of B (arrears over 12 months)		£
D Minimum specific provision		£

An example on how to work out minimum specific provisions is given below:

Arrears Analysis		Number	Net Liabilities
A	3 months to 12 months	7	£7,000
B	Over 12 months	10	£10,000
C	Total	(A + B)	£17,000

Minimum specific provision		
35% of A (arrears - 3 months to 12 month)		£2,450
100% of B (arrears over 12 months)		£10,000
D Minimum specific provision		£12,450

Actual provision for doubtful debt - general

These are the provision for doubtful debt that your *credit union* has actually made to cover potential doubtful debts, in the future, as laid down in CRED. It is the same figure that appears at **1G** on the Quarterly Return (CQ).

Minimum provision for doubtful debt - general

Minimum general provisions are based on all actual net liabilities on loans which are currently not in arrears or are up to and including 3 months in arrears. (Please refer to Arrears analysis below for further details).

The formula for working out minimum specific provisions is as follows:

Minimum general provision		
Total net liabilities (same as 1E on Quarterly Return)		£
Total arrears over 3 months (C above)		(£ _____)
E Total net liabilities subject to general provision		£
F Minimum general provision		£
	(2% of total loans subject to general provision)	

An example on how to work out minimum general provisions is given below:

Minimum general provision

Total net liabilities (same as 1E on Quarterly Return)	£107,250
Total arrears over 3 months (C)	(£ 17,000)
E Total net liabilities subject to general provision	£90,250
F Minimum general provision	£1,805

How is total net worth calculated?

From the above we have established how to work out how much money your *credit union* should be setting aside to adequately cover doubtful debts. *CRED* 8.3.4G states that "bad and doubtful debts must be taken into account" when determining the *credit union's* total net worth.

For this reason, if your *credit union* has not made adequate provisions the shortfall will be deducted from total capital in determining the total net worth of the *credit union*. *Version 1 credit unions* cannot, however, include surplus provisions in this calculation. To calculate the total net worth of your *credit union* you can use the following table:

	Minimum Provision	Actual Provision	Affecting net worth
Specific	A	B	If A < B then "nil" If A > B then, (B - A)
General	C	D	If C < D then "nil" If C > D then, (D - C)

Using the figures from the example above:

- Actual provision for doubtful debt – specific = £14,000
- Actual provision for doubtful debt – general = £1,000

	Minimum Provision	Actual Provision	Affecting net worth
Specific	£12,450	£14,000	"Nil"
General	£1,850	£1,000	£850

The total net worth of your *credit union* is:

Total capital
(Specific - affecting net worth)
(General - affecting net worth)
Total net worth

For the purpose of this example, total capital is £2,000.

£2,000
(£0)
(£850)
£1,150 Total net worth

On this example, your *credit union* would satisfy the requirements of *CRED*, since the *credit union* has a "positive net worth".

Capital Ratio (for information purposes only)

To determine the capital ratio your *credit union* will use the following formula:

$$\frac{\text{Total capital (5E)}}{\text{Total assets (4A)}} \times \frac{100}{1}$$

6 Arrears analysis - page 2

This relates to net liabilities on loans as mentioned above at "loans to members" – **1B – 1G**. In this section there are 2 time periods under which to analyse the number and amount of loans in arrears and have net liabilities attached:

- "3 months to 12 months" on the Quarterly Return (CQ) refers to all loans which are over 3 months and up to and including 12 months in arrears, and have net liabilities attached;
- "over 12 months" on the Quarterly Return (CQ) refers to all loans which are over 12 months in arrears, and have net liabilities attached;.

Please note: Where payments actually received from a member are irregular in timing and/or amount, your *credit union* needs to have a policy on how to deal with such arrears. Ultimately, how sure can your *credit union* be that such a loan will not be defaulted upon in the future? The main concern for us is that your *credit union* can be confident that adequate provisions have been made to offset any potential burdens an irrecoverable debt would place on the *credit union* in the future. For this reason, it may be prudent for your *credit union* to make provisions for such risks.

For example:

If 15 weekly repayments have been missed (or an amount equivalent to 15 weekly repayments is overdue), then the loan is to be included under the "3 months to 12 months" time period, irrespective of when the most recent repayment was received.

Number

The actual number of outstanding loans, within the time periods mentioned above, with net liabilities at the end of the quarter.

Net liabilities

The total amount outstanding on all loans (inclusive of interest owing) in arrears for each time period (i.e. if a loan is in arrears, the figure used should be the total net liabilities owed by the member, including interest - not just the sum of the repayments that have been missed). The formula used is as follows:

$$\text{Loan balance} + \text{interest owing} - \text{share balance} = \text{Net liability}$$

The table below is an example on how to work out net liability:

Loans 3-12 months in arrears:				
Loan No.	Loan balance	Interest owing	Share balance	Net liability

1	£390	£10	£200	£200
2	£580	£20	£500	£100
3	£4,050	£150	£2,200	£2,000
4	£720	£30	£1,000	£0
5	£115	£10	£50	£75
Total	£5,855	£220	£3,950	£2,375

From this table we see that there are 4 loans with positive net liabilities. Total net liabilities for this period is £2,375.

The **Total** of the number and amount of net liabilities of loans in arrears should also be given. From the example above totals will be as follows:

	Number	Net Liability
3-12 months	4	£2,375
Over 12 months	0	£0
Total	4	£2,375

Liquidity ratio - Page 3

7A Cash and bank balance

The total amount in your *credit union's bank* current account plus any cash in the custody of officers (e.g. cash for the collection point float or petty cash). The following are not to be included in this calculation:

- Authorised overdrafts;
- Committed facilities;
- Other investments of surplus funds which will fall into the investments section of liquid assets.

Please note that this relates to money relating to adult members and juvenile depositors. Following recent changes, *credit unions* no longer have to keep the *deposits* of juveniles separate from the shares of adult members. Grants that constitute part of the *bank* balance should be excluded from liquid assets, unless there are adequate funds in long-term investment to cover the amount of the grant used for this purpose.

7B Investments (less than eight days to maturity)

CRED 9.3.8R states that only investments that could be realised within eight days can be included in calculating your *credit union's* liquidity ratio. It is therefore important that your committee of management takes a long-term view of the *credit union* business before investing surplus funds. Your *credit union* will need to be aware of redemption penalties or other losses you may incur for the early realisation of such funds. In short, most investments can be converted into cash but at a cost.

Please note: This will include any deposit accounts your *credit union* may use.

Important notice: Version 1 credit unions should not hold investments with a maturity date of over 12 months (CRED 7.2.2R).

The remainder of the information at **7B** relates directly to *version 2 credit unions*.

CRED 9.3.9E(1) reads: "For the purpose of calculating a *credit union's* liquidity ratio, the *securities* referred to in *CRED 7.2.2R – 7.2.3R* should be valued on the basis that they could be realised at par, minus the following discounts:

- (a) maturity less than 1 year - Zero
- (b) maturity 1 to 5 years - 5%"

So in events where your *credit union* can realise investments within eight days, you will still need to reduce the applicable figure by 5% for all *securities* with a maturity date of between one and five years.

Example:

Time period	Amount realisable in 8 days	Amount allowed for liquidity
Less than 1 year	£200	£200
1 to 5 years	£500	£475

Whilst these are minimum requirements your *credit union* will need to draft and implement a comprehensive Liquidity Management Policy to account for the greater risks attached to longer-term investments.

7C Unused committed facilities

A committed facility is a committed line of credit, other than an overdraft, from a *bank*. These are funds immediately available from a *bank* and constitute a loan.

This relates to a *credit union* that has secured committed facilities from an institution authorised to accept *deposits* within the EEA. Normally this will be the *bank* with which your *credit union* holds its current account. Any unused committed facilities can be entered into this box. If your *credit union* does not have any committed facilities this box should be filled by a "nil". We would like to draw your attention to *CRED (7.3.3R)*. It states that "the borrowings of a *version 1 credit union* must not exceed, except on a short term basis, an amount equal to 20% of the shareholding in the *credit union*". Short-term is defined as not more than "the end of two consecutive quarters" (*CRED 7.3.4E*).

Please note that any unused committed facilities may only be used for calculating the liquidity ratio of your *credit union*, but cannot be used when calculating the total assets of your *credit union*. We reserve the right to seek evidence of any committed facilities which are used for liquidity purposes.

7D Unused overdrafts

This relates to a *credit union* which has an authorised overdraft arrangement with an institution authorised to accept *deposits* within the EEA. Normally this will be the *bank* with which your *credit union* holds its current account. Any surplus overdrafts which has not been used can be entered into this box. If your *credit union* does not have an authorised overdraft facility this box should be filled by a "nil". Again, we would like to draw your attention to *CRED (7.3.3R)*. It states that "the borrowings of a *version 1 credit union* must not exceed, except on a short term basis, an amount equal to 20% of the shareholding in the *credit union*". Short-term is defined as not more than "the end of two consecutive quarters" (*CRED 7.3.4E*).

Please note that any unused overdrafts may only be used for calculating the liquidity ratio of your *credit union*, but cannot be used when calculating the total assets of your *credit union*. We reserve the right to seek evidence that a *credit union* overdraft facility, which is used for liquidity purposes, has indeed been authorised by the relevant *bank*.

7E Total liquid assets

This figure is calculated by the following:

$$7A + 7B + 7C + 7D = 7E$$

7F Unattached shares / juvenile deposits

Total value of adult shares, which are not attached to a loan, and the total value of juvenile *deposits* held by your *credit union*.

Because juvenile depositors cannot have loans, all juvenile *deposits* will be unattached.

To assist you in working out the unattached shares for your *credit union*, we would like to draw your attention to the following three different classifications – which are for illustration purposes only. These are:

1. All members who have not got a loan and are not acting as guarantor for a loan;

Example:

Member number	Share balance	Loan balance + interest owing	Unattached shares
101	£750	£0	£750
102	£1,201	£0	£1,201
103	£254	£0	£254
104	£1,500	£0	£1,500
Totals	£3,705	£0	£3,705

2. All members with loans, but not part of a guarantor agreement;

Example:

Member number	Share balance	Loan balance + interest owing	Unattached shares
005	£600	£750	£nil
006	£1,470	£1,201	£269
007	£522	£254	£268
008	£900	£1,500	£nil
Totals	£3,492	£3,705	£537

3. All guarantors

Example:

Member 200 received a loan on the condition that Member 300 acted as guarantor for the loan. At the quarter end both accounts read as follows:

Member number	Share balance	Loan balance + interest owing	Net liability	Unattached shares
200	£600	£750	£150	nil
300	£1,470	£1,201	nil	£269

The net liability for the loan of member 200 equals £150 and therefore member 200 has no unattached shares.

Member 300 has no net liability, but £269 in unattached shares. Since there is a charge on these shares to the value of the net liabilities of the loan of member 200, the total unattached shares for both members is as follows:

a	Unattached shares of member 300	£269
b	Net liability of member 200	£150
	Combined unattached shares (a-b)	£119

Your *credit union* will need to closely monitor guaranteed loans when working out unattached shares.

Liabilities (with an original or remaining maturity of less than three months)

These are all liabilities excluding unattached shares / juvenile *deposits* (which are already covered in the relevant liabilities being calculated). Only liabilities that fall due within the three-month period are to be included in the calculations. **7G** and **7H** below fall into this group.

Please note: Only those liabilities (repayments of capital and interest) which fall due over the next three months are to be included.

7G Authorised overdrafts

All drawn down overdrafts which need to be repaid over the next three months are to be included here

Example:

Your *credit union* has an overdraft facility of £2,000. It has drawn down £600 which it expects to pay back over the next six months on a pro-rata basis. Over the next three months your *credit union* will expect to pay back £300 capital and any interest charges. This is the figure to be included.

7H Other liabilities / borrowings

These are all liabilities excluding unattached shares / juvenile *deposits* and authorised overdrafts (which are already covered in **7F** and **7G**). Included in this category are such things as:

- loans from other *credit unions*;
- loans from *banks*;
- subordinated debts;
- committed facilities

Example:

Your *credit union* receives a £1,200 loan from your local *bank*. The terms of the loan agreement state that the loan must be repaid in 12 equal monthly instalments over a year. Your *credit union* has to pay back £100 capital and outstanding interest at the end of every month. In this instance your *credit union* should include three monthly repayments (to include capital and interest), when calculating liabilities with maturity of less than three months.

7I Total relevant liabilities

This figure is calculated by using the following formula:

$$7F + 7G + 7H = 7I$$

7J Liquidity ratio

To determine the liquidity ratio, your *credit union* will use the following formula:

$$\frac{\text{Total liquid assets (7E)}}{\text{Total relevant liabilities (7I)}} \times \frac{100}{1}$$

Large exposures - Page 3

Whilst these figures relate to the quarter end, your *credit union* will need to look at large *exposures* requirements when issuing loans. For example, *CRED* 10.4.1R defines a large *exposure* as any individual net liability which is at least £5,000 and at least 10% of the value of the *credit union's* capital.

8A Largest net exposure

To work out your *credit union's* largest net *exposure* you will need to determine:

- a) the net *exposure* on each loan and find the largest figure. The formula for this is:

$$(\text{loan balance} + \text{interest owing}) - \text{share balance}$$

- b) what is the total capital of your *credit union*? This is defined at **5G**.

Say, for example your *credit union's* total capital is £40,000. We know from the above that only net liabilities over 10% of Capital are subject to the large *exposures* rule. Ten percent of £40,000 is £4,000.

However, we further know from the above that only net liabilities over £5,000 are subject to the large *exposures* rule. Below we see all net *exposures* over 10% of total capital and those that do and do not qualify:

Example:

Member number	Share balance	Loan balance + interest owing	Net liabilities	Is it a large exposure?
150	£3,125	£12,500	£9,375	YES
152	£1,750	£7,000	£5,250	YES
103	£3,115	£9,002	£5,887	YES
462	£2,500	£6,700	£4,200	No
204	£2,138	£7,911	£5,773	YES
109	£4,000	£8,500	£4,500	No

As we can see the largest net *exposure* is that of member 150 and it is £9,375.

8B As % of capital

An individual large *exposure* should not exceed **25%** of your *credit union's* capital (*CRED* 10.4.2R).

To determine this percentage, your *credit union* will need to use the following calculation:

$$\frac{\text{Largest net exposure (8A)}}{\text{Total capital (5G)}} \times \frac{100}{1}$$

So: $\frac{£9,375}{£40,000} \times \frac{100}{1} = 23.44\%$

8C Aggregate total of large net exposures

This figure relates to the sum total of all net liabilities subject to the large *exposures* rule as defined in **8A** above.

Taking the example at **8A** above, this figure will be £26,285 (see below).

Member number	Share balance	Loan balance + interest owing	Net liabilities
150	£3,125	£12,500	£9,375
152	£1,750	£7,000	£5,250
103	£3,115	£9,002	£5,887
204	£2,138	£7,911	£5,773
Totals	£10,128	£36,413	£26,285

8D As % of capital

CRED states that the aggregate total of large net *exposures* should not exceed 500% of the total capital of the *credit union* (*CRED* 10.4.2R), and should not exceed 300% of total capital without prior notifying the *FSA* (*CRED* 10.4.3R). To see if the example satisfies the rules please use the following calculation:

$$\frac{\text{Aggregate total of large net exposure (8C)}}{\text{Total capital (5G)}} \times \frac{100}{1}$$

So: $\frac{£26,285}{£40,000} \times \frac{100}{1} = 65.71\%$

Large version 1 and version 2 credit unions

Risk adjusted capital ratio - page 3

A risk adjusted capital ratio is a requirement for larger *version 1 credit unions* and *version 2 credit unions* under *CRED*.

CRED 8.3.16R states "A *version 1 credit union* with total assets of more than £10 million and/or a total number of members of more than 10,000 must maintain at all times a risk-adjusted capital to total assets ratio of at least 8%"

9A Total capital

This figure is the same as the figure that appears at **5G** on page 2 of the Quarterly Return (CQ).

9B Net provisions or 1% of total assets whichever is the lower

Capital should be risk-adjusted for *version 2 credit unions* and large *version 1 credit unions* (CRED 8.4.1R and CRED 8.3.16R). The maximum net figure for provisions that may be included in calculating risk-adjusted capital is 1% of total assets (CRED 8.4.2R).

Net provisions are those provisions your *credit union* has made minus minimum specific provisions. In other words:

	Provision
Minus	100% of net liabilities on loans which are 12 months or more in arrears
Minus	35% of net liabilities on loans 3 – 12 months in arrears
=	Net provisions

This figure is calculated by using the following calculation:

Arrears Analysis

Arrears - 3 months to 12 months	A
Arrears - over 12 months	B
Total arrears	C = A+B

The above arrears are based on net liabilities

Number	Net Liabilities
	£
	£
	£

Minimum specific provision

35% of **A** (arrears - 3 months to 12 month)

£

100% of **B** (arrears - over 12 months)

£

D Total minimum specific provisions

£

Actual specific provision for doubtful debt (as at **1F**)

£

Actual general provision for doubtful debt (as at **1G**)

£

E Total actual provisions

£

Total minimum specific provisions (**D**)

(£)

F Net provisions

£

Total assets (as at **4A**)

£

G 1% of total assets

£

The figure to be posted onto the Quarterly Return (CQ) is the lesser of **F** and **G**. If this is a negative figure, the figure that appears on the Quarterly Return (CQ) needs to be a negative figure.

Example

Arrears Analysis

Arrears - 3 months to 12 months **A**
Arrears - over 12 months **B**
Total arrears **C = A + B**
The above arrears are based on net liabilities

Number	Net Liabilities
5	£28,000
10	£67,000
15	£95,000

Minimum specific provision

35% of **A** (arrears - 3 months to 12 month) £9,800
100% of **B** (arrears over 12 months) £67,000
D Total minimum specific provisions £76,800

Actual specific provision for doubtful debt (as at **1F**) £70,000
Actual general provision for doubtful debt (as at **1G**) £10,000
E Total actual provisions £80,000
Total minimum specific provisions (**D**) (£76,800)
F Net provisions £3,200
Total assets (as at **4A**) £1,120,000
G 1% of total assets £11,200

The figure to be posted onto the Quarterly Return (CQ) at 9B is £3,200.

9C Total risk adjusted capital

This figure is calculated using the following formula:

$$9A + 9B = 9C$$

9D Total assets

This is the total assets of your *credit union* that appears on the Balance Sheet. It will be the same figure that appears in **4A** above. Please note that unused overdrafts or unused committed facilities cannot be used when calculating the total assets of your *credit union*.

9E Risk adjusted capital ratio

The risk adjusted capital ratio your *credit union* will use the following formula:

$$\frac{\text{Total risk adjusted capital (9C)}}{\text{Total assets (9D)}} \times \frac{100}{1}$$

GVCY



**Guidance Note for completion of
Credit union Annual Return**

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General information

The Annual Return (CY) should be completed by all *credit unions* in Great Britain at the end of their financial year. It should be completed using the accruals-based accounting method.

Please read *CRED* in conjunction with these reporting instructions.

Send the fully completed Annual Return (CY) (including a completed auditor's statement) to the Financial Services Authority in accordance with *SUP* 16.3.6R – *SUP* 16.3.13R (see *CRED* 14.10.4G) by the date stated in the *credit union's* rules (which should be within 7 months of the financial year end). Failure to do so is a breach of your regulatory requirements, as laid down in *CRED*, and may result in your *credit union* being subject to *FSA* sanctions.

A copy of the audited annual accounts of the *credit union* (and the auditor's report on those accounts) should also be submitted (see *CRED* 14.10.10R(1)).

If there is no figure to be entered in the box please write "nil", "none" or "N/A" as appropriate.

Care should be taken to avoid errors. The two people who sign page 2 of the Annual Return (CY) should initial any alterations to entries. Correction fluid should **not** be used in correcting entries.

Page numbers in this note relate to the pages of the Annual Return (CY), **not** to the pages of this guidance note.

Words in italics denote defined terms which can be found in the Glossary to the main *FSA Handbook*.

"*CRED*" means the Credit Unions Sourcebook.

"*SUP*" means The Supervision Manual (part of the main *FSA Handbook*)

"*APER*" means the Approved Person Manual (part of the main *FSA Handbook*)

'CUA 1979' means the Credit Unions Act 1979.

The number and figure in brackets shown next to the headings refer to the box numbers on the Annual Return (CY) form.

Accounting Policies

Fixed assets

Fixed assets are stated at net book value. Depreciation is provided on fixed assets at rates expected to cover costs over their expected useful lives.

Investments

These are stated at cost, less provision for permanent diminution in value where necessary.

Provision for doubtful debts

This is made in accordance with the rules and guidance set out in *CRED* 10.5.3E.

Amount of interest

Interest receivable on loans and other investments and payable on loans made to the *credit union* is to be accrued.

Front pages**Name and address**

Insert the registered name and address of the *credit union*.

Firm reference number

Insert the number assigned to the *credit union* by the Financial Services Authority.

Financial year end

Insert the date of the *credit union's* financial year end (See *SUP* 16.7.63BR and *CRED* 14.10.10R(2)(a)).

Version 1 / version 2 requirement

See *FSA Handbook Glossary* for definitions.

Affiliation

Insert the name of the trade association that the *credit union* is affiliated to. If the *credit union* is not affiliated, insert "none".

Membership (A1)

Indicate in the appropriate boxes the number of members that the *credit union* currently has in each category of membership.

A "non-qualifying" member is someone who no longer fulfils the membership qualification, having once done so e.g. he or she no longer lives in the common bond area. No more than 10% of the total membership of the *credit union* should be "non-qualifying".

A "juvenile depositor" is a person who is too young to be a member - someone under the age of 16 - who can save up to a maximum of £5,000, but cannot take out a loan from the *credit union*.

Audited accounts

Delete "Yes or No" as appropriate. Audited annual accounts are required by the Friendly and Industrial and Provident Societies Act 1968. *CRED* 14.10.9G and *CRED* 14 Ann 1G give guidance about the statutory accounts. Attach a copy of the accounts before returning the Annual Return (CY). See *CRED* 14.10.10R.

Computer software (A4)

Please insert the name of the software system the *credit union* uses.

Bankers

Please insert the name of the *bank* or *building society* the *credit union* holds its current account with.

Number of staff members paid for by the credit union (A5-6)

Please insert the relevant number of full and part time staff the *credit union* employs. This figure should not include staff who work at the *credit union* but whose wages are paid by another organisation.

Number of staff members paid for by other organisations (A7)

Please insert the number of paid staff that the *credit union* has that are paid for by outside organisations.

Paid staff members - *approved persons*

Please delete either yes or no as appropriate.

Fidelity bond insurance

The purpose of this section is to ensure that the *credit union* had sufficient and continuous insurance in place during the period covered by the Annual Return (CY).

Policy issued by

Insert the name of the company providing the insurance to the *credit union*.

Date of inception of policy or last renewal (A8)

Insert the date that the policy originally started or the date on which it was last renewed. The date of the last renewal is likely to coincide with the *credit union's* year-end (prior year).

Date of expiry of policy (A9)

This should be the date that the policy held by the *credit union* expires. It is likely to be the same date as the year-end for this return.

Amount of cover (A10)

The amount of cover actually provided should be available from the bonding certificate or insurance policy.

Table showing the amount of cover required (CRED 7A.1.10R)

Aggregate value	Cover required in respect of any one claim	Cover required in respect of total claims made in any one year
Less than £10,000	The higher of £500 or 50 per cent of the aggregate value	The higher of £1,000 or 100 per cent of the aggregate value
£10,000 to £100,000	The higher of £5,000 or 20 per cent of the aggregate value	100 per cent of the aggregate value
More than £100,000	The higher of £20,000 or 15 per cent of the aggregate value	The higher of £100,000 or 75 per cent of the aggregate value
Over £1,000,000	£150,000 plus 5 per cent of value over £1,000,000 (subject to a maximum of £2,000,000)	£750,000 plus 5 per cent of value over £1,000,000 (subject to a maximum of £4,000,000)

All claims in any one year (A11)

The total amount of claims that the *credit union* has made on its fidelity bond insurance policy in this financial year.

Were any claims made? (A12)

Please answer yes or no.

Signatures

The signatories should not sign the form until they have made sure that all entries are complete.

One signatory should be a member of the committee of management.

One signatory should be the secretary of the *credit union*.

Any corrections to entries should be initialled by each of the two signatories. Send in the form with originals (**not** photocopies).

Balance sheet

The balance sheet sets out the *credit union's* total assets, reserves and liabilities at the end of the financial year.

Assets

(1A) Fixed assets

The figure entered here should include the value of any property the *credit union* owns (e.g. the *credit union's* registered office, computer or office equipment). Depreciation of the fixed assets should be deducted before the figure is entered into the box.

Current assets

(1B) Investments – Banks and Building Societies

The total of money held in a *bank* or *building society* investment account: this will be separate from the current account that the *credit union* holds and will usually pay more interest on the monies held.

Credit unions may only invest this money in *deposits* or loans to: (1) a *UK domestic firm* with *Part IV permission to accept deposits*; (2) an institution which is authorised in any other *EEA State to accept deposits* (See CRED 7.2.1R)

(1C) Investments – securities

The total of money held in *securities*.

A *credit union* may only invest this money in: sterling-denominated *securities* issued by the government of any *EEA State*; (2) and fixed-interest sterling-denominated *securities* guaranteed by the government of any *EEA State* (See CRED 7.2.1R).

A *version 1 credit union's investments* should not have a maturity date exceeding 12 months from the date the *investment* was made. (CRED 7.2.2R)

A *version 2 credit union's investments* should not have a maturity date exceeding five years from the date the *investment* was made. (CRED 7.2.3R)

Further information can be found in *CRED* Chapter 7 (Investment and borrowing).

(1D) Investments juvenile deposits

The *investments* held in respect of the *credit union's* juvenile depositors.

Due from members for loans

The total amount outstanding at the year-end on all loans to members.

(1E) Secured loans

The total amount outstanding to the *credit union* that is secured e.g. on shares or property. This figure will exclude any loans written off during the financial year. Please note that if loans are secured on property, a legal charge should be taken out by the *credit union* to ensure that the loan is properly secured.

(1F) Unsecured loans

The total amount of loans that are made to members but are not fully secured as indicated above. This figure will exclude any loans written off during the financial year.

Less: Provision for doubtful debts

This figure is deducted from the loan balances and is therefore shown as a negative.

(1G) General provision

CRED 10.5.3E sets out that *credit unions* should maintain a general provision for bad and doubtful debts of at least 2% of net liabilities not already covered by specific provisioning on loan arrears **(1H)**. General provisions are provisions that your *credit union* has made to cover potential doubtful debts in the future. These are loans currently not in arrears or loans that are in arrears up to three months.

(1H) Specific provision

CRED 10.5.2 R states that a *credit union* must make specific provision in its accounts of at least:

1. 35% of the net liability to the *credit union* of borrowers where the amount is more than three months in arrears.
2. 100% of the net liability to the *credit union* of borrowers where the amount is more than 12 months in arrears.

Net liability on a loan can be calculated as follows:

(Total loan + outstanding interest) – shares

Where a member's shares exceed the amount held in loan there is no risk to the *credit union* and no provision needs to be made.

Please note that these are minimum requirements and your *credit union* may need to make additional provisions to reflect the risks and/or potential risks bad debts will have on the *credit union*.

(1J) Due from other *credit unions*

The total amount outstanding at the year-end on all loans made to other *credit unions* (irrespective of when the loans were made).

(1K) Cash and *bank* balances

The total amount in the *credit union's bank* account, plus any cash that the *credit union* holds (e.g. collection point floats or petty cash). If the *credit union* has drawn upon its overdraft facilities, the amount owed should be inserted in box **2D** of the balance sheet.

(1L) Other debtors

Any monies owed to the *credit union* from organisations not listed above.

(1M) Prepaid expenses

These are bills that the *credit union* has paid but the benefit falls into a later accounting period e.g. insurance premiums.

(1N) Other

This can include any other assets not covered in the above boxes. It may include suspense accounts that have been opened to correct an error. A suspense account figure should only appear under "assets" if the error results from over debiting and the amount is expected to be recoverable. Any entries made here should be itemised.

(1P) Total assets

This figure is the sum total of boxes **1A-1N**.

Liabilities

(2A) Juvenile deposits

The total amount due to juvenile depositors.

Loans

(2B) Borrowings from other credit unions

The figure for the amount outstanding on any loan that the *credit union* may have received from another *credit union*.

(2C) Bank loan

The figure for the amount outstanding on any loan that the *credit union* may have received from a *bank*.

A version 1 credit union may not borrow more than 20% of the total shareholding (see box 13d) of the *credit union* except on a short-term basis. Subordinated debt does not form part of the later calculation. (See *CRED* 7.3.3R-7.3.6R for more information.)

(2D) Authorised overdrafts

The amount that the *credit union* is overdrawn at the *bank*. This figure should not be shown on the assets side of the balance sheet.

(2E) Grants

Total amount of grants that the *credit union* has received but not yet released to revenue.

(2F) Other creditors and accruals

Money that the *credit union* owes with respect to bills or interest still owing on loans.

(2G) Corporation tax

The amount of tax owed by the *credit union* at the year-end in respect of corporation tax. Corporation tax is payable on interest earned on non-trading income e.g. bank account interest.

(2H) Interest to juvenile depositors

The amount of interest payable on juvenile accounts that the *credit union* has not paid at the end of the financial year.

(2J) Applications

Total monies applied to dividend, rebate of interest and donations in the current year but not yet paid to members.

(2K) Other

This should include any other liability not covered above. All entries made here should be fully itemised.

(2L) Total liabilities

This figure is the sum total of boxes **2A-2K**.

(2M) Net assets

This is the sum of total assets minus total liabilities (**1P minus 2L**).

Credit union capital and reserves

(2N) General reserves

Amount held by the *credit union* in general reserve (See *CRED* 8.3.5R.)

(2P) Other reserves

Money that the *credit union* has set aside out of profits e.g. a revenue reserve to provide for unforeseen circumstances. Other reserves are entirely voluntary and do not have to be held by the *credit union*.

(2Q-R) Subordinated debt

Subordinated debts in 2Q-R are loans where the lender has agreed to the terms set out on *CRED* 8.2.1R. They are loans to the *credit union* where the lender has agreed to rank behind everyone else, if the *credit union* fails, in terms of recovering their money. The loans should have an original term of over five years.

Whereas your *credit union* is permitted to raise subordinated debt from a variety of sources, it cannot automatically include subordinated debts when calculating the capital ratio. To be included in the calculation of capital, subordinated debt should meet the rules laid down in *CRED* 8.2.1R(4). You will need to refer to this when calculating subordinated debt. Some of the main conditions are listed below:

- When the loan is issued it should have a maturity date of not less than five years;
- The conditions attached to the loan should state that the claims of the subordinated creditors should rank behind those of all unsubordinated creditors including the *credit union's* shareholders;

- The subordinated debt should not become due and payable before its final maturity date except in the event of default by non-payment of any interest or principal under the debt agreement or the winding-up of the *credit union*; and

Please note that only subordinated debt counting towards capital should be shown in 2Q-R.

To meet the subordinated debt rules laid down in Chapter 8 (Capital requirements) of *CRED*, the following formula should be used in writing down your *credit union's* subordinated debt (see *CRED* 8.2.4R):

Years to maturity	Amount of loan counting towards capital
More than 4	100%
Less than and including 4 but more than 3	80%
Less than and including 3 but more than 2	60%
Less than and including 2 but more than 1	40%
Less than and including 1	20%

(2S) Total capital

The total of boxes 2N-2R.

(2T) Members' share balances

Total amount of money held by the *credit union* in respect of shares paid in by adult members.

(2U) Total capital and share balances

This is the sum of total capital plus members' share balances. This figure should be equal to the net assets figure shown in box **2M**.

Revenue account

The Revenue Account sets out the *credit union's* total income and expenditure, in order to arrive at the profit for the year.

Income

(3A) Entrance fees

The total amount of money the *credit union* has received through entrance fees from new members.

(3B) Interest from members' loans

The total amount of interest earned on loans made to members.

(3C) Bank interest

The total amount of interest receivable on the *credit union's* bank account.

(3D) Other investment income

The total amount earned on investments held by the *credit union*.

(3E) Profit on sale of investments and assets

Profit earned on any investment or asset sales.

(3F) Bad debts recovered

The amount of debts that the *credit union* has recovered having previously written them out of the accounts.

(3G) Administrative charges on juvenile account

The amount earned by the *credit union* on any administrative charges to juvenile depositors.

(3H) Grants

Money received by the *credit union* in the form of a grant from another organisation and released into revenue.

(3J) Donations

Money received by the *credit union* in the form of a donation from a member or another body.

(3K) Insurance commission

Money received by the *credit union* from commission on insurance product sales.

(3L) Annual membership fees

Money received by the *credit union* from charging an annual membership fee for members.

(3M) Ancillary service charges

Money received by the *credit union* from fees for providing ancillary services to members.

(3N) Other income

This could be any other form of income received by the *credit union* that is not covered above by **3A-3M**. Any entry made here should be fully itemised.

(3P) Total income

This figure is the sum total of boxes **3A-3N**.

Expenditure

(4A) Admin expenses

This figure should include the following expenditure items as a total figure:

1. Occupancy costs
2. Printing, stationery and advertising costs
3. Staff remuneration
4. Insurance costs (not fidelity bond)
5. Legal fees

(4B) Auditors remuneration

Total payable to auditor.

(4C) Fidelity bond insurance

Total payable for fidelity insurance.

(4D) Management expenses

Total payable for expenses incurred by the officers of the *credit union* e.g. Officer expenses, honoraria to officers and expenses.

(4E) Bad debt provision

The net amount in the year added to the bad debt provision to provide adequately for loan arrears for the whole financial year. This may be a negative amount if arrears have fallen during the year.

(4F) Bad debts written off

The total amount of outstanding loans written out of the accounts due to non-payment to the extent that they have not been charged to the bad debt provision.

These are delinquent loans that your *credit union* believes are likely to be irrecoverable and has therefore been written out of the accounts. Writing off loans does not prevent your *credit union* continuing to seek repayment.

(4G) Bank charges

Charges payable on the *credit union's* bank accounts.

(4H) Interest charged (on borrowings)

This is total amount of interest the *credit union* has paid on borrowings. This figure is the sum total of boxes **22C**, **23C**, **24C** and **25C**.

(4J) Loss/revaluation on investments/assets

The total amount that the *credit union* has lost on investment sales and asset revaluation. This should not include depreciation as this is a capital movement not an expenditure item.

(4K) General insurance

The total amount that the *credit union* has paid for general insurance during the year.

(4L) LP/LS insurance

The total amount that the *credit union* paid on LP/LS insurance.

(4M) FSA and related fees/costs

The total amount that the *credit union* paid to the *FSA* during the year. Please note that this figure should include the costs of the *Financial Ombudsman Service*.

(4N) Trade association membership dues

The total amount the *credit union* paid to its trade association for membership during the year.

(4P) Other

This should include any expenditure items not covered in the other boxes. Any entry made here should be fully itemised. For example loans made to other *credit unions* that have been written off due to non-payment.

(4Q) Total expenditure

This figure is the sum total of boxes **4A-4P**.

(4R) Income less expenditure

The sum of box **3P** less box **4Q**.

(5) Profit/(loss) for year before taxation

If the figure is a negative, the *credit union* made a loss for the financial year. A positive figure denotes that a profit has been made by the *credit union*.

(6) Less taxation

The amount payable by the *credit union* on any taxable profit. Any tax enquiries should be made to your local Inland Revenue Office.

(7) Profit/(Loss) for year transferred to appropriation account

Amount transferred to appropriation account for distribution.

Appropriation Account

(8A) Profit (loss) after tax

The same figure as shown at the end of the Revenue Account at **7**.

(8B) Transfer to general reserve

This transfer should be compliant with *CRED* 8.3.6R – 8.3.8R. For a *version 1 credit union* if the *credit union's* general reserve is less than 10% of total assets, the *credit union* should transfer at least 20% of surplus to general reserve. *Credit unions* may also make a voluntary transfer to general reserve and that should also be shown.

(8C) Transfer to other reserve

The amount the *credit union* decided to transfer to other reserves after the transfer to general reserve has taken place.

(8D) Transfer from general reserve

The *credit union* can only remove funds from general reserve if the general reserve exceeds 10% of total assets.

(8E) Transfer from other reserve

The *credit union* can transfer funds from other reserves as and when it sees fit.

(8F) Transfer to applications

Funds transferred for distribution.

Applications

(9A) Transfer from appropriation account

The same as the amount shown at **8F** in the appropriation account.

(9B) Transfer as % of profit after tax

This is the percentage of profit transferred into the applications account for distribution.

(9C) Dividend

The amount of surplus the *credit union* will pay to members in the form of a dividend.

(9D) Rate of dividend

The percentage of dividend paid on members' accounts. *Credit unions* cannot pay more than 8% dividend to members in any one financial year even if several dividends are paid. If different rates are paid on different types of accounts these different rates should be shown in the boxes provided.

(9E) Rebate of interest

The amount of surplus that the *credit union* intends to use as a rebate on interest receivable on members' loans.

(9F) Rate of interest rebate

The percentage of interest rebate the *credit union* has given on members' loans.

(9G) Donations

Any monies donated to another *credit union* or charitable organisation.

Reserves

General Reserve

(10A) Opening balance

The amount of general reserve at the end of the last financial year before any additions or subtractions for this financial year.

(10B) Transfer from appropriation account

The same as the amount shown at **8B** in the appropriation account.

(10C) Transfer as % of profit after tax

This sum is the amount transferred as a percentage of profit after tax. For *version 1 credit unions*: if your general reserve is less than 10% of total assets at the end of the previous financial year, then this figure should be at least 20% of profit.

(10D) Transfer from other reserves

Money transferred from other reserves into the general reserve – same as **11F**.

(10E) Transfer to appropriation account

Money transferred to appropriation account – same as **8D**.

(10F) Transfer to other reserves

The amount transferred to other reserves – same as **11D**.

(10G) Closing balance

The total general reserve at the end of this financial year. This should be identical to the figure shown on the balance sheet at **2N**. This figure should be the sum of **10A+10B+10D-10E-10F**.

Other Reserves

(11A) Opening balance

The balance of other reserves at the end of the previous year.

(11B) Transfer from appropriation account

The amount transferred from the appropriation account as at **8C**.

(11C) Transfer as a percentage of profit after tax

This sum is the amount transferred as a percentage of profit after tax.

(11D) Transfer from general reserve

The amount transferred as at **10F** from general reserve.

(11E) Transfer to appropriation account

The amount transferred from other reserves as at 8E into the appropriation account.

(11F) Transfer to general reserve

The amount of voluntary transfer the *credit union* has made from other reserves as at **10D** into the general reserve.

(11G) Closing balance

The total amount held in other reserves at the *credit union* at the end of the financial year and identical to the figure in box **2P** on the balance sheet. This figure should be the sum of **11A+11B-11D-11E-11F**.

Notes to accounts

Membership

(12A) Beginning of year

Number of members at the start of the financial year.

(12B) Added during year

Number of new members during financial year.

(12C) Ceased during year

Number of members who ceased membership during financial year.

(12D) Total members

Total members at the end of the financial year. This figure is the sum total of boxes **12A+12B – 12C**.

(12E) Non qualifying at end of year

Total number of non-qualifying members at the end of the financial year. Non-qualifying members are members who once qualified under the common bond but no longer do so. For example, if someone moved outside the common bond area of your *credit union* or ceased to work for the employer your *credit union* is related to.

(12F) % Non qualifying members

This is the percentage of non-qualifying members of the total membership of the *credit union*:

$$\frac{\text{Non-qualifying members}}{\text{Total members}} \times \frac{100}{1}$$

Shareholdings

(13A) Opening balance

The total shareholdings and juvenile deposits at the end of the last financial year.

(13B) Shares in (including dividends)

The total amount of shares and juvenile deposits added during the year including any dividend paid. Please note that this should be a total amount and not net amount.

(13C) Shares withdrawn (including transfers)

The total amount of shares and juvenile deposits that have been withdrawn during the financial year and should include any shares transferred to offset loans outstanding. This figure is a negative entry due to the reduction to total shares

(13D) Closing balance

The total amount of shares and juvenile deposits held by the *credit union* at the year-end. This figure is the sum total of boxes **13A+13B-13C**.

(13E) Average share balance

The average share balance of the *credit union*. This can be calculated by dividing total shares by the total number of members at the end of the year.

(13F) Value of unattached shares

Total value of adult shares and juvenile deposits, which are not attached to a loan. This includes all shares:

- that are not attached to any loan;

Example:

Member number	Share balance	Loan balance + interest owing	Unattached shares
101	£750	£0	£750
102	£1,201	£0	£1,201
103	£254	£0	£254
104	£1,500	£0	£1,500
Totals	£3,705	£0	£3,705

- which exceed a member's loan balance.

Example:

Member number	Share balance	Loan balance + interest owing	Unattached shares
001	£600	£750	£nil
002	£1,470	£1,201	£269
003	£522	£254	£268
004	£900	£1,500	£nil
Totals	£3,492	£3,705	£537

- which are not used to guarantee a loan.

Example:

Member 200 received a loan on the condition that Member 300 acted as guarantor for the loan. At the quarter end both accounts read as follows:

Member number	Share balance	Loan balance + interest owing	Net liability
200	£600	£750	(£150)
300	£1,470	£1,201	£269

The net liability for the loan of member 200 equals £150. Member 300 has £269 in unattached shares. To work out the unattached shares of both members we should complete the following formula:

Unattached shares of member 300	£269
Net liability of member 200	<u>(£150)</u>
Combined unattached shares	£119

Your *credit union* will need to monitor closely guaranteed loans when working out unattached shares.

Loans to Members

(14A) Opening balance

The total amount owing to the *credit union* at the end of the previous financial year.

(14B) Loans made to members

The total amount of loans made to members during the financial year.

(14C) Interest receivable

The amount of interest charged on loans to members this should not exceed 12.68% per year.

(14D) Total repayments (interest and capital)

The total amount of loans (including interest) that have been repaid during the year. The figure should also include loans that have been repaid due to a share to loan transfer. This figure is a negative entry due to the reduction to total loans.

(14E) Bad debts written off

The total amount of loans that have been written out of the accounts of the *credit union* and should be the same as that shown in the Revenue Account at **4F**. This figure is a negative entry due to the reduction to total loans.

(14F) Closing balance

The total amount of loans that the *credit union* has out to members at the end of the financial year. This figure is the sum total of boxes **14A+14B+14C-14D-14E**.

(14G) Number of loans (at year-end)

The total number of loans outstanding at the end of the financial year.

(14H) Total net liabilities

The total amount of outstanding on loans (inclusive of interest owing). Net liabilities can be calculated by using the following formula:

Loan balance + interest owing – share balance = Net liabilities

(15A-C) Arrears analysis

This relates to net liabilities on loans. In this section there are 2 time periods under which to analyse the number and amount of loans in arrears and have net liabilities attached:

- "3 months to 12 months" on the Annual Return (CY) refers to all loans which are over 3 months and up to and including 12 months in arrears, and have net liabilities attached;

- "over 12 months" on the Annual Return Form refers to all loans which are over 12 months in arrears, and have net liabilities attached;

Please note: Where payments actually received from a member are irregular in timing and/or amount, your *credit union* should have a policy on how to deal with such arrears. Ultimately, how sure can your *credit union* be that such a loan will not be defaulted upon in the future? The main concern for us is that your *credit union* can be confident that adequate provisions have been made to offset any potential burdens an irrecoverable debt would place on the *credit union* in the future. For this reason, it may be prudent for your *credit union* to make provisions for such risks.

For example:

If 15 weekly repayments have been missed (or an amount equivalent to 15 weekly repayments is overdue), then the loan should be included under the "3 months to 12 months" time period, irrespective of when the most recent repayment was received.

Number

The actual number of outstanding loans, within the time periods mentioned above, with net liabilities at the end of the quarter.

Net liabilities

The total amount outstanding on all loans (inclusive of interest owing) in arrears for each time period (i.e. if a loan is in arrears, the figure used should be the total net liabilities owed by the member, including interest - not just the sum of the repayments that have been missed). The formula used is as follows:

$$\text{Loan balance} + \text{interest owing} - \text{share balance} = \text{Net liability}$$

The table below is an example on how to work out net liability:

Loans 3-12 months in arrears:				
Loan No.	Loan balance	Interest owing	Share balance	Net liability
1	£390	£10	£200	£200
2	£580	£20	£500	£100
3	£4,050	£150	£2,200	£2,000
4	£720	£30	£1,000	£0
5	£115	£10	£50	£75
Total	£5,855	£220	£3,950	£2,375

From this table we see that there are 4 loans with positive net liabilities. Total net liabilities for this period is £2,375.

The **Total** of the number and amount of net liabilities of loans in arrears should also be given. From the example above totals will be as follows:

	Number	Net Liability
3-12 months	4	£2,375
Over 12 months	0	£0
Total	4	£2,375

Provision for members' doubtful debts

General Provision

(16A) Balance at beginning of year

The total general provision at the beginning of the year. General bad debt provisions refer to provisions that your *credit union* has made to cover potential doubtful debts. These are loans not currently in arrears or loans up to and including three months in arrears.

(16B) Increase in year

The total amount added to the general bad debt provision during the financial year.

(16C) Written off in year

The total amount of loans written off from the general bad debt provision during the financial.

(16D) Decrease in year

The total amount released from the general bad debt provision during the financial year because it was no longer required e.g. because the total amount of loans outstanding has fallen

(16E) Balance at end of year

The total general provision at the end of the year. Please note that *CRED* 10.5.3.E states that a *credit union* should have a general bad debt provision of 2% of total net liabilities on all loans not covered by the specific bad debt provisioning. This figure is the sum total of boxes **16A+16B-16C-16D** and should be the same as box **1G** on the balance sheet.

Specific provision

(16F) Balance at beginning of year

The amount that the *credit union* has specifically provided against loan arrears at the beginning of the financial year.

(16G) Increase in the year

The total amount placed into the specific bad debt provision during the financial year.

(16H) Written off during year

The total amount of loans written off from the specific bad debt provisions during the financial year.

(16J) Decrease in year

The total amount released from the specific bad debt provision during the financial year.

(16K) Balance at end of year

The total amount in the specific general reserve at the end of the financial year. To comply with *CRED* 10.5.2R, all net liabilities on loans over 12 months in arrears should be fully provided for and all loans between 3-12 months should be provided for on a 35% of net liabilities basis. This figure is the sum total of boxes **16F+16G-16H-16J** and should be the same as box **1H** on the balance sheet.

Fixed assets

(17A) Opening cost

The total amount of fixed assets the *credit union* had at the end of the previous financial year.

(17B) Additions at cost

The total amount of fixed assets purchased during the financial year.

(17C) Original Cost of disposals

The total amount of fixed assets sold during the financial year shown at original cost. It is shown as a negative, as it reduces the total amount of fixed assets held by the *credit union*.

(17D) Opening depreciation

Amount of depreciation at the end of the financial year.

(17E) Depreciation charge in year

Total amount of depreciation charged against assets.

(17F) Depreciation eliminated on disposals

Total amount taken out due to disposal of assets.

(17G) Net book value

The total amount of fixed assets held by the *credit union* at the end of the financial year. This figure is the sum total of boxes **17A+17B-17C-17D-17E-17F** and match that shown in the balance sheet at **1A**.

Investments**Due from other credit unions****(18A) Opening balance**

The total amount that the *credit union* had out on loan to other *credit unions* at the beginning of the financial year.

(18B) Transfer to other credit unions during year

The total of loans granted to other *credit unions*.

(18C) Repaid by credit union during year

The total amount of the loan that has been repaid excluding the interest that the *credit union* has received on that loan.

(18D) Capital written off

The total amount of loans made to other *credit unions* that have been written off due to default or non-payment.

(18E) Closing balance

The total amount of outstanding loans made to other *credit unions* at the year-end. This figure is the sum total of boxes **18A+18B-18C-18D**.

(18F) Return on investment

The total amount of interest received by the *credit union* on its loans to other *credit unions* this should be the end of year balance.

Investments – *Bank and Building Societies*

(19A) Opening balance

The amount that the *credit union* had in an investment account held at a *Bank or Building Society* at the beginning of the year.

(19B) Invested during year

The amount of money added to the investment account during the year.

(19C) Withdrawn during year

The amount of money withdrawn during the year.

(19D) Closing balance

The amount that the *credit union* held in an investment account at the end of the year. This figure is the sum total of boxes **19A+9B-19C**.

Investments - Securities

(20A) Opening balance

The amount the *credit union* held in investments at the beginning of the year.

(20B) Investments purchased during year

The total cost of new investments the *credit union* made during the year.

(20C) Investment sold during year

Amount received for investments sold during year.

(20D) Losses/capital written off

Amount written off during financial year due to losses on sale of investments or a change in their market value.

(20E) Closing balance

Amount of investments at end of financial year. This figure is the sum total of boxes **20A+20B-20C-20D**.

Cash and *Bank* balance

(21A) Opening balance

Amount held in *Bank* and in cash at beginning of year.

(21B) Increase/(decrease)

Amount added/withdrawn from cash/*bank* balances during year.

(21C) Closing balance

The amount held in cash and at *Bank* at the end of year. This figure is the sum total of boxes **21A+/-21B**.

Debt Liabilities

Borrowings from other credit unions

(22A) Opening balance

The total amount of borrowings the *credit union* had at the beginning of the financial year.

(22B) Amount received

The total amount the *credit union* borrowed from other *credit unions* during the financial year.

(22C) Interest charged for the year

The total amount of interest payable on loans from other *credit unions*.

(22D) Repayments (capital and interest)

The total amount of the loan that the *credit union* has repaid and is shown as a negative as it reduces the total amount of borrowings.

(22E) Closing balance

Total amount of borrowings at year-end. This figure is the sum total of boxes **22A+22B+22C-22D**.

(22F) Date of final repayment

The date that the last payment is due to the lending *credit union*.

Bank Loans**(23A) Opening balance**

The total amount at the beginning of the financial year that the *credit union* borrowed from a *bank*.

(23B) Amount of loan received

The total amount borrowed by the *credit union* during the financial year.

(23C) Interest charged for the year

The total amount of interest payable on the loan during the financial year.

(23D) Repayments (capital and interest)

The total amount the *credit union* repaid during the financial year.

(23E) Closing balance

Total amount of *bank* loans at end of financial year. This figure is the sum total of boxes **23A+23B+23C-23D**.

(23F) Date of final repayment

The date that the final repayment is due.

Other borrowings**(24A) Opening balance**

The total amount of other borrowings that the *credit union* had at the beginning of the financial year.

(24B) Amount of loan received

The total amount of the loan borrowed during the financial year.

(24C) Interest charged for year

The total amount of interest payable on the loan during the financial year.

(24D) Repayments (capital and interest)

The total amount that the *credit union* has repaid.

(24E) Closing balance

Total amount of other borrowings at financial year-end. This figure is the sum of boxes **24A+24B+24C-24D**.

(24F) Date of final repayment

The date that the last payment is due to the lender.

Subordinated Debt

Subordinated debts are any loans where the lender has agreed to the terms as set out in *CRED* 8.2.1R. These terms include agreeing to rank behind other creditors including the *credit union's* members in the event of the *credit union* failing. Total amounts of subordinated debt held by the *credit union* should be shown here although only the amounts attributable to capital calculations should be shown in the balance sheet. Please see the guidance for boxes **2Q-R**.

(25A) Opening balance

Total amount of subordinated debt at the beginning of financial year.

(25B) Received during year

Total additions to subordinated debt during financial year.

(25C) Interest charged for the year

The total amount of interest payable on the subordinated debt.

(25D) Repaid during year

Total amount of capital repaid on subordinated debt during financial year.

(25E) Closing balance

Total amount of subordinated debt at the end of the financial year. This figure is the sum total of boxes **25A+25B+25C-25D**.

Authorised overdrafts**(26A) Maximum limit**

Maximum amount that the *credit union* can go overdrawn by.

(26B) Charges incurred during year

Total amount of charges during the financial year (*bank* charges not interest).

(26C) Date term expires

Date the overdraft facility expires.

(26D) Max amount drawn during year

The maximum amount of overdraft used during the financial year.

Committed facilities

A committed facility is a committed line of credit, other than an overdraft, from a bank. These are funds immediately available from a bank and constitute a loan.

This relates to a *credit union* that has secured committed facilities from an institution authorised to accept *deposits* within the EEA. Normally this will be the bank with which your *credit union* holds its current account. Any unused committed facilities can be entered into this box. If your *credit union* does not have any committed facilities, enter "nil" in this box. We would like to draw your attention to *CRED* (7.3.3R). It states that "the borrowings of a *version 1 credit union* must not exceed, except on a short term basis, an amount equal to 20% of the shareholding in the *credit union*". Short-term is defined as not more than "the end of two consecutive quarters" (*CRED* 7.3.4E).

Please note that any unused committed facilities may only be used for calculating the liquidity ratio of your *credit union*, but cannot be used when calculating the total assets of your *credit union*. We reserve the right to seek evidence of any committed facilities which are used for liquidity purposes.

(27A) Maximum limit

Maximum amount that the *credit union* can call on.

(27B) Charges incurred during year

Total amount of charges incurred during financial year for use of standby facility (*bank charges not interest*).

(27C) Date facility expires

Date the standby facility expires.

(27D) Max used committed facilities during year

The maximum amount of used committed facilities during the financial year.

Grants

(28A) Opening balance

Amount of grants at start of financial year.

(28B) Received during year

Total amount of new grants received during the financial year.

(28C) Applied during year

Total amount of grants applied during the financial year.

(28D) Closing balance

Total amount of grants at the end of the financial year. This figure is the sum total of boxes **28A+28B-23C**.

(28E) Date Grants expire

Date grant funding ends.

Adult liquidity ratio

Liquid assets

(29A) Cash and bank balance

The total amount in your *credit union's* current *bank* account and any cash held in the custody of officers. This should be the same as box **1K**. The following are not to be included in this calculation:

- Authorised overdrafts;
- Committed facilities;
- Other investments of surplus funds which will fall into the investments section of liquid assets.

(29B) Investments (less than eight days to maturity)

CRED 9.3.8R states that only investments that could be realised within eight days can be included in calculating your *credit union's* liquidity ratio. It is therefore important that your committee of management takes a long-term view of the *credit union* business before investing surplus funds in long term investments. Your *credit union* will need to be aware of redemption penalties or other losses you may incur for the early realisation of such funds. Most funds can be converted into cash but at a cost.

Please note: This will include any *deposit* accounts your *credit union* may use.

Version 1 credit unions should not hold any investments with a maturity date of over 12 months (CRED 7.2.2R).

The remainder of the information in 29B relates directly to *version 2 credit unions*.

CRED 9.3.9E(1) reads: "For the purpose of calculating a *credit union's* liquidity ratio, the *securities* referred to in *CRED* 7.2.2R – 7.2.3R should be valued on the basis that they could be realised at par, minus the following discounts:

- (a) maturity less than 1 year - Zero
- (b) maturity 1 to 5 years - 5%

So in events where your *credit union* can realise investments within eight days, you will still need to reduce the applicable figure by 5% for all *securities* with a maturity date of between one and five years.

Example:

Time period	Amount realisable in 8 days	Amount allowed for liquidity
Less than 1 year	£200	£200
1 to 5 years	£500	£475

Whilst these are minimum requirements your *credit union* will need to draft and implement a comprehensive liquidity management policy to account for the greater risks attached to longer term investments.

(29C) Unused committed facilities

This relates to a *credit union* that has secured committed facilities from an institution authorised to accept *deposits* within the EEA. Normally this will be the *bank* or *building society* which your *credit union* holds its current account. Any unused committed facilities may be entered into this box. If your *credit union* does not have any committed facilities, enter "nil" in this box. Please note that to comply with *CRED* 7.3.4E, the total borrowings

of a *version 1 credit union* should not exceed 20% of the total adult shareholdings at the end of two consecutive quarters.

Please note that any unused committed facilities may only be used for calculating the liquidity ratio of your *credit union*, but cannot be used when calculating the total assets of your *credit union*. We at the *Financial Services Authority* reserve the right to seek evidence of any committed facilities, which are used for liquidity purposes.

(29D) Unused overdrafts

This relates to a *credit union* which has authorised overdrafts arrangement with an institution authorised to accept *deposits* within the *EEA*. Normally this will be the *bank* or *building society* with whom your *credit union* holds its current account. Any surplus overdrafts which have not been used may be entered into this box. If your *credit union* does not have an authorised overdraft facility, enter "nil" in this box. Please note that as laid down in CRED 7.3.4E the total borrowings of a *version 1 credit union* may not exceed 20% of the total adult shareholdings at the end of two consecutive quarters.

Please note that any unused overdrafts may only be used for calculating the liquidity ratio of your *credit union*, but cannot be used when calculating the total assets of your *credit union*. We may seek evidence that a *credit union* overdraft facility, which is used for liquidity purposes, has indeed been authorised by the relevant *bank* or *building society*.

(29E) Total liquid assets

This figure is the sum total of boxes **29A+29B+29C+29D**.

Relevant liabilities

(30A) Unattached shares

Please see earlier definition above at **13F**.

Liabilities (with an original or remaining maturity of less than three months)

These are all liabilities excluding unattached shares (which are already covered in the relevant liabilities being calculated). Only liabilities that fall due within three months can be included in the calculations.

(30B) Authorised overdrafts

These are all drawings under authorised overdraft.

(30C) Other liabilities / borrowings

These are all liabilities, excluding unattached shares and authorised overdrafts (which are already covered in the relevant liabilities being calculated here). Included in these calculations are such things as:

- loans from other *credit unions*
- loans from *banks*
- subordinated debt
- committed facilities

Chapter seven (Investments and borrowing) of *CRED* sets out the sources of borrowing available to *credit unions*.

(30D) Total relevant liabilities

This figure is the sum total of boxes **30A+30B+30C**.

(30E) Liquidity ratio

To determine the liquidity ratio your *credit union* will use the following formula:

$$\frac{\text{Total liquid assets}}{\text{Total relevant liabilities}} \quad \times \quad \frac{100}{1}$$

Please note that your liquidity level should not fall below 5% at any time and that *version 1 credit unions* should ensure that on no two consecutive quarter ends is the level of the *credit union's* liquid assets below 10% of its total relevant liabilities.

Large exposures

Whilst these figures relate to the financial year end, your *credit union* will need to look at large *exposure* requirements when issuing loans. For example, *CRED* 10.4.1R defines a large *exposure* as any individual net liability which is at least £5000 and at least 10% of the value of the *credit union's* capital.

(31A) Largest net exposure

To work out your *credit union's* largest net *exposure* you will need to determine:

- the net *exposure* on each loan and find the largest figure. The formula for this is:
(loan balance + interest owing) - share balance
- what is the total capital of your *credit union*? This is defined at **5G**.

Say, for example your *credit union's* total capital is £40,000. We know from the above that only net liabilities over 10% of Capital are subject to the large *exposures* rule. Ten percent of £40,000 is £4,000.

However, we further know from the above that only net liabilities over £5,000 are subject to the large *exposures* rule. Below we see all net *exposures* over 10% of total capital and those that do and do not qualify:

Example:

Member number	Share balance	Loan balance + interest owing	Net liabilities	Is it a large exposure?
150	£3,125	£12,500	£9,375	YES
152	£1,750	£7,000	£5,250	YES
103	£3,115	£9,002	£5,887	YES
462	£2,500	£6,700	£4,200	No
204	£2,138	£7,911	£5,773	YES
109	£4,000	£8,500	£4,500	No

As we can see the largest net *exposure* is that of member 150 and it is £9,375.

(31B) As % of capital

An individual large exposure should not exceed **25%** of your *credit union's* capital (*CRED* 10.4.2R).

To determine this percentage, your *credit union* will need to use the following calculation:

$$\frac{\text{Largest net exposure (9A)}}{\text{Total capital (5G)}} \times \frac{100}{1}$$

So: $\frac{£9,375}{£40,000} \times \frac{100}{1} = 23.44\%$

(31C) Aggregate total of large net exposures

This figure relates to the sum total of all net liabilities subject to the large *exposure* rule as defined in **31A** above.

Taking the example at 9a above, this figure will be £26,285 (see below).

Member number	Share balance	Loan balance + interest owing	Net liabilities
150	£3,125	£12,500	£9,375
152	£1,750	£7,000	£5,250
103	£3,115	£9,002	£5,887
204	£2,138	£7,911	£5,773
Totals	£10,128	£36,413	£26,285

(31D) As % of capital

CRED states that the aggregate total of large net *exposures* must not exceed 500% of the total capital of the *credit union* (*CRED* 10.4.2R), and must not exceed 300% of total capital without prior notifying the FSA (*CRED* 10.4.3R). To see if the example satisfies the rules please use the following calculation:

$$\frac{\text{Aggregate total of large net exposure (31C)}}{\text{Total capital (2S)}} \times \frac{100}{1}$$

So: $\frac{£26,285}{£40,000} \times \frac{100}{1} = 65.71\%$

Please note that risk adjusted capital should not be used for the purposes of calculating your large *exposures*. For all *credit unions* the total capital figure used here should be the same as box **2S** on the balance sheet.

(31A) Largest net exposure

This figure should be calculated at the financial year end figures and not the figures at the time the loan was granted. *CRED* 10.4.1R defines large *exposures* as "an *individual net liability to the credit union of at least £5000*". To work out this figure your *credit union*

needs to determine the net *exposure* on each loan and find the largest figure. The formula for this is:

$$(\text{loan balance} + \text{interest owing}) - \text{share balance}$$

Example:

Member number	Share balance	Loan balance + interest owing	Net liabilities
150	£3,125	£12,500	£9,375
152	£1,750	£7,000	£5,250
103	£3,115	£9,002	£5,887
204	£2,138	£7,911	£5,773
Totals	£10,128	£36,413	£26,285

As we can see the largest net *exposure* is that of member 150 and is £9,375.

An individual large *exposure* should not exceed **25%** of your *credit union's* capital (*CRED* 10.4.2R).

(31B) As % of capital

To determine this percentage, your *credit union* will need to use the following calculation:

$$\frac{\text{Largest net exposure}}{\text{Capital}} \times \frac{100}{1}$$

The figure for capital will be the figure that appears on the balance sheet at **2S**.

(31C) Aggregate totals of large net exposures

This figure relates to the total of large net *exposures*. Further clarification on this may be found in *CRED* 10.4.6G.

(31D) As % of capital

To determine this percentage your *credit union* will need to use the following calculation:

$$\frac{\text{Aggregate totals of large net exposure}}{\text{Capital}} \times \frac{100}{1}$$

Large version 1 and version 2 credit unions

Risk adjusted capital ratio

A risk adjusted capital ratio is a requirement for larger *version 1 and version 2 credit unions* under *CRED*.

CRED 8.3.16R states "A *version 1 credit union* with total assets of more than £10 million and/or a total number of members of more than 10,000 must maintain at all times a risk-adjusted capital to total assets ratio of at least 8%".

(32A) Total capital

The figure for capital will be the figure that appears on the balance sheet at **2S**.

(32B) Net provisions or 1% of total assets whichever is the lower

Capital should be risk-adjusted for *version 2 credit unions* and large *version 1 credit unions* (CRED 8.4.1R and CRED 8.3.16R). The maximum net figure for provisions that may be included in calculating risk-adjusted capital is 1% of total assets (CRED 8.4.2R).

Net provisions are those provisions your *credit union* has made minus minimum specific provisions. In other words:

	Provision
Minus	100% of net liabilities on loans which are 12 months or more in arrears
Minus	35% of net liabilities on loans 3 – 12 months in arrears
=	Net provisions

This figure is calculated by using the following calculation:

Arrears Analysis

Arrears - 3 months to 12 months	A
Arrears - over 12 months	B
Total arrears	C = A + B

The above arrears are based on net liabilities

Number	Net Liabilities
	£
	£
	£

Minimum specific provision	
35% of A (arrears - 3 months to 12 months)	£
100% of B (arrears - over 12 months)	£
D Total minimum specific provisions	£
Actual specific provision for doubtful debt (as at 1H)	£
Actual general provision for doubtful debt (as at 1G)	£
E Total actual provisions	£
Total minimum specific provisions (D)	(£)
F Net provisions	£
Total assets (as at 1P)	£
G 1% of total assets	£

The figure to be posted onto the Annual Return (CY) is the lesser of **F** and **G**. If this is a negative figure, the figure that appears on the Annual Return (CY) needs to be a negative figure.

Example

Arrears Analysis

Arrears - 3 months to 12 months	A
Arrears - over 12 months	B
Total arrears	C = A + B

The above arrears are based on net liabilities

Number	Net Liabilities
5	£28,000
10	£67,000
15	£95,000

Minimum specific provision	
35% of A (arrears - 3 months to 12 months)	£9,800
100% of B (arrears - over 12 months)	£67,000

D Total minimum specific provisions	£76,800
Actual specific provision for doubtful debt (as at 1H)	£70,000
Actual general provision for doubtful debt (as at 1G)	£10,000
E Total actual provisions	£80,000
Total minimum specific provisions (D)	(£76,800)
F Net provisions	£3,200
total assets (as at 1N)	£1,120,000
G 1% of total assets	£11,200

The figure to be posted onto the Annual Return (CY) at 32B is £3,200.

(32C) Total risk adjusted capital

This figure is the sum total of boxes **34a-34b**.

(32D) Total assets

This is the same as box 1m on the Balance Sheet.

(32E) Risk adjusted capital ratio

To determine the risk adjusted capital ratio, your *credit union* will use the following formula:

$$\frac{\text{Total risk adjusted capital}}{\text{Total assets}} \times \frac{100}{1}$$

Auditor's statement

This statement that the information in the Annual Return (CY) has been completely and accurately extracted from the annual audited accounts of the *credit union* should be completed by the *credit union's* auditor. It is important to note that the *credit union* remains responsible for the completion of the Annual Return (CY).

Committee of Management

Please complete the relevant details for all *credit union* officers here. The details required are their full name, address, post held at the *credit union* (this should include what committee they sit on), whether they are an *approved person*, their approved person function, and their year of birth.

Whilst a brief list of the main controlled functions are given below, *credit unions* will need to refer to *CRED* Chapter 4 (Senior management arrangements, Systems and Controls) and Chapter 6 (The Approved persons regime) of *CRED*. Please note that only the controlled function number needs to be inserted for example if you are on the *credit union's* committee of management the number would be CF1.

The governing functions of a *credit union* are:

CF1: The Directors function;

CF2: The non-executive director function; and

CF3: The chief executive function.

The required functions of a *credit union* are:

CF8: The apportionment and oversight function; and

CF11: The money laundering reporting function.

The system and controls functions of a *credit union* are:

CF13: The finance function;

CF14: The risk assessment function; and

CF15: The internal audit function.

SECURITISED DERIVATIVES LISTING RULES INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Annex 1 to this instrument (Powers exercised).

Commencement

- B. This instrument comes into force on 1 August 2002.

Amendments to the Listing Rules

- C. The Listing Rules are amended in accordance with Annex 2 (Replacement of Chapter 24 of the Listing Rules) and Annex 3 (Amendments to Chapter 23 of the Listing Rules) to this instrument.

Amendments to the UKLA Guidance Manual

- D. The UKLA Guidance Manual is amended in accordance with Annex 4 to this instrument (Amendments to the UKLA Guidance Manual).

Citation

- E. This instrument may be cited as the Securitised Derivatives Listing Rules Instrument June 2002.

By order of the Board
20 June 2002

ANNEX 1

Powers exercised

1. The following powers and related provisions in the Financial Services and Markets Act 2000 are exercised by the Financial Services Authority to amend the Listing Rules:
 - sections 74 and 75;
 - section 77;
 - sections 79 to 89 (inc);
 - section 91;
 - section 96;
 - sections 98 to 101 (inc).

2. The following power in the Financial Services and Markets Act 2000 is exercised by the Financial Services Authority to amend the UKLA Guidance Manual:
 - section 157(1).

ANNEX 2

Replacement of Chapter 24 of the Listing Rules

The following Chapter replaces Chapter 24 of the listing rules (Miscellaneous Securities). Paragraphs 24.40 to 24.67 of Chapter 24 and Table II in the Appendix to Chapter 24 are moved to Chapter 23, as set out in Annex 3. The remainder of Chapter 24 is deleted.

CHAPTER 24

SECURITISED DERIVATIVES

Scope of chapter

This chapter sets out the rules relating to securitised derivatives as defined below.

This chapter also deals with the procedures relating to securitised derivatives issued under a programme.

For the purposes of this chapter, any reference to “issuer” is in relation to the issuer of the securitised derivative and is not a reference to the issuer of the underlying instrument.

Issuers of these products should note that permission may be required from the owner or publisher for the use of indices and prices on which the valuation of the securitised derivative is based.

Certificates representing securities as defined in article 80 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 are listed under the requirements of chapter 23 and not under the requirements of this chapter.

The main headings are:

- 24.1 definitions
- 24.2 general
- 24.7 method of exercising retail securitised derivatives
- 24.8 conditions for listing
- 24.11 methods of bringing securities to listing
- 24.12 listing particulars
- 24.48 listing application procedure
- 24.51 publication and circulation
- 24.53 issuance programmes
- 24.57 continuing obligations

Definitions

24.1 In addition to the definitions set out at the front of the listing rules, the following definitions also apply:

- (a) “charges” means payments identified under the terms and conditions of the securitised derivative;
- (b) “contingent liability investment” means an investment under the terms of which a holder may be liable to make further payments other than charges when the transaction falls to be completed;

- (c) “contract for differences” means an investment as defined in article 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (d) “exercise price” means the price stipulated by the issuer at which the holder can buy or sell the underlying instrument(s) from or to the issuer;
- (e) “exercise time” means the time stipulated by the issuer by which the holder must exercise their right(s);
- (f) “expiration date” means the date stipulated by the issuer on which the holder’s rights in respect of the securitised derivative ends;
- (g) “exercise notice” means a document that notifies the issuer of a holder’s intention to exercise its rights under the securitised derivative;
- (h) “guarantee” means (unless the context otherwise requires):
 - (i) a guarantee given in accordance with paragraph 24.8(c) (if any); or
 - (ii) any other guarantee of the issue of securitised derivatives;and “guaranteed” and “guarantor” shall be construed accordingly;
- (i) “in the money”:
 - (i) where the holder has the right to buy the underlying instrument(s) from the issuer, in the money means when the settlement price is greater than the exercise price; or
 - (ii) where the holder has the right to sell the underlying instrument(s) to the issuer, in the money means when the exercise price is greater than the settlement price;
- (j) “option” means an investment as defined in article 83 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (k) “retail securitised derivative” means a securitised derivative that is not a specialist securitised derivative;
- (l) “securitised derivative” means an option or a contract for differences or a debt security with characteristics of either an option or a contract for differences or both;
- (m) “specialist securitised derivative” means a securitised derivative which because of its nature is normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters;
- (n) “settlement price” means the reference price(s) of the underlying instrument(s) stipulated by the issuer for the purposes of calculating its obligations to the holder;
- (o) “underlying instrument” means either:
 - (i) where the securitised derivative is an option or a debt security with the characteristics of an option, any of the underlying investments listed in article 83 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or

- (ii) where the securitised derivative is a contract for differences or a debt security with the characteristics of a contract for differences, any factor by reference to which a profit or a loss under article 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 can be calculated.

General

24.2 In this chapter, the rules apply for all securitised derivatives (i.e. both retail and specialist securitised derivatives) unless the contrary intention appears.

24.3 In respect of specialist securitised derivatives falling within the scope of this chapter, the UK Listing Authority has exercised its powers under section 82(1)(c) of the Act to authorise the omission from listing particulars of information which is required in respect of securitised derivatives. Accordingly pursuant to section 80 of the Act, information not required in respect of specialist securitised derivatives (but which is required in respect of retail securitised derivatives) is not required to be included in listing particulars for specialist securitised derivatives.

24.4 For a securitised derivative to be admitted to listing:

- (a) the underlying instrument of the securitised derivative must be traded on a regulated, regularly operating, recognised open market, save where the underlying instrument is:
 - (i) a currency;
 - (ii) an index;
 - (iii) an interest rate; or
 - (iv) a basket of any of the above;
- (b) a retail securitised derivative must not be a contingent liability investment; and
- (c) a retail securitised derivative which has a right of exercise must comply with paragraph 24.7.

24.5 Any product that:

- (a) does not fall within the definition of securitised derivative as set out in paragraph 24.1(1) by virtue of having other characteristics; or
- (b) is linked to an underlying instrument that does not fall within the criteria stipulated in paragraph 24.4(a);

may be admitted to listing with the specific approval of the UK Listing Authority; and provided, in the case of retail securitised derivatives, that the product falls within the scope of specified investments set out in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

The UK Listing Authority must be consulted at an early stage in such cases.

24.6 In the case of issues of specialist securitised derivatives, there must be a clear statement on the front page of the listing particulars, any supplementary listing particulars and all pricing supplements that

the issue is intended for purchase by only the type of investor referred to in paragraph 24.1(m).

Method of exercising retail securitised derivatives

24.7 In the case of retail securitised derivatives, where the holder has a right of exercise the terms and conditions of the securitised derivative must provide that:

- (a) for cash settled securitised derivatives that are in the money at the exercise time on the expiration date, the exercise of the securitised derivative is automatic;
- (b) for physically settled securitised derivatives that are in the money at the exercise time on the expiration date, in the event that the holder fails to deliver an exercise notice by the time stipulated in the terms and conditions, the issuer will, irrespective of such failure to exercise, pay to the holder an amount in cash in lieu of the holder's failure to deliver such exercise notice, the amount and method of calculation of this amount to be determined by the issuer (the "assessed value payment amount").

Conditions for listing

24.8 Any issuer seeking to list securitised derivatives must:

- (a) have permission under the Act to carry on such activity and be either a bank or a securities and futures firm. For the purposes of this paragraph "bank" and "securities and futures firm" shall have the same meaning ascribed to them in the glossary giving the meanings of defined terms used in the FSA Handbook of rules and guidance;
- (b) if the issuer is an overseas company, be regulated by an overseas regulator with responsibility for regulating banks or securities firms or futures firms which has a lead regulation agreement for financial supervision with the Financial Services Authority, provided such activity falls within the approved scope of the issuer's business; or
- (c) arrange for the obligations of the issuer, in relation to the securitised derivatives being issued, to be unconditionally and irrevocably guaranteed by, or benefit from an arrangement which is equivalent in its effect to such a guarantee provided by, an entity which satisfies (a) or (b) above.

24.9 Issuers of securitised derivatives must comply with the following conditions for listing as set out in chapter 3 modified as stated below:

Paragraph

- 3.1 special conditions
- 3.2 incorporation, first sentence only
- 3.3(a) audited accounts, modified so as only to require the accounts to cover at least two years and so that the latest accounts must be in respect of a period ended not more than 18 months before the date of the listing particulars
- 3.3(c) accounting standards, modified so as only to require the audited accounts to have been prepared in accordance with the applicant's national law (subject to paragraph 24.26)
- 3.3(d) auditing standards, modified so as only to require the accounts to have been

- independently audited (subject to paragraph 24.26)
 - 3.5 independence of auditors
 - 3.8 directors
 - 3.14 validity
 - 3.14A admission to trading
 - 3.15 transferability
 - 3.22 whole class to be listed
 - 3.27 settlement modified so as only to require securitised derivatives to be eligible for electronic settlement.
- 24.10 If the issuer is an overseas company, in addition to 24.9 above it must comply with paragraph 17.19(a).

Methods of bringing securities to listing

- 24.11 An issuer of securitised derivatives to which this chapter applies need not comply with the requirements of chapter 4.

Listing particulars

- 24.12 An issuer of securitised derivatives preparing listing particulars must comply with the following provisions of chapter 5 as adapted by this chapter:

Paragraph

- | | |
|---|---|
| 5.1 | requirement for prospectus or listing particulars |
| 5.2, 5.5 | responsibility |
| 5.6, 5.7, 5.8 | form and content |
| 5.9(a), (c), (f), (i), (j), (k) and (l) and 5.10 | submission of draft documents |
| 5.11 | annotation of drafts |
| 5.12(a), (b)(ii), (c), (d)(ii), (e), (f), (g), (h), (j), (n) and (p) and 5.13 | approval |
| 5.14 to 5.16 | supplementary listing particulars |
| 5.17 to 5.21 | omission of information |
| 5.22.1.1 | omission of material contract from display. |

Issues where the issue is not guaranteed by another entity

- 24.13 Where an issue of securitised derivatives is not guaranteed by another entity, the issuer must include in the listing particulars all the information specified under the relevant headings below up to and including the heading “documents on display”.

Issues where the issue is guaranteed by another entity

- 24.14 Where an issue of securitised derivatives is guaranteed by another entity, the issuer must include in the listing particulars:

- (a) with regard to an issuer with a two year trading record, all the information specified under the relevant headings below up to and including the heading “documents on display”;

- (b) with regard to an issuer without a two year trading record, all the information specified under the relevant headings below up to and including the heading “documents on display” other than paragraph 24.23, for which accounts relating to a period shorter than two years will be accepted if the guarantor has published or filed audited accounts that cover at least 2 years; and
- (c) with regard to the guarantor in the case of both (a) and (b) above, all the information specified by the headings below up to and including the heading “documents on display” except for the information required under paragraphs 24.32 up to and including 24.43.

Declaration of responsibility for the listing particulars

24.15 A declaration of responsibility for the listing particulars must be given in the following form in respect of:

- (a) an issuer issuing retail securitised derivatives:

“The directors of [the issuer], whose names appear on page [], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.”

- (b) an issuer issuing specialist securitised derivatives:

“The issuer accepts responsibility for the information contained in this document. To the best of the knowledge and belief of the issuer (who has taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.”

24.16 To the extent that the issue is guaranteed by another entity, a further declaration in the form of the declaration in paragraph 24.15(b) must be included and adapted to ensure that the guarantor also accepts responsibility in respect of the information regarding itself included in the listing particulars.

24.17 The name, home or business address and function of each of the persons giving the declaration in paragraph 24.15(a) must be included.

24.18 Where the declaration set out in paragraph 24.15(a) or 24.15(b) is given for part only of the listing particulars that part must be indicated.

24.19 Where the securitised derivatives relate to underlying instruments issued by a third party the declarations set out in paragraphs 24.15(a) and 24.15(b) may be modified as follows:

- (a) the declaration in paragraph 24.15(a) can take the following form:

“Subject as set out below, the directors of the issuer whose names appear on page [...] accept responsibility for the information contained in this document. To the best of the knowledge and belief of the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.

The information relating to [the underlying instrument(s) issuer(s)] has been accurately reproduced from information published by [that underlying issuer(s)/or other source]. So far as the directors are aware and/or are able to ascertain from information published by [the underlying instrument(s)]

issuer(s)/or other source] no facts have been omitted which would render the reproduced information misleading.”

(b) the declaration in paragraph 24.15(b) can take the following form:

“Subject as set out below, the issuer accepts responsibility for the information contained in this document. To the best of the knowledge and belief of the issuer (who has taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.

The information relating to [the underlying instrument(s) issuer(s)] has been accurately reproduced from information published by [that underlying issuer(s)/or other source]. So far as the issuer is aware and/or is able to ascertain from information published by [the underlying instrument(s) issuer(s)/or other source] no facts have been omitted which would render the reproduced information misleading.”

Information to be disclosed about the issuer and guarantor

24.20 The listing particulars must include the following information in respect of the issuer and guarantor:

- (a) the name, registered office and, if different, head office;
- (b) the country of incorporation;
- (c) the date of incorporation and the length of life of the issuer and guarantor, except where indefinite;
- (d) the legislation under which the issuer and guarantor operate and legal form which they have adopted under that legislation;
- (e) a description of the issuer’s and guarantor’s principal objects and reference to the clause of the memorandum of association in which they are described;
- (f) the place of registration and its registration number;
- (g) if the issuer or guarantor have subsidiary undertakings or parent undertakings, a brief description of that group of undertakings and of the issuer’s or guarantor’s position within it;
- (h) a summary of the principal contents of each material contract directly concerning the issue, for example the guarantee, the fiscal or paying agency and subscription or underwriting agreements;
- (i) a description of the issuer’s and guarantor’s principal activities, stating the main categories of activity;
- (j) where the issuer, and guarantor are a member of a group or groups, then a description of each group’s principal activities;
- (k) information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have a significant effect on the issuer’s ability to fulfil its obligations under the proposed issue of securitised derivatives, or an appropriate negative statement;

- (l) information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the guarantor is aware) which may have a significant effect on the guarantor's ability to fulfil its obligations under the proposed issue of securitised derivatives, or an appropriate negative statement; and
- (m) the full name, business address and function in respect of the issuer and guarantor of each of the following persons:
 - (i) directors of the issuer and guarantor; and
 - (ii) partners with unlimited liability, in the case of a limited partnership with a share capital.

Additional information to be disclosed about the issuer and guarantor where the securitised derivative is a debt security

24.21 In addition to the requirements set out in paragraph 24.20, for issues of securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)), the listing particulars must include the following information about the issuer and guarantor (for issues of specialist securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)), only the information set out in paragraph 24.21(a) needs to be included):

- (a) the amount of the issuer's and guarantor's authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the securities of which it is composed with details of their principal characteristics; if any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of securities not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up;
- (b) the amount of any convertible debt securities, exchangeable debt securities or debt securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange, or subscription;
- (c) the number, book value and nominal value or, in the absence of a nominal value, the accounting par value of any of the issuer's and guarantor's own shares which the issuer and guarantor or any subsidiary undertaking of the issuer and guarantor has acquired and is holding, if such securities do not appear as a separate item on the balance sheet, in so far as they represent a significant part of the issued capital;
- (d) a description of the issuer's and guarantor's principal activities, stating the main categories of products sold and/or services performed;
- (e) information on any significant new products and/or activities;
- (f) the location, size and tenure of the issuer's and guarantor's group principal establishments and summary information about land or buildings owned or leased. Any establishment which accounts for more than 10% of turnover or production shall be considered a principal establishment;
- (g) where the information given pursuant to paragraphs (d) to (f) above has been influenced by exceptional factors, that fact must be mentioned;
- (h) summary information regarding the extent to which the issuer and guarantor is dependent, if at all, on patents or licences, industrial, commercial or financial contracts or new

manufacturing processes, where such factors are of fundamental importance to the group's business or profitability;

- (i) a description, with figures, of the main investments made, including interests such as shares, debt securities, etc, in other undertakings over the last three financial years and during the current financial year;
- (j) information concerning the principal investments (including new plant, factories, and research and development) being made; with the exception of interests being acquired in other undertakings, including:
 - (i) the geographical distribution of these investments (home and abroad); and
 - (ii) the method of financing such investments (internal or external);
- (k) information concerning the issuer's and guarantor's principal future investments (including new plant, factories, and research and development) (if any), with the exception of interests to be acquired in other undertakings, on which the issuer's and guarantor's directors have already made firm commitments; and
- (l) for mining, extraction of hydrocarbons, quarrying and similar activities, in so far as significant, description of deposits, estimate of economically exploitable reserves, and expected period of working.

Financial information about the issuer and guarantor

24.22 Save as provided in paragraph 24.25 below, the listing particulars must include the following financial information about both the issuer and guarantor in the form of a comparative table with comparative figures:

- (a) profit and loss account;
- (b) balance sheet;
- (c) cash flow;
- (d) notes (for the last financial year only need be included);
- (e) if either or both the issuer and guarantor prepare both own and consolidated annual accounts then the issuer and guarantor may include either, on condition that the accounts that are not included do not provide any significant additional information; and
- (f) in the case of new applicants, the full text of the auditors' report accompanying the last accounts referred to in the statement must be included. Where inclusion of the full text of the auditors' report in the listing particulars is prohibited, a letter from the auditors, confirming that they have audited those accounts and have given an unqualified opinion thereon, may be substituted for their report.

24.23 The financial information required by paragraph 24.22 must cover a period of two years up to the end of the latest audited financial period, which must not be more than 18 months before the date of the listing particulars.

24.24 Financial information included pursuant to paragraph 24.22 must:

- (a) cover the issuer and its subsidiary undertakings subject to paragraph 24.22(e);
 - (b) in the case of an issuer presenting a comparative table, be extracted without material adjustment from the last audited accounts which have been prepared and audited in accordance with paragraphs 3.3(c) and (d) as modified by paragraph 24.9 above.
- 24.25 A new applicant may present the financial information required by paragraph 24.22 in the form of an accountants' report. Such report must be prepared by independent accountants who are qualified to act as auditors and be drawn up to a standard referred to in paragraph 3.3(c) and (d) as modified by paragraph 24.9.
- 24.26 An explanation of any significant departures from one of the following standards or principles must be included in the listing particulars:
- (a) International Accounting Standards;
 - (b) United Kingdom Generally Accepted Accounting Principles;
 - (c) United States Generally Accepted Accounting Principles;
 - (d) International Standards on Auditing;
 - (e) United Kingdom Auditing Standards; or
 - (f) United States Auditing Standards.

Additional financial information about the issuer and guarantor where the securitised derivative is a debt security

- 24.27 In addition to the requirements set out in paragraph 24.22 to 24.26, for issues of securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)), the listing particulars must include the following financial information about the issuer and guarantor (for issues of specialist securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)), only the information set out in paragraphs 24.27(d)(i)-24.27(d)(v) needs to be included):
- (a) where more than nine months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim financial statement covering at least the first six months following the end of that financial year must be included in or appended to the listing particulars. If such an interim financial statement is unaudited, that fact must be stated;
 - (b) where the issuer and guarantor prepare consolidated annual accounts, the interim financial statement must either be a consolidated statement or include a statement that, in the opinion of the issuer's and guarantor's directors, the interim financial statement enables investors to make an informed assessment of the results and activities of the group for the period;
 - (c) if the issuer's and guarantor's own annual or consolidated annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits and losses of the issuer and guarantors group, more detailed and/or additional information must be given. In the case of issuers and guarantors incorporated in a non-member state which are not obliged to draw up their accounts so as to give a true and fair view, but are required to draw them up to an equivalent standard, the latter would be sufficient with the specific approval of the UK Listing Authority;

- (d) details as at the most recent practicable date (which must be stated) of the following, if material:
 - (i) the total amount of any loan capital outstanding, distinguishing between loans guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties) and unsecured;
 - (ii) the total amount of all other borrowings and indebtedness in the nature of borrowing, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debts;
 - (iii) the total amount of any contingent liabilities or guarantees;
 - (iv) an appropriate negative statement must be given in each case, where relevant, in the absence of any loan capital, borrowings, indebtedness and contingent liabilities; and
 - (v) if the issuer and guarantor prepares consolidated annual accounts, the principles laid down in paragraph 24.22(e) shall apply;
- (e) a table showing the changes in financial position over each of the last three financial years either in the form of a source and application of funds statement or a cash flow statement;
- (f) information in respect of the matters listed below relating to each undertaking in which the issuer and guarantor holds (directly or indirectly) on a long term basis an interest in the capital likely to have a significant effect on the assessment of the issuer's and guarantor's own assets and liabilities, financial position or profits and losses:
 - (i) the name and address of the registered office;
 - (ii) the field of activity;
 - (iii) the proportion of capital held;
 - (iv) the issued capital;
 - (v) the reserves;
 - (vi) the profit or loss arising out of ordinary activities, after tax, for the last financial year;
 - (vii) the amount still to be paid up on shares held; and
 - (viii) the amount of dividends received in the course of the last financial year in respect of shares held.
- (g) the items of information listed in (f) above must be given in any event for every undertaking in which the issuer and guarantor has a direct or indirect participating interest, if the book value of that participating interest represents at least 10% of the capital and reserves of the issuer and guarantor or if that interest accounts for at least 10% of the net profit or loss of the issuer and guarantor or, in the case of a group, if the book value of that participating interest represents at least 10% of the consolidated net assets or accounts for at least 10% of

the consolidated net profit or loss of the group;

- (h) the information required under (f)(v) and (vi) above may be omitted where the undertaking in which a participating interest is held does not publish its annual accounts;
- (i) the information required by (f)(iv) to (viii) above may be omitted if the annual accounts of the undertakings in which the participating interests are held are consolidated into the group annual accounts or if the value attributable to the interest under the equity method is disclosed in the annual accounts, provided that in the opinion of the UK Listing Authority the omission of the information is not likely to mislead the public with regard to the facts and circumstances knowledge of which is essential for the assessment of the security in question; and
- (j) when the listing particulars include consolidated annual accounts, disclosure:
 - (i) of the consolidation principles applied (which must be described explicitly where such principles are not consistent with generally accepted accounting practice in the United Kingdom);
 - (ii) of the names and registered offices of the undertakings included in the consolidation, where that information is important for the purpose of assessing the assets and liabilities, financial position and profits and losses of the issuer; it is sufficient to distinguish them by a symbol in the list of undertakings for which details are required in paragraph (f) above; and
 - (iii) for each of the undertakings referred to in (ii) above:
 - (a) the total proportion of third-party interests, if annual accounts are wholly consolidated; or
 - (b) the proportion of the consolidation calculated on the basis of interests, if consolidation has been effected on a pro rata basis.

General information about the issuer's and guarantor's financial position (except for retail securitised derivatives that are debt securities)

24.28 The listing particulars must include the following general information about the issuer's and guarantor's financial position for all issues of securitised derivatives, except for retail securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)):

- (a) a description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement; and
- (b) general information on the trend of the group's business since the end of the financial year to which the last published annual accounts relate or a statement that there has been no material adverse change in the financial position or prospects of the group since the date of its last published annual accounts.

General information about the issuer's and guarantor's financial position for retail securitised derivatives that are debt securities

24.29 In the case of retail securitised derivatives that are debt securities (as referred to in paragraph

24.1(l)), the listing particulars must include:

- (a) a description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement; and
- (b) general information on the trend of the issuer's and guarantor's group's business since the end of the financial year to which the last published annual accounts relate, except in the event of a variation granted by the UK Listing Authority, and in particular:
 - (i) the most significant recent trends in production, sales and stocks and the state of the order book;
 - (ii) recent trends in costs and selling prices; and
 - (iii) information on the issuer's and guarantor's prospects for at least the current financial year.

Information about profit forecasts

24.30 Where a profit forecast appears, a statement of the principal assumptions for each factor which could have a material effect on the achievement of the forecast must be included in the listing particulars. The assumptions must:

- (a) be clearly segregated between assumptions about factors which the directors can influence and assumptions about factors which are exclusively outside the influence of the directors;
- (b) be readily understandable by investors;
- (c) be specific and precise; and
- (d) not relate to the general accuracy of the estimates underlying the forecast.

A profit estimate may be subject to assumptions only in exceptional circumstances.

Information about auditors

24.31 The following information about auditors must be included in the listing particulars:

- (a) a statement that the annual accounts of the issuer and guarantor for the last two financial years have been audited or three financial years in the case of securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)). If audit reports on any of those accounts have been refused by the auditors or contain qualifications, such refusal or such qualifications must be reproduced in full and the reasons given;
- (b) a statement of what other information in the listing particulars has been audited by the auditors; and
- (c) if the audit report has been reproduced in the listing particulars a statement as set out in paragraph 24.44(b) needs to be made.

Information always required in respect of the underlying instruments

24.32 The following information is always required in respect of the underlying instrument and the issuer thereof, to the extent that, having made reasonable enquiries, such information is publicly available:

Equity and debt securities

- (a) where the underlying instrument is an equity or a debt security:
 - (i) the name of the issuer of the equity or debt security;
 - (ii) the ISIN (International Security Identification Number) or other such security identification code;
 - (iii) the nominal/par value;
 - (iv) the name of the exchange which holds the primary listing or admission to trading of the equity or debt security; and
 - (v) details of where pricing information about the underlying equity or debt security is available;

Indices

- (b) where the underlying instrument is an index:
 - (i) the name of the index;
 - (ii) a short description of the index;
 - (iii) the name of the Index Sponsor (the entity that publishes and compiles the index);
 - (iv) detailed provisions in the terms and conditions of the securitised derivative describing how the issuer deals with events of modification and discontinuance of the index; and
 - (v) details of where the level or rate of the index is available;

Interest rates

- (c) where the underlying instrument is an interest rate:
 - (i) a description of the interest rate;
 - (ii) the name of the entity responsible for determining the interest rate; and
 - (iii) details of where the interest rate is published;

Currencies, palladium, platinum, gold or silver

- (d) where the underlying instrument is a currency, palladium, platinum, gold or silver:
 - (i) the type of the underlying instrument;

- (ii) the name and description of the market on which the underlying instrument is traded; and
- (iii) details of where pricing information about the underlying instrument is available;

Others

- (e) where the underlying instrument does not fall within the categories specified in (a) to (d) above, such requirements as are determined by the UK Listing Authority; the UK Listing Authority must be consulted at an early stage in order to determine what the disclosure requirements need to be.

Information about baskets consisting of more than one underlying instrument

24.33 Securitised derivatives consisting of more than one underlying instrument (“baskets”) must additionally disclose the relevant weightings of each underlying instrument in the basket.

Additional disclosure required where there is physical settlement

24.34 In the case of securitised derivatives that are physically settled, the following additional information must be disclosed:

- (a) a statement whether the underlying instruments are in registered or bearer form and, if registered, whether they will be capable of being held in uncertificated form;
- (b) arrangements by the issuer for transfer of the underlying instruments; and
- (c) any restrictions on the free transferability of the underlying instruments (for example, provisions requiring transfers to be approved).

Cash or physical settlement

24.35 In the case of securitised derivatives where the issuer settles its obligations to the holder by cash or physical settlement at either the issuer or the holder’s discretion, the following information must be given:

- (a) disclosure on the underlying instrument as set out in paragraphs 24.32 and 24.34 above; and
- (b) information detailing how the cash or physical settlement will operate.

Disclosure about risk factors

24.36 The listing particulars must include a section setting out the risks involved in purchasing securitised derivatives. This section should include:

- (a) factors affecting the value and trading price of the securitised derivative ; and
- (b) factors affecting the realisation of the value of the securitised derivative.

24.37 The listing particulars must include a risk warning in a prominent place on the front page that purchasing securitised derivatives involves risks stating the page reference of where those risks are disclosed in the document.

Information required in respect of securitised derivatives

Terms and Conditions

- 24.38 The listing particulars must set out in detail the terms and conditions of the securitised derivatives for which listing is being sought, including where relevant:
- (a) a section setting out the definitions applicable to the terms and conditions;
 - (b) the minimum and maximum number of securitised derivatives exercisable;
 - (c) a description of all applicable exercise rights including:
 - (i) automatic exercise;
 - (ii) in relation to physical settlement, the right to deliver an exercise notice;
 - (iii) in relation to cash or physical settlement a statement regarding who has the right to choose the settlement method; and
 - (iv) the amount and or the method of calculating the assessed value payment amount;
 - (d) a description of the exercise procedures and any limitations in relation to the same including:
 - (i) automatic exercise;
 - (ii) in relation to physical settlement, the delivery of an exercise notice and payment of the exercise price;
 - (iii) a description of how the settlement procedure works; and
 - (iv) payment of the assessed value payment amount;
 - (e) a description of any applicable redemption rights and procedures;
 - (f) a description of the settlement procedure of the securitised derivatives detailing the following:
 - (i) for cash settlement, how holders are to receive or make payments;
 - (ii) for physical settlement how holders are to take or make delivery of the underlying instrument;
 - (g) a description of how any return on the securitised derivatives is calculated, including:
 - (i) for cash settled securitised derivatives, disclosure setting out how the cash settlement amount is calculated;
 - (ii) for physically settled securitised derivatives, disclosure setting out how the amount of the underlying instrument to be delivered is determined; and
 - (iii) for securitised derivatives that have an element of both cash and physical settlement, disclosure as set out in (i) and (ii) above;

- (h) a description of any other rights other than those stipulated in any other paragraph above conferring rights on the holder of the securitised derivatives;
- (i) a description of the tax considerations which the issuer deems that the holder of the securitised derivatives needs to be aware of and a clear statement of when the holder of the securitised derivatives is to seek its own tax advice;
- (j) a description of any market disruption and settlement disruption events in relation to the underlying instrument;
- (k) a description of the calculation agent's determinations and modifications;
- (l) a description of any events affecting the securitised derivatives including but not limited to adjustments, nationalisation, insolvency and merger events;
- (m) a description of any termination events of the issue by the issuer;
- (n) a statement of whether the securitised derivatives are in global or definitive form;
- (o) a description of the transfer procedures of the securitised derivatives;
- (p) a description of the transferability of the securitised derivatives and any restrictions on the same;
- (q) a description of the legal status and ranking of the securitised derivatives;
- (r) a description of the circumstances in which the issue may become unlawful and the consequences for the holder of the same;
- (s) a statement of the governing law and the applicable jurisdiction in the case of litigation in connection with the issue;
- (t) a description of the time limit on the validity of claims relating to the payment or delivery obligations of the issuer;
- (u) the nature and scope of any guarantee;
- (v) the names and addresses of any agents related to the issue including and not limited to, any paying agent, calculation agent and registrar;
- (w) a description of the circumstances under which the issuer can or will be substituted; and
- (x) a description of how notices will be published.

24.39 Where the securitised derivatives have an interest bearing element, the following additional terms and conditions need to be disclosed:

- (a) the nominal amount of the securitised derivatives;
- (b) a description of any applicable interest element of the securitised derivatives including the payment and calculation method of the same;
- (c) in addition to the disclosure regarding tax set out in paragraph 24.38(i), the following must be disclosed:

- (i) a statement regarding tax on the income from the securitised derivative withheld at source in both the country of origin and the United Kingdom if different;
 - (ii) a statement whether the issuer assumes responsibility for the withholding of tax at source; and
- (d) where relevant the name and head office of the trustee or other representative of the securitised derivative holders.

Additional terms and conditions where the securitised derivative is a debt security

24.40 In addition to the requirements set out in paragraph 24.39 above, for issues of securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)), the listing particulars must include the following terms and conditions where relevant (for issues of specialist securitised derivatives which are debt securities (as referred to in paragraph 24.1(l)), only the terms and conditions set out in paragraphs 24.40(b), (c), (f), and (i)(vi) need where relevant to be included):

- (a) the procedures for the allocation of any other advantages and the method of calculating such advantages;
- (b) arrangements for the amortisation of the securitised derivative including the repayment procedures;
- (c) the procedures and time limits for delivery of the securitised derivatives, and a statement as to whether temporary documents of title will be issued;
- (d) except in the case of continuous issues, a statement of yield. The method whereby that yield is calculated must be described in summary form;
- (e) the conditions under which the trustee or other representative of the securitised derivative holders may be replaced;
- (f) a summary of clauses subordinating the securitised derivatives to other debts of the issuer already contracted or to be contracted;
- (g) the names, addresses and descriptions of the persons underwriting or guaranteeing the issue for the issuer; where not all of the issue is underwritten or guaranteed, a statement of the portion not covered;
- (h) if securitised derivatives of the same class have not yet been admitted to listing but are dealt in on one or more other regulated, regularly operating, recognised, open markets, an indication of such markets; and
- (i) if an issue is to be effected at the same time as admission or has been effected within the three months preceding such admission:
 - (i) the procedure for the exercise of any right of pre-emption; the negotiability of subscription rights and the treatment of subscription rights not exercised;
 - (ii) the issue price or offer or placing price, stating the nominal value or, in its absence, the accounting par value or the amount to be capitalised;
 - (iii) except in the case of continuous securitised derivatives issues, the period during which the issue or offer remained open or will remain open and any possibility of

- early closure;
- (iv) the names of the receiving agents;
- (v) a statement, where necessary, that the subscriptions may be reduced; and
- (vi) the purpose of the issue and the intended application of its proceeds.

General information about the issue

24.41 The listing particulars must contain the following general information about the issue:

- (a) a statement setting out the type of securitised derivative for which listing is being sought;
- (b) a statement setting out the type of underlying instrument over which securitised derivatives will be issued;
- (c) a statement setting out the resolutions, authorisations and approvals by virtue of which the securitised derivatives have been or will be created and/or issued; and
- (d) a statement setting out whether or not the issuer (or another person appointed by the issuer) will act as market maker for each issue of securitised derivatives. Where the issuer (or another person appointed by the issuer) will not be acting as market maker for each issue, this is to be stated, together with an explanation in the risk section of the additional risks to an investor of the fact that there will be no market makers for the issue.

Economics of the issue

24.42 The listing particulars must include where relevant the following information about the economics of the issue:

- (a) the size of the securitised derivative issue;
- (b) in the case of securitised derivatives that are debt securities (as referred to in paragraph 24.1(l)), the estimated net proceeds of the issue;
- (c) the currency of the securitised derivative issue;
- (d) the cover ratio, parity, multiplier or other term that reflects the number of securitised derivative units per unit of underlying instrument or vice versa;
- (e) the interest rate of the securitised derivative;
- (f) the exercise price of the securitised derivative;
- (g) the issue price of the securitised derivative ;
- (h) the expiration or maturity date of the securitised derivative;
- (i) the issue date of the securitised derivative;
- (j) the exercise date of the securitised derivative;
- (k) the exercise time of the securitised derivative; and

- (l) the exercise period of the securitised derivative.

24.43 If the issue may be cancelled at any time until the document of title is issued and therefore the grant of the listing may not become effective, this must be made clear in the listing particulars. If applicable, any subscription agreements must make the obligations thereunder conditional upon the securitised derivatives being admitted to listing.

General information to be disclosed about the issuer and guarantor

24.44 The following general information about the issuer and guarantor must be included in the listing particulars:

- (a) the names, addresses and qualifications of the auditors who have audited the issuer's and guarantor's annual accounts in accordance with national law for the last two financial years or three financial years in the case of securitised derivatives that are debt securities (as referred to in paragraph 24.1(l));
- (b) where a statement or report attributed to a person as an expert is included in the listing particulars, a statement that it is included, in the form and context in which it is included, with the consent of that person, who has authorised the contents of that part of the listing particulars for the purposes of Regulation 6(1)(e) of the Financial Services and Markets Act 2000 (Official listing of securities) Regulations 2001;
- (c) a statement that application has been made to the UK Listing Authority for the securitised derivatives to be admitted to the Official List, and to trading on the names of the stock exchange(s) in the UK where the securitised derivatives are to be traded;
- (d) a statement that a copy of the listing particulars has been delivered to the Registrar of Companies;
- (e) details of any other markets or exchanges where the securitised derivative is or will be listed or traded; and
- (f) a statement that the securitised derivatives can be held in uncertified form and that there are settlement arrangements for the securitised derivatives in place in the UK.

Documents on display

24.45 The listing particulars must include a statement that for a period of not less than 14 days from the date of the particulars (or in the case of a programme for the life of the programme) at a named place in or near the City of London or such other place in the United Kingdom as the UK Listing Authority may agree, the following documents (or copies thereof), where applicable, may be inspected:

- (a) each document mentioned in paragraph 24.20(h);
- (b) all reports, letters, and other documents, balance sheets, valuations and statements by any expert, any part of which is included or referred to in the listing particulars;
- (c) the audited accounts of the issuer or, in the case of a group, the consolidated audited accounts of the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the listing particulars, including, in the case of a company incorporated in the United Kingdom, all notes, reports or information required by the Companies Acts 1985 and 1989, any interim financial statements published subsequently to the above accounts;

- (d) in the case of an issue that is guaranteed, the audited accounts of the guarantor for each of the two financial years preceding the publication of the listing particulars, accompanied by any interim statements published subsequently; the principles regarding the basis of preparation of financial information as set out in paragraph 24.22(e) may be applied to those accounts and interim statements;
- (e) the current listing particulars;
- (f) any supplementary listing particulars published since the current listing particulars were published; and
- (g) any pricing supplements (relating to listed and outstanding issues) issued since the current listing particulars were published.

24.46 Where any of the documents listed in paragraph 24.45 are not in the English language, translations into English must also be available for inspection.

24.47 The terms and conditions of each issued securitised derivative must be available on the issuer's website for the duration of the relevant securitised derivative.

Listing application procedures

24.48 Issuers of securitised derivatives are subject to the following requirements of chapter 7, as modified or augmented by paragraph 24.49:

Paragraph

7.1, 7.2	general
7.5	48 hour documents as follows:
(a)	application form
(b)	listing particulars
(c)	advertisement
(e)	board resolution
(g)(i)	additional documents for new applicants
(j)	bearer securities
(l)	application for admission to trading
7.6	delays in obtaining allotment resolution
7.7(a)	items to be lodged on the day
7.8(e), (f), (g), and (j)	documents to be lodged later
7.9(a) to (g)	additional documents.

24.49 The requirements of paragraph 24.48 are subject to the following modifications:

- (a) copies of letters from experts consenting to the inclusion of statements or reports in listing particulars are not required to be produced under paragraph 7.9;
- (b) offering or invitation telexes and other similar documents need not be submitted;
- (c) the signature on the listing particulars, as required under paragraph 7.5(b), must be by a duly authorised officer, or by an agent or attorney of the issuer and, if applicable, of the guarantor;

- (d) the copy of any certificate required under 7.5 (j) should be submitted as soon as possible after the consideration of the application for admission to listing; and
- (e) the issuer must also submit a copy of the securitised derivative agreement or securitised derivative instrument or equivalent document (as appropriate) as soon as possible after the date on which admission becomes effective.

24.50 Following submission of the relevant documents, listing may be granted, subject to the issue of the securitised derivatives in question.

Publication and circulation

24.51 Issuers of securitised derivatives are subject to the following provisions of chapter 8 relating to publication of listing particulars, as modified by paragraph 24.52:

Paragraph

8.1 to 8.3	prior approval
8.4 to 8.5	publication
8.7	advertising
8.8	timing
8.10	formal notice (excluding 8.10(e))
8.20	supplementary listing particulars (excluding 8.20(b))
8.21	documents available for inspection
8.23 to 8.27	approval and authorisation of advertisements.

24.52 The requirements of paragraph 24.51 are subject to the following modifications:

- (a) as regards paragraph 8.5 (period of time available) the copies of the listing particulars must be published and the formal notice must be advertised as soon as possible after its approval and in any event, no later than the day before the date when admission to listing is expected to become effective; and
- (b) as regards paragraph 8.8 (timing), the formal notice must be advertised as soon as possible after approval of the listing particulars and in any event no later than the day before the date when admission to listing is expected to become effective.

Issuance programmes

Initial application and publication of listing particulars

24.53 The initial procedure to be followed in respect of the application for the listing of and the publication of the listing particulars is as set out in paragraphs 24.48 to 24.52 and includes the preparation of listing particulars. If the UK Listing Authority approves the application, it will admit to listing all securitised derivatives which may be issued under the programme within 12 months after the publication of the listing particulars, subject to the UK Listing Authority:

- (a) being advised of the final terms of each issue;

- (b) receiving and approving for publication any supplementary listing particulars that may be appropriate;
- (c) receiving confirmation that the securitised derivatives in question have been issued; and
- (d) receiving any listing fees payable.

Submission and publication of pricing supplements

- 24.54 The final terms of each issue which is intended to be listed (“the pricing supplement”) must be submitted in writing to the UK Listing Authority as soon as possible after they have been agreed and in any event no later than 2.00pm on the day before listing is required to become effective. The pricing supplement may be submitted by the issuer or one or more firms designated by the issuer so long as in the latter case the UK Listing Authority has received a letter of appointment signed by a duly authorised officer of the issuer.
- 24.55 The pricing supplement relating to an issue, when read together with the listing particulars and any supplementary listing particulars in respect of the programme, must provide an investor with the full terms and conditions of that issue.
- 24.56 The application for admission to listing in the form set out in schedule 3B need not be submitted for issues made after the first issue in any 12 month period after publication of listing particulars.

Continuing obligations

- 24.57 Issuers must comply with the following continuing obligations:
- (a) issuers who only have securitised derivatives listed are subject only to the obligations set out in this chapter;
 - (b) issuers who have other securities listed in addition to securitised derivatives are subject to the obligations set out in this chapter in addition to the obligations set out in other chapters applicable to the security in question.

Obligations of the issuer of the securitised derivatives in relation to itself

New developments

- 24.58 The issuer must notify a Regulatory Information Service without delay any major new developments in its sphere of activity which are not public knowledge and which may:
- (a) by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, lead to substantial movements in the price of the securitised derivative; or
 - (b) significantly affect the issuer’s ability to meet its obligations under the securitised

derivative;

save that if the issuer considers that disclosure to the public of information required by this paragraph to be notified to a Regulatory Information Service might prejudice the issuer's legitimate interests, the UK Listing Authority may grant a dispensation from the requirement.

- 24.59 An issuer must take all reasonable care to ensure that any statement or forecast or any other information it notifies to a Regulatory Information Service or makes available through the UK Listing Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, forecast or other information.

Equivalent information

- 24.60 The issuer must, in so far as it releases information in an overseas market that may be of importance for the evaluation of the securitised derivatives listed by the UK Listing Authority ensure that equivalent information is made available at the same time to the public in the UK by way of an announcement to a Regulatory Information Service.

Equality of treatment

- 24.61 The issuer must ensure equal treatment for all holders of listed securitised derivatives of the same series in respect of all rights attaching to such securitised derivatives.

Changes to rights

- 24.62 Any change in the rights attaching to listed securitised derivatives must be notified to a Regulatory Information Service without delay.

Annual accounts

- 24.63 Subject to paragraph 24.64 below, an issuer must publish and submit in accordance with paragraph 24.74 annual accounts which must:

- (a) be drawn up and independently audited in accordance with the requirements of paragraphs 3.3(c), 3.3(d), and 3.5 (subject to the modification set out in paragraph 24.9 above); and
- (b) be published as soon as possible after they have been approved and in any event within six months of the end of the financial period to which they relate.

If the issuer prepares both own and consolidated annual accounts, it may publish either form provided that the form which is not published does not contain any significant additional information.

- 24.64 If the issue is guaranteed, the UK Listing Authority may waive the above requirements on annual reports and accounts if:

- (a) the guarantor is a listed company;
- (b) the issuer is included in the consolidated accounts of the guarantor;
- (c) no other requirement for the preparation of annual reports and accounts exists; and
- (d) non-publication of the issuer's accounts would not be likely to mislead the public with

regard to facts and circumstances, knowledge of which is essential for the assessment of the securitised derivatives in question.

The issuer must confirm on an annual basis that the above conditions are satisfied.

- 24.65 Immediately following the publication of the accounts the issuer must notify a Regulatory Information Service of where securitised derivative holders can obtain a copy of the accounts free of charge.
- 24.66 Where the issuer does not publish accounts in accordance with paragraph 24.64, the issuer must notify a Regulatory Information Service of where securitised derivative holders can obtain a copy of the guarantor's accounts free of charge.
- 24.67 For issues that are guaranteed and that guarantor is not a listed company the guarantor's accounts must be submitted to the UK Listing Authority.

Communications with holders

- 24.68 All notices to holders must be made either by:
- (a) the placement of a paid advertisement in at least one leading national newspaper circulating in the United Kingdom;
 - (b) despatch of the notice to the holders registered address; or
 - (c) sending the notice electronically to the holder's e-mail address.
- 24.69 An issuer must notify a Regulatory Information Service of all notices to holders of listed securitised derivatives no later than the date of despatch or publication.

Paying agent

- 24.70 The issuer must maintain a paying agent in the United Kingdom until the maturity date of the securitised derivatives (unless the issuer provides financial services and itself performs the function of a paying agent in the United Kingdom). Any change of paying agent within the United Kingdom must be notified to a Regulatory Information Service without delay.

Notification of early redemptions and cancellations

- 24.71 Any early redemptions or cancellations of the issuer's listed securitised derivatives must be notified to a Regulatory Information Service when an aggregate of 10% of the initial amount of the relevant class of securitised derivatives has been redeemed or cancelled, and for each 5% in aggregate of the initial amount of that class redeemed or cancelled thereafter. Such notifications must be made as soon as possible and in any event no later than 7.30am on the business day following the calendar day on which the relevant threshold is reached or exceeded. The notification must state the amount of securitised derivatives redeemed or cancelled since the last such notification and the amount of the class of securitised derivatives that remains outstanding.

Annual listing fee

- 24.72 Issuers must pay the annual fee for listing, calculated in accordance with the UK Listing Authority's scale of fees for the time being in force, as soon as such payment becomes due.

English language

- 24.73 All documents lodged with the UK Listing Authority and announcements notified to a Regulatory Information Service must be in English.
- 24.74 Issuers must lodge with the UK Listing Authority two copies of any document required pursuant to the continuing obligations at the same time as they are issued.

Admission to trading

- 24.75 An issuer's listed securitised derivatives must be admitted to trading on an RIE at all times.
- 24.76 An issuer must inform the UK Listing Authority in writing without delay if it has:
- (a) requested an RIE to admit or re-admit any of its listed securitised derivatives to trading;
 - (b) requested an RIE to cancel or suspend trading of any of its listed securitised derivatives; or
 - (c) been informed by an RIE that the trading of any of its listed securitised derivatives will be cancelled or suspended.

Settlement arrangements

- 24.77 An issuer must ensure that appropriate settlement arrangements for its listed securitised derivatives are in place. Listed securitised derivatives must be eligible for electronic settlement, which includes settlement by a "relevant system," as that term is defined in the Uncertificated Securities Regulations 1995 (SI 1995/3272).

Additional obligations of the issuer of the securitised derivatives in relation to itself where the issuer has issued securitised derivatives that are debt securities

- 24.78 In addition to the obligations set out in paragraphs 24.58-24.77, where the issuer has issued securitised derivatives that are debt securities (as referred to in paragraph 24.1(1)), the issuer must notify a Regulatory Information Service without delay of new issues of debt securities, and in particular any guarantee or security in respect thereof.

Obligations of the issuer of the securitised derivatives in relation to the underlying instrument

General obligations

- 24.79 The issuer must notify a Regulatory Information Service of any adjustment or modification it makes to the securitised derivative as a result of any change in or to the underlying instrument including details of the underlying event that necessitated the adjustment or modification.

Suspension of listing

- 24.80 The issuer must inform the UK Listing Authority immediately if it becomes aware that an underlying instrument that is listed or traded outside the UK has been suspended.

ANNEX 3

Amendments to Chapter 23 of the Listing Rules

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

- 1 The following paragraphs of Chapter 23 of the listing rules (Specialist securities (including Eurobonds)) are amended as shown:

CHAPTER 23

SPECIALIST SECURITIES (INCLUDING EUROBONDS)

Scope of chapter

This chapter details the requirements relating to specialist securities (including eurobonds) ~~and~~ , specialist certificates representing shares and specialist certificates representing debt securities. The requirements relating to other certificates representing shares are contained in chapters 3,5,6 and 9. The chapter also deals with the procedures relating to specialist debt securities and miscellaneous securities issued under a programme.

Additional and alternative conditions for listing apply in the case of securities issued by property companies, mineral companies, scientific research based companies, investment entities, innovative high growth companies and venture capital trusts.

The main headings are:

- 23.1 definitions
- 23.2 general

Specialist debt securities (including eurobonds)

- 23.4 conditions for listing
- 23.5 methods of bringing securities to listing
- 23.6 listing particulars
- 23.13 listing application procedures
- 23.18 publication and circulation
- 23.22 continuing obligations
- 23.25 documents constituting specialist debt securities
- 23.27 asset-backed securities
- 23.33 debt and asset-backed securities issuance programmes.

Specialist certificates representing shares

- 23.45 general
- 23.46 conditions for listing
- 23.47 methods of bringing securities to listing
- 23.48 listing particulars
- 23.52 listing application procedures
- 23.55 publication and circulation
- 23.57 continuing obligations
- 23.88 documents constituting specialist certificates representing shares.

Specialist certificates representing debt securities

- 23.89 general
- 23.91 conditions for listing
- 23.97 methods of bringing securities to listing
- 23.98 listing particulars

~~23.107 listing application procedures~~

~~23.110 publication and circulation~~

~~23.112 continuing obligations.~~

23.1 In addition to the definitions set out at the front of the listing rules, the following definitions also apply:

- (a) “specialist securities” mean securities which, because of their nature, are normally bought and traded by a limited number of investors who are particularly knowledgeable in investment matters and “specialist debt securities” ~~and~~, “specialist certificates representing shares” ~~and~~ “specialist certificates representing debt securities” should be interpreted accordingly;

[Rules 23.1(b) – 23.11(y) remain unchanged]

23.11A Where debt securities are linked to other securities for cash settlement the information required by paragraphs ~~24.26(a), (c), (e) and (f)~~ 24.32 and 24.33 should be given in respect of those securities, indices or assets.

[Rules 23.12 – 23.88 remain unchanged]

2 Paragraphs 24.40 to 24.67 of Chapter 24 of the listing rules are moved to Chapter 23, renumbered and amended as shown:

Specialist certificates representing debt securities

General

~~24.40~~ 23.89 ~~The certificates to which this chapter applies are Paragraphs 23.89 to 23.113 and Table III in the appendix to this chapter apply to certificates which:~~

- (a) ~~evidencing evidence~~ entitlement to capital and interest payments arising from debt securities (which for the purposes only of paragraphs ~~24.40 to 24.67~~ 23.89 to 23.113 and ~~appendix 2 of Table III in the appendix to this chapter~~ shall mean investments falling within articles 77 and 78 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) held by a suitably authorised and regulated financial institution acting as custodian or depositary; ~~and~~
- (b) ~~This Chapter only applies to certificates representing debt securities which~~ are “specialist securities” as defined in paragraph 23.1(a).

~~24.41~~ 23.90 An issuer of specialist certificates representing debt securities must comply with the listing rules as modified by the provisions of ~~this chapter paragraphs 23.89 to 23.113 and Table III in the appendix to the chapter.~~ Such certificates issued under a programme must be issued in accordance with paragraphs 23.25, 23.26 and 23.33 to 23.44.

~~24.42~~ ~~Paragraph deleted – March 1994~~

~~24.43~~ ~~Paragraph deleted – December 2001~~

Conditions for listing

~~24.44~~ ~~23.91~~ An issuer of certificates is subject to the following requirements only of chapter 3 and, in the case of an overseas company, paragraph 17.19(a):

Paragraph

3.2 incorporation
3.14 validity
3.14A admission to trading
3.15 transferability
3.22 whole class to be listed.

~~24.45~~ ~~23.92~~ The issuer of the certificates must be a suitably authorised and regulated financial institution.

~~24.46~~ ~~23.93~~ The underlying debt securities must not be assets of the issuer of the certificates and, subject to paragraph ~~24.47~~ ~~23.94~~, the certificates must not represent liabilities of the issuer of the certificates. The issuer of the certificates must operate in a jurisdiction where the underlying securities would not form part of its assets on bankruptcy or insolvency.

~~24.47~~ ~~23.94~~ The certificates should impose no obligations on their issuer other than to the extent necessary for the protection of the certificate-holders' rights to and the transmission of entitlements of the underlying debt securities.

~~24.48~~ ~~23.95~~ The issuer of the underlying debt securities must have debt or equity listed on a stock exchange.

~~24.49~~ ~~23.96~~ At the time of issue the payments arising from the underlying debt securities must be sufficient to meet the payments required under the certificates.

Methods of bringing securities to listing

~~24.50~~ ~~23.97~~ The requirements of chapter 4 do not apply to issues of specialist certificates representing debt securities covered by this chapter.

Listing Particulars

~~24.51~~ *Paragraph deleted – December 2001*

~~24.52~~ ~~23.98~~ An issuer of specialist certificates representing debt securities ~~to which this chapter applies~~ preparing listing particulars need only comply with the following provisions of chapter 5, as amended or adapted by this chapter.

Paragraph

5.1 requirement for prospectus or listing particulars
5.2 responsibility
5.6, 5.7, 5.8 form and content
5.9(a), (c), (f), (j), (k) and (l), 5.10 submission of draft documents (see paragraph ~~24.53~~ ~~23.99~~)
5.11 annotation of drafts

5.12(a), (b)(ii), (d)(ii), (f), (g), (h), (o), 5.13 5.14 to 5.16	approval supplementary listing particulars
5.17 and 5.19	omission of information
5.22	omission of material contract from display.

~~24.53~~ 23.99 The requirements set out in paragraph ~~24.52~~ 23.98 are subject to the following modifications:

- (a) draft listing particulars may be submitted to the UK Listing Authority less than 10 clear business days, or in the circumstances where paragraph 5.10 applies, less than 20 clear business days, prior to the intended publication date. However, they must be submitted as early as possible as any significant delay may affect the listing timetable; and
- (b) the documents referred to in paragraph 5.9(a), (c), (f), (j), (k) and (l) may be submitted to the UK Listing Authority less than 10 clear business days prior to the intended publication date. However, they must be submitted as early as possible as any significant delay may affect the listing timetable. Only one copy of the documents referred to in paragraph 5.9(c), (j), (k) and (l) need be submitted.

~~24.54~~ 23.100 The information required in listing particulars must be in respect of:

- (a) the certificates and their issuer (see paragraph ~~24.56~~ 23.102); and
- (b) the underlying debt securities and their issuer (see paragraphs ~~24.57~~ 23.103 and ~~24.58~~ 23.104).

~~24.55~~ 23.101 The information required in listing particulars is set out below. Information required by chapter 6 should be taken to relate to the certificates in respect of which the application is being made, or to the underlying debt securities to which they relate, as appropriate, and to the issuer of the certificates or to the issuer of the underlying debt securities, as appropriate.

Information required in respect of the certificates and their issuer

~~24.56~~ 23.102 The listing particulars must contain the following information in respect of the certificates and the issuer:

New applicant

- (a) where the issuer of the certificates is a new applicant:
 - (i) all the information detailed under the relevant heading in Table ~~II~~ III in the appendix to this chapter;
 - (ii) a declaration in the following form:

“Subject as set out below, the issuer whose name appears on page ... accepts responsibility for the information contained in this document. To the best of the knowledge and belief of the issuer (who has taken all reasonable care to ensure that such is the case) the information contained in this document is

in accordance with the facts and does not omit anything likely to affect the import of such information. The information contained herein with regard to [name of issuer of underlying debt securities], its subsidiary undertakings and the [description of underlying debt securities], consists of extracts from or summaries of information contained in financial and other information released publicly by [name of issuer of underlying debt securities] and summaries of certain provisions of [jurisdiction of issuer of underlying debt securities] law. The issuer accepts responsibility for accurately reproducing such extracts or summaries. The issuer accepts no further or other responsibility in respect of such information"; and

- (iii) the information required by paragraph 6.J.14(a) (material contracts) as modified by paragraph 23.11(g);

Listed issuer

- (b) where the issuer of the certificates is already listed:
 - (i) all the information detailed under the relevant heading in Table ~~II~~III in the appendix to this chapter;
 - (ii) a declaration taking the same form as that set out in (a)(ii) above; and
 - (iii) the information required by paragraph 6.J.14(a) (material contracts) as modified by paragraph 23.11(g);

Additional information

- (c) information to demonstrate the suitability of the issuer under paragraph ~~24.45~~ 23.92 and the name of the authority regulating the issuer's activities;
- (d) a summary of the issuer's responsibilities and obligations and in particular a statement that the issuer's only obligations in respect of the certificates are to make certain payments as and when payments on the underlying debt securities are received;
- (e) confirmation that under the laws governing the issuer's activities the underlying securities would not form part of the issuer's assets in the event of bankruptcy or insolvency and that there is no credit risk of the issuer attaching to the certificates;
- (f) information on any relevant tax considerations;
- (g) a description of the structure of the transaction and explanation of the flow of funds; a description of any material risks together with any methods whereby they are sought to be addressed; and details of the consequences of an event of default occurring on the underlying debt securities; and
- (h) the names of banks with which the main accounts relating to the transaction are held.

Information required in respect of the underlying debt securities and their issuer

~~24.57~~ 23.103 Save where paragraphs ~~24.58~~ 23.104 to ~~24.60~~ 23.106 apply, the listing particulars must contain the following information in respect of the underlying debt securities to the extent that, having made reasonable enquiries, such information is publicly available:

Issuers other than public sector issuers and state guaranteed issuers

- (a) where the issuer of the underlying debt securities is not a public sector issuer, and does not benefit from a state guarantee:
 - (i) all the information detailed under the relevant heading in Table ~~II~~III in the appendix to this chapter; and
 - (ii) the names and addresses of the paying agents and trustees or fiscal agents;

States and their regional and local authorities

- (b) where the issuer of the underlying debt securities is a state or a regional or local authority:
 - (i) the information required by paragraph 22.7(a), (c), (d), (f) and (g); and
 - (ii) the names and addresses of the paying agents and trustees or fiscal agents; and

Public sector issuers (other than states and their regional and local authorities) and state guaranteed issuers

- (c) where the issuer of the underlying debt securities is a public sector issuer other than a state or its regional or local authority, or where the issue benefits both as regards principal and interest from the irrevocable and unconditional guarantee of a state or federated state:
 - (i) all the information detailed under the relevant heading in Table ~~II~~III in the appendix to this chapter; and
 - (ii) the names and addresses of the paying agents and trustees or fiscal agents;

where underlying debt securities are guaranteed, the information requirements which apply to the issuer of the underlying debt securities should also be applied to the guarantor, depending on whether the guarantor is listed or the guarantor of other listed securities.

Circumstances when the issuer of the underlying debt securities is treated as the issuer

~~24.58~~ 23.104 In the case of an issue of certificates being made with the full co-operation of the issuer of the underlying debt securities, the UK Listing Authority may permit the information required in listing particulars as set out in paragraphs 23.6 to 23.11 or in equivalent offering documents

as set out in paragraph 23.12 (as appropriate) to be given by the issuer of the underlying debt securities. In such cases, the issuer of the underlying debt securities must take full responsibility for the information required and the issuer of the certificates need not take any responsibility for that information.

~~24.59~~ 23.105

The UK Listing Authority may treat the issuer of the underlying debt securities as being the issuer for the purposes of the listing rules, if the issue involves an issuing custodian or depositary acting in a trustee capacity and if the following conditions are satisfied:

- (a) the issue of the certificates is made with the full co-operation of the issuer of the underlying debt securities;
- (b) in respect of the issuer of the certificates, the requirements of paragraphs ~~24.45~~ 23.92 to ~~24.47~~ 23.94 are satisfied;
- (c) at the time of issue the payments arising from the underlying debt securities must be sufficient to meet the payments required under the certificates;
- (d) in respect of the certificates for which listing is sought, the following requirements of chapter 3 are satisfied:

Paragraph

3.14	validity
3.14A	admission to trading
3.15	transferability
3.22	whole class to be listed

- (e) the issuing custodian or depositary is duly incorporated or otherwise established under the law of the place where it is incorporated or otherwise established and it is in conformity with that law and its memorandum and articles of association;
- (f) under the terms of the trust deed, the issuing custodian or depositary holds on trust for the benefit of certificate holders all monies received from the issuer of the underlying debt securities pursuant to the obligations in respect of the underlying debt securities, subject only to payment of the issuing custodian's or depositary's remuneration and expenses;
- (g) the trust deed or equivalent document complies with the relevant requirements of appendix 2 to chapter 13 (other than those set out in paragraphs 1(a), 2 and 11 to 14 of that appendix); and
- (h) in respect of the issuer of the underlying debt securities, the conditions set out in paragraph 23.4 are satisfied.

~~24.60~~ 23.106

If the conditions in paragraph ~~24.59~~ 23.105 are satisfied, the listing particulars must include:

- (a) in respect of the issuer of the underlying debt securities and those underlying debt securities, the information required by paragraphs 23.9 to 23.11 or 23.12 as appropriate;

- (b) in respect of the issuing custodian or depository, the information required by paragraphs 6.J.1 to 6.J.4, 6.J.6 and 6.K.1; and
- (c) in respect of the certificates, the information required by paragraphs 23.9 to 23.11 in so far as they relate to information required by paragraphs 6.I.1 to 41.

Listing application procedures

~~24.61~~ 23.107 Issuers of certificates are only subject to the following requirements of chapter 7, as modified or augmented by paragraph ~~24.62~~ 23.108:

Paragraph

- | | |
|--------------------------|--|
| 7.1, 7.2 | general |
| 7.5 | 48 hour documents as follows: |
| (a) | application form |
| (b) | listing particulars |
| (c) | advertisement |
| (e) | board resolution |
| (g)(i) | additional documents for new applicants |
| (j) | bearer securities |
| (l) | application for admission to trading |
| 7.6 | delays in obtaining allotment resolution |
| 7.7(a) | items to be lodged on the day |
| 7.8(e), (f), (g) and (j) | documents to be lodged later |
| 7.9(a) to (g) | additional documents. |

~~24.62~~ 23.108 The requirements of paragraph ~~24.61~~ 23.107 are subject to the following modifications and augmentation:

- (a) copies of letters from experts consenting to the inclusion of statements or reports in the listing particulars need not be submitted;
- (b) offering or invitation telexes and other similar documents need not be submitted;
- ~~(c) — Paragraph deleted — August 1995~~
- ~~(c)~~ signature of the listing particulars, as required under paragraph 7.5(b), must be by a duly authorised officer, or by an agent or attorney of the issuer and, if applicable, of the guarantor;
- ~~(e) — Paragraph deleted — September 1997~~
- ~~(f) — Paragraph deleted — September 1997~~
- ~~(g) — Paragraph deleted — September 1997~~
- ~~(h) — Paragraph deleted — September 1997~~
- ~~(i) — Paragraph deleted — September 1997~~

- (dj) the copy of any certificate required under 7.5(j) need only be submitted as soon as possible after the consideration of the application for admission to listing.

~~24.63~~ 23.109 Following submission of the relevant documents, listing may be granted, subject to the issue of the securities in question.

Publication and circulation

~~24.64~~ 23.110 Issuers of certificates are only subject to the following provisions of chapter 8, relating to publication of listing particulars, as modified by paragraph ~~24.65~~ 23.111:

Paragraph

- | | |
|--------------|--|
| 8.1 to 8.3 | prior approval |
| 8.4 to 8.5 | publication |
| 8.7 | advertising |
| 8.8 | timing |
| 8.10 | formal notice (excluding 8.10 (e)) |
| 8.20 | supplementary listing particulars (excluding 8.20 (b)) |
| 8.21, 8.22 | documents available for inspection |
| 8.23 to 8.27 | approval and authorisation of advertisements. |

~~24.65~~ 23.111 The requirements of paragraph ~~24.64~~ 23.110 are subject to the following modifications:

- (a) as regards paragraph 8.5 (period of time available) the copies of the listing particulars must be made available as soon as possible after their approval and in any event, no later than the day before the date when admission to listing is expected to become effective;
- (b) as regards paragraph 8.7 (advertising), instead of advertising in a national newspaper, advertising may be by notification to the Company Announcements Office;
- (c) as regards paragraph 8.8 (timing), the formal notice must be advertised as soon as possible after approval of the listing particulars and in any event no later than the day before the date when admission to listing is expected to become effective;
- (d) the issuer and any guarantors' accounts required to be available for inspection by paragraphs 6.C.7(g) or 6.J.7(g) and 8.21 (documents available for inspection) must be accompanied by any interim statements published subsequently. The principles regarding the basis of preparation of financial information set out in paragraph 23.11(k)(v) and (m) may be applied to those accounts and interim statements; and
- (e) as regards paragraph 8.22 (documents available for inspection), the reference to documents listed in paragraph 6.J.7 shall be taken not to include any reference to the directors' service contracts mentioned in paragraph 6.M.2.

Continuing obligations

~~24.66~~ 23.112 Issuers of specialist certificates representing debt securities are subject to the same continuing obligations as issuers of specialist debt securities, as set out in paragraphs 23.22 and 23.23, with the exception of those relating to new issues (paragraph 23.22(e)) and publication of annual accounts (paragraph 23.22(g)). The obligation relating to repurchases (paragraph 15.13) referred to in paragraph 23.22(p)) only applies in circumstances where the proposed repurchase will affect the holders of the certificates.

~~24.67~~ 23.113 Where the issuer of the underlying debt securities is treated as the issuer pursuant to paragraph ~~24.59~~ 23.105, the continuing obligations contained in paragraphs 23.22 to 23.24 (except paragraph 23.22(l)) apply with respect to the issuer of the underlying securities instead of those specified in paragraph ~~24.66~~ 23.112. In addition, any change of issuing custodian or depositary is required to be notified. The notification should contain the information required by paragraph ~~24.60(b)~~ 23.106(b) in respect of the new issuing custodian or depositary. The new issuing custodian or depositary appointed must satisfy the applicable conditions for listing set out above.

3 The Appendix to Chapter 23 of the Listing Rules is amended as shown:

APPENDIX TO CHAPTER 23

1. This appendix sets out the information required to be included in listing particulars produced in connection with an issue of specialist debt securities (Table I), specialist certificates representing shares (Table II) and specialist certificates representing debt securities (Table III). Some of the paragraphs referred to in chapter 6 are amended by this chapter.
2. Where the information in a paragraph which is required below is inappropriate to the issuer's sphere of activity or legal form, the information must be appropriately adapted so that equivalent information is given.
3. Negative statements are required only where so indicated in the paragraphs and subject to paragraph 23.11(c) or paragraph 23.51(d).
4. Where the UK Listing Authority has permitted admission of securities to listing in the case of an issuer having a financial record of less than three years, references in a paragraph required below to three or two financial years are to be read as references to such shorter period (if any) for which accounts have been published or filed.
5. The information required in parts 6.D, 6.G, 6.K and 6.N may be given for either the issuer or the group, provided that in the case of 6.D and 6.G the information not given for the group or the issuer respectively is not material and in the case of 6.K and 6.N the information not given for the group is not material.
6. If information which would be required by any paragraph of chapter 6 is given in accordance with paragraphs 6.E.1 or 6.L.1 it need not be repeated.
7. Where information required by paragraph 6.E.11(a)(iv) to (x) is to be omitted in accordance with paragraph 6.E.11(d) the sponsor or an authorised adviser, as applicable, must confirm to the UK Listing Authority in writing that the applicable condition set out in paragraph 6.E.11(d) has been met and that, in its opinion, the omission of the information is not likely to mislead the public with regard to the facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

[Tables I and II remain unchanged]

- 4 Table II in the Appendix to Chapter 24 is moved to the Appendix to Chapter 23, renumbered as Table III and amended as shown:

TABLE II III: SPECIALIST CERTIFICATES REPRESENTING DEBT SECURITIES

	Information in respect of the issuer of the certificates		Information relating to underlying debt securities*	
	Unlisted issuer	Listed issuer	Issuers other than public sector issuers and state guaranteed issuers	Public sector issuers and state guaranteed issuers
The persons responsible for listing particulars etc.	6.H.2, 3, 9	6.H.2, 3, 9	6.H.4, 5	---
The securities	6.I.1, 4 to 8(a), 9 to 17, 21, 23 to 27, 33(g) and (h), 34, 35, 38	6.I.1, 4 to 8(a), 9 to 17, 21, 23 to 27, 33(c), (f), (g) and (h), 34, 35, 38	6.I.1, 4 to 8(a), 9, 15, 21, 23 to 27, 31, 34, 35	6.I.1, 4 to 8(a), 9 to 15, 21, 23 to 27, 31, 34, 35
The issuer and its capital	6.J.1 to 4, 6, 7(c) and (e), 8, 11, 14(a)	6.J.1 to 4, 6, 7(c) and (e), 8, 11, 14(a)	6.J.1, 2, 4, 6, 7(a) and (g), 8, 11	6.J.1, 2, 7(a) and (g), 8
The group's activities	6.K.1	---	---	---
The management	6.M.1	6.M.1	---	---

* The information required applies to the issuers of the underlying debt securities, other than states and their regional and local authorities (as to which see paragraph ~~24.57(b)~~ 23.103(b)), and is required to the extent that, having made reasonable enquiry the information is publicly available.

ANNEX 4

Amendments to the UKLA Guidance Manual

Chapter 9 of the Guidance Manual (Suspension and Cancellation of the listing of Securities) is amended by inserting the following new paragraphs:

9.22 Suspensions of securitised derivatives listed under chapter 24

9.22.1 In addition to the matters discussed in the rest of this chapter, an *issuer* of securitised derivatives should be aware of the following additional *guidance*.

9.22.2 In the case of a securitised derivative relating to a single underlying instrument, in the event of that underlying instrument being suspended, the *UKLA* will normally *suspend the listing* of all securitised derivatives to which that underlying instrument relates.

9.22.3 In the case of a securitised derivative relating to a basket of underlying instruments, in the event of one or more underlying instruments of a basket being suspended, the *UKLA* will normally *suspend the listing* of all securitised derivative baskets to which that underlying instrument relates.

9.23 Restoration of securitised derivatives listed under chapter 24

9.23.1 Once an underlying instrument is restored, the likelihood is that the *listing* of the securitised derivative will be *restored* provided no other factors have arisen that would necessitate the suspension of that securitised derivative. In addition, in the case of a securitised derivative relating to a basket of underlying instruments that has been suspended, the *listing* of the securitised derivative may be restored by the *UKLA*, irrespective of whether or not the underlying instrument has been restored, if:

1. the *issuer* of the securitised derivative confirms to the *UKLA* that despite the suspension of the relevant underlying instrument(s) a market in the securitised derivative will continue to be made; and
2. the *UKLA* is satisfied that the restoration of the listing of the securitised derivative is not contrary either to the goal of the protection of investors or to the smooth operation of the market.

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(EURO EXCHANGE RATE) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for friendly societies 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).
- B. The provisions of the Act relevant to making rules and 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 October 2002.

Amendment of the Interim Prudential sourcebook for friendly societies

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Euro Exchange Rate) Instrument 2002.

By order of the Board
18 July 2002

ANNEX

Amendments to IPRU(FSOC)

In this Annex, underlining indicates new text.

Rule 4.7(4) For the purposes of the rules in Chapter 4 and the definition of *non-directive friendly society*, the exchange rate from the Euro to the pound sterling for each year beginning on 31 December is the rate applicable on the last day of the preceding October for which the exchange rates for the currencies of all the European Union member states were published in the Official Journal of the European Communities.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(MINOR CHANGES) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for insurers 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).
- B. The provisions of the Act relevant to making rules and 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 October 2002.

Amendment of the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Minor Changes) Instrument 2002.

By order of the Board
18 July 2002

ANNEX

Amendments to IPRU(INS)

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

Rule 2.10(6) For the purposes of the *Margins of Solvency Rules* and the definition of *non-directive insurer*, the exchange rate from the Euro to the pound sterling for each year beginning on 31 December is the rate applicable on the last day of the preceding October for which the exchange rates for the currencies of all the European Union member states were published in the Official Journal of the European Communities.

Rule 9.6(6) There must be deposited with every revenue ‘account’ and ‘balance sheet’ of an *insurer* any report on the affairs of the *insurer* submitted to the shareholders or *policy holders* of the *insurer* in respect of the *financial year* to which the ‘account’ and ‘balance sheet’ relate. Where a financial statement or other report on the affairs of the *insurer* has not been submitted at the time the revenue 'account' and 'balance sheet' are deposited, it must be deposited as soon as possible after it is submitted.

Paragraph (d) of the definition of *industrial assurance business* in rule 11.1:

contracts of insurance for £25 or more effected after the passing of the Industrial Assurance Act 1923, premiums in respect of which are payable at intervals of one month or more, and which are treated as part of the business transacted by a branch other than the industrial branch of the society or company, in cases where the ~~FSA~~ certifies relevant authority certified prior to 1 December 2001 under section 1(2)(d) of that Act that the terms and conditions of such contracts are on the whole not less favourable to the ~~assured~~ *policy holders* than those imposed by that Act.

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT No 7)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority alters the Conduct of Business sourcebook (COB) and the Glossary in the exercise of the powers listed in Schedule 4 to COB.
- B. The rule-making powers identified above are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 September 2002.

Amendments to the Conduct of Business sourcebook

- D. The transitional rules in the Conduct of Business sourcebook are amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.
- F. Schedule 1 to the Conduct of Business sourcebook (Record keeping requirements) is amended in accordance with Annex C to this instrument
- G. Schedule 6 to the Conduct of Business sourcebook (Rules that can be waived) is amended in accordance with Annex D to this instrument.

Amendments to the Glossary

- H. The Glossary is amended in accordance with Annex E to this instrument.

Citation

- I. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 7) Instrument 2002.

By order of the Board
18 July 2002

ANNEX A

Amendments to the Conduct of Business Transitional Rules

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

1 COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

1.0 Application

...

2.0 Purpose

2.1 G The *FSA* is aware that the introduction of *COB* will impose an additional compliance burden on *firms*, even when there is an underlying continuity of policy. The *FSA* wishes to lighten that burden in a manner consistent with its regulatory objectives and the principles of good regulation under the *Act*. The following *rules* provide transitional relief which takes three distinct forms:

- (a) extra time provisions (ETPs) which, in practice, give firms additional time after *commencement*, ~~until 30 June 2002 (note that for ex-section 43 firms, the relief lasts until expiry of 12 months following commencement)~~, to complete their preparations for the impact of certain provisions in *COB*;

...

4.0 Definitions

4.1 R In these transitional provisions the following words are to have the meaning given to them below:

...

"*transitional period*" means the period starting on *commencement* and finishing on midnight on 30 June 2002, except where otherwise specified.

ANNEX B

Amendments to the Conduct of Business sourcebook

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

1.4 General application: where?

1.4.3 R This table sets out the application of COB with reference to the location of the carrying on of an activity by a firm.

This table belongs to COB 1.4.1R.

Activity		Application of COB
(b)	<p>An activity carried on:</p> <ul style="list-style-type: none">• otherwise than in (a); and• with or for a <i>client</i> in the <i>United Kingdom</i>	<p>Where, if the office from which the activity is carried on were a separate <i>person</i>, the activity:</p> <ul style="list-style-type: none">• would fall within the <i>overseas persons</i> exclusions in article 72 of the <i>Regulated Activities Order</i>; or• would not be regarded as carried on in the <i>United Kingdom</i>; <p>then only the following apply:</p> <ul style="list-style-type: none">• <i>COB 5.5.7R</i> and <i>COB 5.5.8R</i> (Overseas business);

Activity		Application of COB
		<ul style="list-style-type: none"> COB 6.5, COB 6.7 and COB 6.8 (Content of key features, Cancellation and withdrawal, Insurance contracts—life and general) but only in relation to long term insurance business carried on with a customer habitually resident in the United Kingdom <u>in relation to long term insurance business carried on with a customer habitually resident in the United Kingdom, COB 6 (Product disclosure and the customer's right to cancel or withdraw) except COB 6.3 (Post-sale confirmation: life policies) and COB 6.9 (With-profits guides); and</u> if relevant, the provisions in (c) <p>Otherwise, COB applies in full</p>
(c)	An activity carried on by a UK firm from a branch in another EEA State under an EEA right	<p>Only the following apply:</p> <ul style="list-style-type: none"> for an <i>ISD investment firm</i> (including a <i>credit institution</i> which is an <i>ISD investment firm</i>), COB 9 (Client assets); and if relevant, the provisions in (b)
(d)	An activity carried on otherwise than in (a), (b) or (c)	<p>Only the following apply;</p> <ul style="list-style-type: none"> COB 5.5.7 R and COB 5.5.8 R (Overseas business); and

Activity		Application of COB
		<ul style="list-style-type: none"> COB 6.5, COB 6.7 and COB 6.8 (Content of key features, Cancellation and withdrawal, Insurance contracts—life and general) but only in relation to long term insurance business carried on with a customer habitually resident in the United Kingdom <u>in relation to long-term insurance business carried on with a customer habitually resident in the United Kingdom, COB 6 (Product disclosure and the customer's right to cancel or withdraw) except COB 6.3 (Post-sale confirmation: life policies) and COB 6.9 (With-profits guides)</u>

3.2.5 R Exemptions

This table belongs to COB 3.2.4R

Exemptions	
This chapter does not apply to the following:	
(1)	a financial promotion to a market counterparty or an intermediate customer, that is a financial promotion which:
(a)	is made only to recipients who the firm has taken reasonable steps to establish are market counterparties or intermediate customers; or
(b)	may reasonably be regarded as directed only at recipients who are market counterparties or intermediate customers;

Exemptions	
	when a <i>person</i> is classified as an <i>intermediate customer</i> under COB 4.1.9R (Expert private customer classified as intermediate customer), this exemption applies only for a <i>financial promotion</i> that relates to the <i>designated investments</i> or <i>designated investment business</i> for which he has been so classified;
(2)	a <i>financial promotion</i> which can lawfully be <i>communicated</i> by an unauthorised communicator <u>person</u> without approval;

3.8 Form and content of financial promotions

Real time financial promotions

3.8.21 G A *firm* should note that COB 3.10.3R prevents a *firm* from communicating an *unsolicited real time financial promotion* other than an exempt *financial promotion* (which is outside the scope of this chapter) or where one of ~~COB 3.10.3 R (1) or (2)~~ COB 3.10.3 R (1), (2) or (3) applies. Many *solicited real time financial promotions* will be exempt *financial promotions* (and, therefore, outside the scope of this chapter). Accordingly, COB 3.8.22 R applies only to *solicited real time financial promotions* which are not exempt *financial promotions* and to *unsolicited real time financial promotions* within ~~COB 3.10.3R (1) OR (2)~~ COB 3.10.3 R (1), (2) or (3).

4 Accepting customers

4.1 Client classification

Requirement to classify

4.1.4 R (1) Before conducting *designated investment business* with or for any *client*, a *firm* must take reasonable steps to establish whether that *client* is a *private customer*, *intermediate customer* or *market counterparty*.

(2) ~~For the purposes of the rules in COB, a firm must ensure that it treats its client in accordance with the classification established~~

~~under (1), or, where relevant, COB 4.1.7 R, COB 4.1.9 R, COB 4.1.12 R, COB 4.1.14 R or COB 4.1.15 R. A firm which takes reasonable steps to classify its *clients*, as required by the rules in this section, and treats a *client* in accordance with the classification it has established for that purpose, does not breach any other rule in COB to the extent that the breach arises only from inappropriate classification of that *client*.~~

Classification of another firm or an overseas financial services institution

- 4.1.7 R (1) When a *firm* ("F") conducts *designated investment business*, or related *ancillary activities*, with or for:
- (a) another *firm*; or
 - (b) an *overseas financial services institution* ("C1"), C1 is a *market counterparty* of F, unless (2), (3), or (4) ~~or (5)~~ applies.
- (2) C1 is an *intermediate customer* of F when the activity carried on by F would be *inter-professional business* (if C1 were a *market counterparty*), and:
- (a) C1 is acting for an underlying *customer* ("C2"); and
 - (b) ~~[deleted]-C1 has decided that, for the interests of C2 to be properly protected under the applicable rules in COB, C1 should benefit from the protections available to *intermediate customers*; and~~
 - (c) F and C1 have agreed that F should classify C1 as an *intermediate customer* when C1 is acting for C2.
- 4.1.8 G (1) Any agreement under COB 4.1.7 R (2) (c) may be in relation to a particular underlying *customer* of C1's or in relation to all cases in which C1 acts on behalf of its *customers*.
- (2) When deciding whether it should be classified as an *intermediate customer* under ~~COB 4.1.7 R (2) (b)~~ COB 4.1.7R (2), C1 should have regard to the fact that it will be responsible to C2 for delivering applicable protections under *COB* (or, if C1 is an *overseas financial services institution*, under any relevant overseas provisions). C1 should also remember that F is entitled to refuse to agree to classify C1 as an *intermediate*

customer; and, in such a case, it may be appropriate for C1 to obtain services from a different *firm*.

- (3) C1 is may be an intermediate customer under COB 4.1.7 R (2) or (3), but remains a *market counterparty* for other purposes. For example, for *designated investment business* which is not *inter-professional business*, C1 is a *market counterparty* for transactions for C1's own account.
- (4) In relation to activities other than *designated investment business*, and related *ancillary activities*, C1 is a *market counterparty* in accordance with the definition of "*market counterparty*".
- (5) When C1 is a *market counterparty*, then only limited parts of *COB* will apply to F's business with C1. The *Principles* (other than 6, 8 and 9 and most of 7) will also apply, as will MAR 3 (Inter-professional conduct) for *inter-professional business*. See MAR 3 Ann 1 for further *guidance* on the application of the *Principles*, *COB* and MAR 3 for *inter-professional business*.
- (6) COB 4.1.7R does not preclude F from offering C1 protections over and above those that are owed to C1 as a market counterparty. However, any such protections would be a matter between F and C1 (for example, in contract) and would not confer the benefits owed to an intermediate or private customer under COB.

Classification of an exchange or clearing house

4.1.8A R A firm must classify a client which is a recognised investment exchange, designated investment exchange, regulated market or clearing house as either a market counterparty or an intermediate customer.

- 4.1.11 E (1) In the written warning required by COB 4.1.9 R (1) (b) (i), a *firm* should, where relevant:
- (a) advise the *client* that he will lose the protection afforded by the following *rules* in *COB* applicable exclusively to *private customers*:

- (i) ~~COB 3.9 (Direct offer financial promotions);~~
~~COB 3.12 (Communication and approval of financial promotions of an overseas or an unauthorised person) and COB 3.13 (Additional requirements for financial promotions for an overseas long term insurer)~~ COB 3 (Financial promotion);
 - (ii) COB 5.4 (Customers' understanding of risk);
 - (iii) COB 5.7 (Disclosure of charges, remuneration and commission);
 - (iv) COB 6.1: (Packaged product and ISA disclosure);
 - (v) COB 7.9 (Lending to private customers);
 - (vi) COB 7.10 (Margin requirements);
 - (vii) COB 7.11 (Non-exchange traded securities);
- (b) explain any consequences to the *client* in respect of the following *rules* in *COB* which are limited or modified in their application to *intermediate customers*:
- (i) ~~[deleted]-COB 3 (Financial promotion)~~;
 - (ii) COB 5.1 (Polarisation and status disclosure);
 - (iii) COB 8.1 (Confirmation of transactions);
 - (iv) COB 8.2 (Periodic statements);

Record keeping

- 4.1.16 R (1) A *firm* must make a record of the classification established for each *client* under this section ~~COB 4.1.4 R (1), or, where relevant, under COB 4.1.7 R, COB 4.1.9 R, COB 4.1.12 R, COB 4.1.14 R or COB 3.1.15 R,~~ including sufficient information to support that classification.

5.2 Know your customer

Record keeping: personal and financial circumstances

- 5.2.9 R A *firm* must make and retain a record of a *private customer's* personal and financial circumstances that it has obtained in satisfying COB 5.2.5 R. The record must be retained for a minimum period after the

information is obtained, as follows:

- (1) indefinitely for a record relating to a *pension transfer, pension opt-out or free-standing additional voluntary contribution* (FSAVC);
- (2) six years for a record relating to a *life policy, or pension contract or stakeholder pension scheme*;
- (3) three years in any other case.

5.7 Disclosure of charges, remuneration and commission

Disclosure of charges

- 5.7.3 R (1) Before a *firm* conducts *designated investment business* with or for a *private customer*, the *firm* must disclose in writing to that *private customer* the basis or amount of its *charges* for conducting that business and the nature or amount of any other income receivable by it or, to its knowledge, by its *associate* and attributable to that business.
- (2) If the *designated investment business* in (1) is in respect of an *execution-only transaction*:
- (a) which does not relate to a *packaged product*; and
 - (b) where prior written disclosure would delay the transaction; the *firm* may instead:
 - (c) make the disclosure required by (1) orally before the transaction is *executed*; and
 - (d) provide written confirmation of the matters disclosed to the *private customer* within five *business days* of the execution.

6 Product disclosure and the customer's right to cancel or withdraw

Quality and production of key features

- 6.1.5 R A *firm* must ensure that any *key features* or information document it produces is in writing, whether in printed hard copy or in electronic format, and:
- (1) is produced and presented to at least the same quality and standard as the associated sales or marketing material being used by the *firm* to promote the *packaged product* or *cash*

deposit ISA to customers; and

- (2) is separate from any other material given to the *customer*, unless it is produced for a *collective investment schemes*, *investment trust savings scheme* or *stakeholder pension schemes*; in that case it may be included as part of another item of sales or marketing material, but only if the *key features* or information document appears with due prominence.

6.5 Content of key features and important information: life policies, schemes, ISA cash deposit components and stakeholder pension schemes
Commission and remuneration for life policies, schemes and stakeholder pension schemes

6.5.38 R A *firm* must include under the heading 'How much will the advice cost?' either the statement prescribed in (1) or ~~the details required by (1A)~~, as applicable, or the information required by (2):

(1) for *life policies* or *stakeholder pension schemes*: 'Your adviser will give you details about the cost. The amount will depend on the size of the premium and the length of the policy term. It will be paid for out of the deductions [~~or charges, if more appropriate~~]; or

(1A) for *schemes*: 'Your adviser will give you details about the cost. The amount will depend on the size of your [use: 'investment' or 'contribution'][add if appropriate: 'and in the case of regular savings the period for which you make them']. It will be paid for out of the charges'; or

- (2) (a) the amount or value in cash terms of the *commission* or *remuneration* and an indication of the timing of these payments; and
- (b) a statement that *commission* or *remuneration* is paid for out of 'the deductions [~~or charges, if more appropriate~~]' and, if applicable, that the amount will depend on the size of the *premium* or contribution and the length of the *life policy, scheme* or *stakeholder pension scheme* term.

6.8.8 R If a *pure protection contract* or *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, ~~at least once a year coincident with or immediately following the first contract anniversary, either~~ 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.

7.3 Dealing ahead

Requirement to postpone own account transactions

7.3.3 R If a *firm* or its *associate* intends to publish to customers a written recommendation, or a piece of research or analysis, ~~to customers~~ that relates to a *designated investment*, unless COB 7.3.4 R applies, the *firm* must:

- (1) not knowingly undertake an *own account transaction* in the *designated investment* concerned or any *related designated investment*; and
- (2) (when the intention to publish is that of, or is known to, the firm) take all reasonable steps to ensure that its *associates* do not knowingly undertake any *own account transaction* in that *designated investment*, or any *related designated investment*;

until the *customers* for whom the publication was principally intended have had (or are likely to have had) a reasonable opportunity to act upon it.

7.3.3A G *Firms* are reminded of the *Chinese wall* provisions in COB 2.4.6 R (Attribution of knowledge).

Exceptions

7.3.4 R COB 7.3.3 R does not apply if:

- (1) the publication could not reasonably be expected to affect

significantly the price of the *designated investment* concerned or any *related designated investment*; or

- (2) the *firm or its associate* is a *market maker* in the *designated investment* concerned or in a *related designated investment* and undertakes the transaction in good faith and in the normal course of market making; or
- (3) the *firm or its associate* *deals* in order to fulfil an unsolicited *customer order*; or
- (4) the *firm* has taken reasonable steps to ensure that it or its associate needs to *deal* to fulfil a *customer order* that is likely to result from the publication, and that doing so will not cause the price of the *designated investment* or *related designated investment* that is the subject of the written recommendation, or piece of research or analysis, to move against a *customer's* interest by a material amount; or
- (5) the *firm* or its *associate* discloses in the publication that the *firm* or its *associate* has undertaken or may undertake an *own account transaction* in the *designated investment* concerned or any *related designated investment*.

7.5.9 G The evidential provision relating to mark-ups and mark-downs in COB 7.5.6 E (1)(d) does not prevent firms from being remunerated by means of mark-ups or mark-downs provided that such remuneration is disclosed to the customer as required by COB 8.1.15E (Content of a confirmation of transaction: general requirements).

7.5.10 G Where a customer order is subject to a special condition as envisaged in COB 7.5.6E (4)(e), the firm should disclose any additional cost involved in satisfying the special condition or in respect of the non-standard element. If, however, it is not possible for the charge to be "unbundled" from the price itself, firms are permitted to deal on a bundled basis subject to the overriding obligation to provide best execution.

7.12 Customer order and execution records

7.12.6 E Minimum contents of customer order and execution records

This table belongs to COB 7.12.3 R

When:		The firm should record:	
...
(2)	the <i>firm</i> executes a transaction	(a)	The name or other designation and account number of the <i>client</i> (if any) for whom the transaction was <i>executed</i> (unless the transaction was an <i>own account transaction</i>);
		(b)	The name of the counterparty, if known to the <i>firm</i> ;
		(c)	The date and if available, the time of the transaction;
		(d)	The identity of the <i>employee</i> executing the transaction;
		(e)	(i) The <i>designated investment</i> concerned; and
			(ii) The number of, or total value of, the <i>designated investment</i> ;
		(f)	The price and other significant terms (including exchange rate details if relevant); <u>and</u>
		(g)	Whether the transaction was a purchase or a sale; <u>and</u>
		(h)	[deleted] whether the <i>firm</i> was acting as <i>principal</i> as well as on behalf of its <i>customer</i>.
...

8.1.15 E Content of a confirmation of transaction – general requirements

This table belongs to COB 8.1.5 E

Content of a confirmation of transaction – general requirements	
...	...
12.	The amount of any <i>fees</i> , taxes or duties, unless included in <i>remuneration</i> mentioned in 11.
<p><u>Note: If the transaction was for an <i>intermediate customer</i>, the <i>firm</i> need not identify separately the <i>unit price</i> and the <i>remuneration</i> of the <i>firm</i> and that of any <i>associate</i> in connection with the transaction, if the <i>intermediate customer</i> has requested a confirmation combining both of these items.</u></p>	

Client money requirement

9.3.105 R ~~Subject to COB 9.3.119 R, the~~ The *client money* requirement is either the sum of, for all *clients*:

- (1) (subject to COB 9.3.119 R) the sum of, for all *clients* the individual *client* balances calculated in accordance with COB 9.3.106 R, excluding:
 - (a) the individual *client* balances calculated in accordance with COB 9.3.106 R, excluding: individual *client* balances which are negative (that is, debtors); and
 - (i) individual *client* balances which are negative (that is, debtors); and
 - (ii) *clients'* equity balances calculated in accordance with COB 9.3.113 R; and
 - (b) *Clients'* equity balances calculated in accordance with COB 9.3.113 R; and the total *margin*ed transaction requirement, calculated in accordance with COB 9.3.115R; or
- (2) the total *margin*ed transaction requirement, which is calculated in accordance with COB 9.3.115 R 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 *margin*ed transaction requirement, which is calculated in accordance with COB 9.3.115R.

9.3.111 G In determining the *client money* requirement under COB 9.3.105R
~~In calculating its individual *client* balances under COB 9.3.106 R, a~~
firm need not include *money* held in accordance with COB 9.3.15 R
and COB 9.3.16 R (delivery versus payment).

9.3.112 G *Firms* are reminded of the provisions of COB 9.3.44R and COB
9.3.46R which require a *firm* to segregate *client money* into *client*
bank accounts within a certain period. In determining the *client*
money requirement under COB 9.3.105R ~~In calculating its~~
~~individual *client* balances under COB 9.3.106 R, a *firm*:~~

...

ANNEX C

Amendments to COB Schedule 1

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

COB 5.2.9R	Private customer's details for a life policy, pension contract <u>or stakeholder pension scheme</u>	Personal and financial circumstances	On giving advice	6 years
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<p>COB 7.12.3R and COB 7.12.6E(2)</p>	<p>Execution of a transaction by a firm</p>	<p>Name/other designation of client (if any); name of counterparty (if known); date and time of execution; who executed the transaction; the designated investment; number of/ total value of the designated investment; price and other significant terms; whether sale or purchase; whether the firm was acting as principal</p>	<p>When the firm executes a transaction</p>	<p>3 years (after the date of completion of the transaction)</p>
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ANNEX D

Amendments to COB Schedule 6

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

6 Rules that can be waived

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The rules in COB can be waived by the FSA under sections 148 or 250 of the Act (Modification or waiver of rules) or regulation 7 of the OEIC Regulations (Modification or waiver of FSA rules), except for the following rules:

- (a) The rules in COB 1 (Application and general provisions) to the extent that those rules apply or modify other rules in COB which may not be waived;
- (b) The rules in ~~COB 2.1 (Clear, fair and not misleading communication)~~ COB 2.3 (Reliance on others) to the extent that those rules apply or modify other rules in COB which may not be waived;
- (c) COB 2.4.4R(1), and 2.4.4R(3) (~~Chinese walls to the extent that it relates to (1) and (4)~~);
- (d) COB 3.11.2R (Unregulated Collective Investment Schemes);
- (e) [deleted] ~~the rules in COB 6.7 (Cancellation and withdrawal) (other than COB 6.7.11R, COB 6.7.21R)~~;
- (f) [deleted] ~~COB 9.3.1-2, 9.3.31, 9.3.34 and 9.3.59 (Client money) and COB 9.5 (Client money distribution)~~;
- (g) The rules in COB 10 (Operators of collective investment schemes) to the extent that those rules apply or modify other rules in COB which may not be waived;
- (h) The rules in COB 11 (Trustee and depositary activities) to the extent that those rules apply or modify other rules in COB which may not be waived;
- (i) The rules in COB 12 (Lloyd's) to the extent that those rules apply or modify other rules in COB which may not be waived.

ANNEX E

Amendments to the Glossary

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

intermediate customer (1) ...
(l) a recognised investment exchange, designated investment exchange, regulated market or clearing house, except when it is classified as a market counterparty in accordance with COB 4.1.8A R (Classification of an exchange or clearing house);

but excluding:

...

market counterparty (1) ...
(h) a recognised investment exchange, designated investment exchange, regulated market or clearing house when it is classified as a market counterparty in accordance with COB 4.1.8A R (Classification of an exchange or clearing house);

but excluding:

...

**MARKET CONDUCT SOURCEBOOK
(AMENDMENT TO LIST OF PRESCRIBED MARKETS)
INSTRUMENT 2002**

Powers Exercised

- A. The Financial Services Authority alters the Market Conduct sourcebook in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 August 2002.

Amendments to MAR 1 (The Code of Market Conduct)

- C. MAR 1 is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as Market Conduct Sourcebook (Amendment to List of Prescribed Markets) Instrument 2002.

By order of the Board
18 July 2002

Annex
Amendments to MAR 1 (The Code of Market Conduct)

In this Annex, underlining indicates new text and struck text indicates removal.

MAR 1.11.2G:

Section 118(3) allows the Treasury to prescribe markets and *qualifying investments*. This is the purpose of the Financial Services and Markets Act 2000 (Prescribed markets and Qualifying investments) Order 2001. This Order, when read in conjunction with the *Act*, makes certain kinds of *investment* “traded on” *prescribed markets qualifying investments*. The Treasury has prescribed all markets established under the rules of a *UK RIE* and the market known as OFEX as markets to which ~~S~~section 118 applies. The *prescribed markets*, as at ~~5 December 2001~~ 18 July 2002, are:

(1) the markets established under the rules of the following (the *UK RIEs*):

- (a) ~~COREDEAL~~ CoredealMTS;
- (b) The International Petroleum Exchange of London Limited;
- ~~(c) Jigsaw Limited~~
- ~~(d)~~ LIFFE Administration and Management;
- ~~(e)~~ The London Metal Exchange Limited;
- ~~(f)~~ London Stock Exchange plc (including AIM);
- ~~(g)~~ OM London Exchange Limited;
- ~~(h)~~ virt-x Exchange Limited;
- ~~(i) virt x plc;~~

(2) the market known as OFEX.

**COMPLAINTS SOURCEBOOK (TREATMENT OF WINDFALL BENEFITS
FOR MORTGAGE ENDOWMENT COMPLAINTS) INSTRUMENT 2002**

Powers Exercised

- A. The Financial Services Authority amends the Complaints sourcebook 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 August 2002.

Amendments to the Complaints sourcebook

- C. The Complaints sourcebook is amended:
- (i) by inserting, after *DISP* Appendix 2 2.5.12G, the provisions in Annex A to this instrument; and
 - (ii) in accordance with Annex B to this instrument.

Citation

- D. This instrument may be cited as the Complaints sourcebook (Treatment of Windfall Benefits for Mortgage Endowment Complaints) Instrument 2002.

By order of the Board
18 July 2002

Annex A

Text inserted into *DISP* Appendix 2

Identification of windfall benefits

- 2.5.13G Windfall benefits should be determined in accordance with the principle in Needler Financial Services and Taber ('Needler'). The basic legal principle in Needler is that a windfall benefit is not to be taken into account in determining the amount of an investor's recoverable loss. The following paragraphs explain our views as to how *firms* may act in accordance with that principle.
- 2.5.14G A windfall benefit arises where:
- (1) there has been a demutualisation, distribution or reattribution of the inherited estate, or other extraordinary corporate event in a *long-term insurer*; and
 - (2) the event gave rise to 'relevant benefits', as defined in *DISP* App 2.5.15G.
- 2.5.15G 'Relevant benefits' are those benefits that fall outside what is required in order that *policyholders*' reasonable expectations at the point of sale can be fulfilled. (The phrase '*policyholders*' reasonable expectations' has been technically superseded. However, the concept now resides within the obligations imposed upon *firms* by *Principle 6* ('... a *firm* must pay due regard to the interests of its *customers* and treat them fairly ...') Additionally, most of these benefits would have been paid prior to *commencement*, when *policyholders*' reasonable expectations would have been a consideration for a *long-term insurer*.)
- 2.5.16G The issue of free *shares* or cash on a demutualisation, and additional bonuses and *policy* enhancements given by way of incentive to approve a reattribution or distribution of an inherited estate, should, unless there is evidence to the contrary, be treated as relevant benefits for the purposes of *DISP* App 2.5.15G. Whether additional bonuses and *policy* enhancements on a demutualisation are relevant benefits should be determined by applying the test in *DISP* App 2.5.15G to each benefit.
- 2.5.17G *Firms* should review the terms on which proposals were put to *policyholders* and the reasons given for a corporate event when determining whether a benefit should be treated as a relevant benefit.
- 2.5.18G *Firms* should not normally take windfall benefits which are relevant benefits (as defined in *DISP* App 2.5.14G) into account when assessing

financial loss and redress. Where a windfall benefit is in the form of a *policy* augmentation, the benefit should be deducted from the overall value of the *policy* when making this assessment.

2.5.19G A relevant benefit derived from a corporate event should only be taken into account if the *firm* is able to demonstrate, with written records created at the time of the advice, that:

- (1) the *firm* foresaw the prospect of the event and the benefit;
- (2) the *firm*'s advice included a statement recommending the particular *policy* because of the possibility of the benefit in question; and
- (3) the statement was a material factor in the context of the advice and the decision to invest.

2.5.20G If a *firm* considers that it can meet this requirement, the *firm* should by letter explain clearly to the complainant the reasons why it proposes that the benefit should not be treated as a windfall and should be taken into account. The *firm* should provide the complainant with copies of the relevant documents.

2.5.21G The letter should also explain how the proposed value of the benefit has been calculated and should inform the complainant that if he does not accept the proposal to take the benefit into account he may tell the *firm*, with reasons. The letter should also say that, if he remains dissatisfied with the *firm*'s response, he may refer the matter to the *Financial Ombudsman Service*.

2.6 Valuing Windfall Benefits

2.6.1G If, exceptionally under the *guidance* at *DISP* App 2.5.13G to *DISP* App 2.5.21G, cash or *shares* derived from a corporate event are to be taken into account when assessing loss and redress, cash should be valued at the amount actually received and *shares* should be valued at their issue price. In both cases there should be no addition for interest.

2.6.2G When valuing windfall augmentation benefits for the purposes of calculating loss and redress the objective is to exclude all changes arising from the windfall event. The amount of redress payable will then be equal to the amount that would have been payable if the windfall event had never occurred.

2.6.3G A *product provider* should ensure that the method it adopts for valuing augmentation benefits is consistent with statements made in the documentation published about the windfall event. Relevant documentation for the purpose of valuing such benefits will include (but is not limited to) -:

- (1) any description of increases in benefits in any circular to *policyholders* (and any other public information relating to the event);
- (2) any principles of financial management established for the management of the fund after the event;
- (3) statements in any appointed *actuary* report produced for the event;
- (4) statements in any independent *actuary* report produced for the event; and
- (5) subsequent statements relating to bonus practice, calculating *surrender values*, or both.

2.6.4G The method of valuation adopted should treat complainants fairly overall.

2.6.5G Where an accurate calculation of the value of an augmentation benefit either cannot be made, or would result in disproportionate expense or delay, *product providers* may adopt a simplified approach or a proxy method for calculating its value.

2.6.6G A simplified approach should treat complainants fairly overall.

2.6.7G The *product provider's* appointed *actuary* should certify that the method adopted by the *product provider* for calculating the value of an augmentation benefit is in accordance with the *guidance* in *DISP* App 2.6.1G to *DISP* APP 2.6.6G.

Implementation

2.6.8G The principles set out in *DISP* App 2.6.1G to *DISP* App 2.6.7G should be applied directly to mortgage endowment complaints where the capital loss is calculated by comparing the *surrender value* of the endowment *policy* with the capital which would have been repaid using a repayment mortgage.

2.6.9G In most cases where there is a loss, the endowment *policy* will be surrendered and put towards the cost of setting up a suitable repayment mortgage. Where this is the case, that part of the *surrender value* relating to the windfall augmentation should be paid as a cash lump sum to the investor or to the investor's order as part of the redress package. Only that part of the *surrender value* which does not relate to the windfall augmentation should be put towards the cost of setting up a suitable repayment mortgage.

2.6.10G There may be some circumstances in which the *policy* will not be surrendered (see *DISP* App 2.2.15G). In these cases, there is no requirement to pay the value of the windfall augmentation as a cash lump

sum since the value of the augmentation will become payable when the *policy* matures. However, any fund value used in the calculation of redress payable should exclude the value of the windfall augmentation.

2.6.11G *Firms* may mitigate losses by making use of the Traded Endowment Policy (TEP) market (see *DISP* App 2.3.8G to *DISP* App 2.3.10G). This allows *firms* to *sell* policies on the TEP market to meet the costs of redress, rather than using the *surrender value*. Where this method is adopted, *firms* should pay to the investor, as part of the redress package, a cash lump sum representing that proportion of the *policy* realised which would have related to the windfall augmentation.

2.6.12G As this windfall amount should be excluded from the fund value used in the calculation of loss and redress it would also be appropriate for this extra payment to be ignored when assessing whether “the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant...” (*DISP* App 2.3.10G).

2.6.13G There may be circumstances in which a *policy* needs to be reconstructed (see *DISP* App 2.4). In carrying out the required reconstruction, the windfall augmentation should be ignored in both the existing and the revised *policy*. However, the *policyholder's* revised *policy* should be credited with any windfall augmentation which would have applied if the *policy* had been set up with the revised terms from the original date of advice. This enhancement can be taken into account in assessing a suitable level for future premiums, in line with *DISP* App 2.4.8G.

2.6.14G *DISP* App 2.5.10G provides *firms* with the option of underpinning benefits. *Firms* should satisfy the *FSA* that their proposals provide complainants with a level of redress that is at least commensurate with the standard approaches and, to ensure consistency, windfall augmentations should be excluded when considering whether an underpin will apply. The *FSA* will take this into account when considering proposals put forward by *firms*.

2.6.15G *Product providers* with windfall benefits in the form of *policy* augmentations should tell:

- (1) their own relevant *customers* (mortgage endowment complainants);
and
- (2) independent financial advisers with such *customers* (and any other interested parties);

that they have excluded windfall augmentation benefits from values used or to be used for loss and redress. *Firms* should provide this information to

the *Financial Services Compensation Scheme* when providing them with a value to be used for loss and redress. Should their own relevant *customers*, independent financial advisers with such *customers* (and any other interested parties), and the *Financial Services Compensation Scheme* request it, the *firm* should provide the value of these benefits and a description of the method used to exclude them.

Annex B

Amendments to the Complaints sourcebook

In this Annex striking through indicates deleted text.

DISP App 2.5.1G: This section addresses ~~two~~ issues which may be relevant to the standard redress for unsuitability cases, as well as some post-retirement cases upheld on the grounds of affordability.

**COMPENSATION SOURCEBOOK
(PENSIONS REVIEW COMPENSATION LEVY)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Compensation sourcebook and the Glossary in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 156 (General supplementary powers);
 - (2) section 213 (The compensation scheme); and
 - (3) Section 214 (General).
- 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 immediately.

Amendments to the Compensation sourcebook

- D. The Compensation sourcebook is amended in accordance with Annex A to this instrument.

Amendment to the Glossary

- E. The Glossary is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Compensation Sourcebook (Pensions Review Compensation Levy) Instrument 2002.

By order of the Board
18 July 2002

Annex A

Amendments to the Compensation sourcebook

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

- COMP 13.5.6R (1) The *FSCS* must (subject to (2)) allocate any *specific costs levy* amongst the *sub-schemes* and relevant *contribution groups* in proportion to the volume of relevant costs arising from, or expected to arise from, claims in respect of the different activities represented by those *contribution groups*.
- (2) ~~The *FSCS* must allocate any part of a *specific costs levy* that relates to *IFA pensions review claims* in accordance with COMP 13.6A.1R (IFA pensions review compensation levies).~~
- COMP 13.5.7R The *FSCS* must calculate a *participant firm's* share of a *specific costs levy* (subject to *COMP 13.4.19R (Adjustments to calculation of levy shares)* and *COMP 13.6A.1R (IFA pensions review compensation levies)*) by: ...
- COMP 13.6.2R (1) The *FSCS* must (subject to (2)) allocate any *compensation costs levy* to the individual *sub-schemes* and relevant *contribution groups* in proportion to the volume of *compensation costs* arising from, or expected to arise from, claims in respect of the different activities represented by those *contribution groups*.
- (2) The *FSCS* must allocate any part of a *compensation costs levy* that relates to *IFA pensions review claims* in accordance with COMP 13.6A.1R (IFA pensions review compensation levies).
- COMP 13.6.6R The *FSCS* must calculate a *participant firm's* share of a *compensation costs levy* (subject to COMP 13.6A.1R (IFA pensions review compensation levies)) on the same basis as a *specific costs levy* under *COMP 13.5.6R*, *COMP 13.5.7R* and *COMP 13.5.8R*.
- COMP 13.6.7R When calculating a *participant firm's* share of a *compensation costs levy* or *specific costs levy* allocated to:
- (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 *COMP 13.6.8R*;

- (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*~~ activity groups and tariff bases set out in part 7 of *SUP 20 Ann 1R* which are identified in *COMP 13.6.9R*;
- (3) the investment business *sub-scheme*, where any part of the levy relates to *IFA pensions review claims*, the *FSCS* must comply with *COMP 13.6A.1R* (*IFA pensions review compensation levies*).

COMP 13.6.9 G R Table: ~~A summary of the relevant~~ The contribution groups and tariff bases for the investment business sub-scheme (see *COMP 13.6.7R(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 7 of *SUP 20 Ann 1R*).

SUB-SCHEME	CONTRIBUTION GROUP (references to A1, A2 A7 etc are to the <i>FSA Fee Blocks activity groups</i> in part 7 of <i>SUP 20 Ann 1R</i>)	LEGAL BASIS FOR ACTIVITY (this is merely a summary of the basis in part 7 of <i>SUP 20 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 7 of <i>SUP 20 Ann 1R</i>)
...
Designated investment business	A16 pensions review	The firm was liable to pay the Pensions Review Levy to the PIA in 2001/2002	Percentage share of <i>PIA's</i> 2001/2002 Pensions Review Levy

COMP 13.6A

IFA pensions review compensation levies

COMP 13.6A.1R

The *FSCS* must allocate any part of a *specific costs levy* or *compensation costs levy* that relates to *IFA pensions review claims*:

- (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).

Annex B

Amendment to the Glossary

Insert the following new definition in the appropriate alphabetical position:

IFA pensions review claim a claim arising from the sale of a personal pension scheme by a former member of *PIA* which was an independent financial adviser;

in this definition:

- (a) a “personal pension scheme” includes:
 - (i) a personal pension scheme approved under Chapter IV Part XIV of ICTA 88;
 - (ii) 'section 32' buy-out policies approved under Section 32 of Finance Act 1981 (now incorporated in Chapter I Part XIV of ICTA 88); and
 - (ii) in relation to opt-outs and non-joiners, retirement annuity contracts approved under Chapter III Part XIV of ICTA 88; and
- (b) “ICTA 88” means the Income and Corporation Taxes Act 1988.

**COLLECTIVE INVESTMENT SCHEMES (SINGLE PRICING AND DILUTION)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Collective Investment Schemes sourcebook and related parts of the Handbook in the exercise of the powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Acts 2000 (the "Act"):
 - (a) 138 (General rule-making powers);
 - (b) 156 (General supplementary powers);
 - (c) 157 (Guidance);
 - (d) 247 (Trust scheme rules); and
 - (e) 248 (Scheme particular rules); and
 - (2) regulation 6 of the Open-Ended Investment Companies Regulations 2001 (FSA rules).
- 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 August 2002.

Amendment of CIS, COB and the Glossary

- D. (1) The Collective Investment Schemes sourcebook is amended in accordance with Annex A to this instrument.
- (2) The Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.
- (3) The Glossary is amended in accordance with Annex C to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes (Single Pricing and Dilution) Instrument 2002.

By order of the Board
18 July 2002

Annex A
Amendments to the Collective Investment Schemes sourcebook

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

CIS Table TP1

<u>12</u>	<u>CIS 3.5.2R18</u>	<u>R</u>	<p>Except where the <i>authorised fund manager</i> <u>takes steps to allow it to adopt a policy enabling it to make a <i>dilution adjustment</i>, the <i>prospectus</i> of an <i>authorised fund</i> in existence on 1 August 2002 need not be revised solely to take account of the amendments to <u>CIS 3.5.2R 18 taking effect on that date until the earlier of:</u></u></p> <p><u>(1) the first day after 1 August 2002 on which the <i>prospectus</i> is revised; and</u></p> <p><u>(2) 1 February 2003</u></p>	<u>From 1 August 2002 for 6 months</u>	<u>1 August 2002</u>
<u>13</u>	<u>CIS 7.3.3R(2)</u> <u>CIS 7.3.3R(3)</u> <u>CIS 7.8.3(4)</u>	<u>R</u>	<p>The retention period of 6 years <u>does not apply to records that, as at 1 August 2002, had not been retained.</u></p>	<u>From 1 August 2002 until 31 July 2008</u>	<u>1 August 2002</u>

CIS 3.4.2R(2)(e)

- (e) CIS 3.5.2R18 (Dilution ~~levy~~); and

CIS 3.4.2R(4)(c)

- (c) solely to reflect an amendment to the *instrument constituting the scheme*:
- (i) made either in accordance with *CIS 11.4.4R* (Amendments to the instrument constituting the scheme: without meeting) or by a resolution passed at a meeting or, where appropriate, *class meeting*, of *holders* and which is not a change to any of the provisions of the *prospectus* included to comply with *CIS 3.5.2R(3)* (Investment objectives and policy) or *CIS 3.5.2R(12)(1)* (Payments to the authorised fund managers); or
- (ii) of one of the types described in *CIS 11.4.2R(1)(a)* or (b) (Amendment to the instrument constituting the scheme: with meeting); ~~or~~

CIS 3.4.2R(4)(d)

- (d) to comply with *CIS 3.5.2R(12)(4)* (Payments to the authorised fund manager) or *CIS 3.5.2R(13)(6)* (Other payments out of the scheme property) if:
- (i) the *authorised fund* already has clear investment objectives indicating:
- (1) a greater preference for the generation of income than for capital growth; or

- (2) equal emphasis on the generation of income and capital growth; and

90 days have elapsed since the *holders* were notified in writing by the *authorised fund manager* of the change to the *prospectus* and of the date when it is to come into effect; or

- (ii) in accordance with *CIS* 8.3.5R(4) (Allocation of payments to capital or income for (for ICVCs)) or *CIS* 8.5.7R(4) (Allocation of payments to capital or income (for AUTs)) all of the *remuneration* of the *authorised fund manager* was immediately prior to the change in the *prospectus*, treated as a capital charge and the *authorised fund manager* and *depository* have agreed that the change to the *prospectus* is of minimal significance; or
- (iii) the change is only to reflect a reduction in the types or amounts of the payments which may be treated as a capital expense; or

(e) to comply with *CIS* 3.5.2R18 (Dilution), if the *authorised fund manager* has not less than 90 days before the intended change:

- (i) given written notice of the intended change to the *depository* and to the *holders*; and
- (ii) revised the *prospectus* to reflect the intended change and the date of its commencement.

CIS 3.5.2R18

18 Dilution levy Dilution

In the case of an *ICVC* or a *single-priced AUT*:

- (1) ~~what is meant by *dilution levy* and for the purposes of (2), by *large deal*; and what is meant by: (a) *dilution*, (b) *dilution levy* or *dilution adjustment* (as the case may be) and (c) for the purposes of (4)(a), *large deals*;~~
- (2) ~~the *authorised fund manager*'s policy on imposing a *dilution levy*, including its policy on *large deals*; a statement that it is not possible to predict accurately whether *dilution* would occur at any point in time;~~
- (3) a statement of which one of the following policies the *authorised fund manager* is adopting:
- (a) it may require a *dilution levy*; or
- (b) it may make a *dilution adjustment*; or
- (c) it will not require a *dilution levy* or make a *dilution adjustment*;
- together with an explanation of how this policy may affect the future growth of the *authorised scheme*; and
- (4) if the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment*:
- (a) a statement of the *authorised fund manager*'s policy in deciding when to require *dilution levy*, including the *authorised fund manager*'s policy on *large deals*, or to make a *dilution adjustment*;
- (b) a statement, based either on historical data or future projections, of the estimated rate or amount of any *dilution levy* or *dilution adjustment*; and
- (c) a statement as to the likelihood that the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment* and the basis (that is, historical or projected) on which the statement is made.

CIS 3.5.2R19

19 SDRT provision

Details as to:

- (1) what is meant by *stamp duty reserve tax*, *SDRT provision* and, for the purposes of (2), by *large deal*; and
- (2) the *authorised fund manager's* policy on imposing an *SDRT provision* including its policy on *large deals*, and the occasions, and the likely frequency of the occasions, in which an *SDRT provision* may be imposed and the maximum rate of it; a usual rate may also be stated.

CIS 4.1.3G

- (1) This chapter helps in achieving the *regulatory objective* of protecting consumers (consumer's interests) as envisaged by sections 2 and 5 of the *Act*. In accordance with *Principle 6*, this chapter is intended to ensure the *authorised fund manager* pays due regard to its *customers'* interests and treats them fairly.

CIS 4.1.4G(7)

- (7) ~~*CIS 4.6* provides the *authorised fund manager* with the power to require, for the benefit of the *authorised fund*, the payment or deduction of a *dilution levy* or a provision for stamp duty reserve tax (*SDRT provision*) or both as an addition to (but not part of) the single price.~~ *CIS 4.6 (Dilution and SDRT provision)* enables the *authorised fund manager* to choose whether or not:
 - (a) to require for the benefit of the *authorised fund*, as an addition to, or deduction from, the single price (but not part of it), a provision (*SDRT provision*) against certain stamp duty reserve tax that is payable out of the *scheme property*; and
 - (b) for the purpose of reducing *dilution* (see *CIS 4.6.2G(1) (Purpose)*) either:
 - (i) to require, for the benefit of the *authorised fund*, a *dilution levy* as an addition to, or deduction from, the single price (but not part of it); or
 - (ii) to make a *dilution adjustment* in the calculation of the single price.

CIS 4.2.5R(3)

- (3) The current *price* of a *unit* for the purpose of (1):
 - (a) must be calculated on the basis that the number of *units* of each relevant *class* in existence immediately before the valuation is the number for which the *initial price* has been paid, or for which assets have been transferred to the *depository* in exchange (or treated for the purpose of the valuation as having been paid or exchanged), before the valuation; and
 - (b) must not include any *dilution adjustment*.

CIS 4.3.11R(2)

- (c) divide the total at (a) by the number of *units* at (b); ~~and~~
- (d) if the *authorised fund manager* makes a determination under CIS 4.6.4R (Dilution adjustment), increase or decrease the resulting amount by an adjustment (the "*dilution adjustment*") made for the purpose of reducing *dilution*; and
- (e) except for *smaller denomination shares*, express the *price* in a form that is accurate to at least four significant figures.

CIS 4.4.7R(1)

- (1) Immediately after completing a valuation under CIS 4.8 (Valuation) (whether regular or otherwise) the *authorised fund manager* must notify the *depository* ~~of the *price* of a *unit* of each *class in issue* as determined for the relevant *valuation point* and of the amount or rate of any *dilution levy* which applies to any *issue* or *cancellation* of *units*. The *prices* to be notified must be in the *base currency* or, in the case of a *currency class share*, the *currency of designation*.~~
 - (a) the *price*, in the *base currency* (or, in the case of a *currency class share*, the *currency of designation*) of a *unit* of each *class in issue* as determined for the relevant *valuation point*; and
 - (b) (i) the amount or rate of any *dilution levy* which applies to any *issue* or *cancellation* of *units* made by reference to that valuation; or

(ii) the amount or rate of any *dilution adjustment* taken into account in calculating that *price* and whether it was an addition or deduction.

4.6 Dilution ~~levy~~ and SDRT provision

CIS 4.6.2G

- (1) (a) An *ICVC* or an *AUT* may suffer *dilution* (reduction) in the value of the *scheme property* as a result of the costs incurred in *dealing* in the underlying *investments* and of any spread between the *buying* and *selling prices* of ~~these~~ those *investments*. ~~However, an *authorised fund manager* is permitted to require the payment of a *dilution levy*, as an addition to (but not part of) the *price* of *units* when they are issued by the *ICVC* or the *trustee* or sold by the *authorised fund manager*, and as a deduction when they are cancelled by the *ICVC* or the *trustee* or redeemed by the *authorised fund manager*. In order to enable the *authorised fund manager* to decide what, if any, response to make to issues about *dilution*, an *authorised fund manager* is permitted to:~~
 - (i) require the payment of a *dilution levy*, as an addition to (but not part of) the *price* of *units* when they are issued by the *ICVC* or the *trustee* or sold by the *authorised fund manager*, and as a deduction when they are cancelled by the *ICVC* or the *trustee* or redeemed by the *authorised fund manager*; or
 - (ii) make a *dilution adjustment* in accordance with CIS 4.3.11R(2)(d) (Price of a unit) so that the *price* of a *unit* is

above or below that which would have resulted from a mid-market valuation; or

(iii) decide not to require the payment of a *dilution levy* or make a *dilution adjustment*.

(b) An authorised fund manager is not obliged by CIS to make any *dilution levies* or *dilution adjustments*.

(c) The choice between (1)(a)(i), (ii) or (iii) will be governed by a statement in the *prospectus*, but only one can apply at any time.

- (2) Certain transactions in *units* can result in stamp duty reserve tax being paid out of the *scheme property* of an *authorised fund*. However, with a view to protecting investors from a resulting diminution in the value of their *units*, an authorised fund manager is permitted to require the payment of an *SDRT provision* as an addition to (but not as part of) the price of *units* when they are *issued* or *sold*, and as a deduction when they are *cancelled* (other than certain in specie *cancellations*) or *redeemed*.
- (3) Any *dilution levy* or *SDRT provision* paid or received by deduction, is for the account of the *authorised fund*. However, there are provisions to prevent a *dilution levy* or *SDRT provision* being imposed twice on both the *issue* and subsequent *sale* of a *unit*, or on the *redemption* and subsequent *cancellation* of a *unit*.
- (4) For the purposes of (1) to (3); it does not matter whether the *issue* or *cancellation* is under CIS 4.3 (Issue and cancellations) or under CIS 4.5R (Issues and cancellations through the authorised fund manager and in specie cancellations). However, there are provisions to prevent the levy being imposed twice on both the *issue* and subsequent *sale* of a *unit*, or on the *redemption* and subsequent *cancellation* of a *unit*.
- (5) CIS 4.6.3R(3)(b) makes it clear that *transactions* that are specifically excluded from a charge of stamp duty reserve tax (such as *transactions* in *units* within an individual pension account) can be excluded from the imposition of an *SDRT provision* without affecting the fairness required by that rule. CIS 4.6.3R (3) (Dilution levy and SDRT provision) requires a *dilution levy* or *SDRT provision* to be imposed only in a manner that, so far as practicable, is fair to all *holders* and potential *holders*. However there are exceptions to this in respect of *large deals*. In addition, certain *transactions* (such as *transactions* in *units* within an *individual pension account*) are specifically excluded from a charge to stamp duty reserve tax.
- (6) Where there is more than one class of *unit* of an *authorised fund*, or in the case of an *umbrella scheme*, a *sub-fund*, the price of a *unit* of each *class* must be calculated separately under CIS 4.3.11R (Price of a unit). Notwithstanding this, the *FSA* envisages that any *dilution adjustment* should in percentage terms affect the price of a *unit* of each *class* identically even if there were net *issues* of *units* of one *class* and net *cancellations* of the other.
- (7) It should be noted that, in determining the rate of any *dilution levy* or *dilution adjustment*, an *authorised fund manager* may, in order to reduce volatility in the rate, take account of:
- (a) the trend of the *authorised fund* or *sub fund* in question to expand or contract; and
- (b) the *transactions* in *units* at a particular *valuation point*.

CIS 4.6.3R(1)

- (1) The *authorised fund manager* may, in accordance with the *prospectus*, have ~~has~~ the power to require any one or more of:

CIS 4.6.3R(3)

- (3) A *dilution levy* or *SDRT provision* may be imposed only in a manner that is, so far as practicable, fair to all *holders* and potential *holders*. However: ~~or~~
- (a) The imposition of a *dilution levy* (or a higher *dilution levy*) or *SDRT provision* (or a higher *SDRT provision*) in respect of *large deals* in a manner described in the *prospectus* current at the time of the *deal*; or
- (b) The exclusion from an *SDRT provision* of any *transaction in units* where the *units* are so held that their redemption or cancellation is specifically excluded from a charge to stamp duty reserve tax; ~~or~~
- Is not unfair.

CIS 4.6.3R(5)

- (5) If the *authorised fund manager* deducts a *dilution levy* or *SDRT provision* from the proceeds of a *unit* it redeemed, it must immediately pay it to the *depository* to become part of the *scheme property*, except to the extent that it has already been, or will be, deducted from the *depository's* payment to the *authorised fund manager* ~~when the *unit* is cancelled~~ on cancellation of that *unit*.

CIS 4.6.4R

Dilution adjustment

4.6.4

- R (1) The *authorised fund manager* may, in accordance with the *prospectus*, have the power to make a *dilution adjustment* but may only exercise this power:
- (a) for the purpose of reducing *dilution* in the fund; or
- (b) to recover any amount which it has already paid or reasonably expects to pay in the future in relation to the *issue* or *cancellation* of *units* (see *CIS 4.6.2G(7)* (Purpose)).
- (2) Where the *authorised fund manager* decides not to make an adjustment, this decision must not be made for the purpose of creating a profit or avoiding a loss for the account of the *authorised fund manager*.
- (3) When by reference to any *valuation point*:
- (a) the aggregate value of the *units* of all *classes* of the *authorised fund* or *sub-fund issued* exceeds the aggregate value of *units* of all *classes cancelled*:
- (i) any adjustment must be upwards; and
- (ii) the *dilution adjustment* must not exceed the *authorised fund manager's* reasonable estimate of the difference between what the *price* would have been had the *dilution adjustment* not been taken into account and what the *price* would have been if the

scheme property had been valued on the best available market offer basis plus dealing costs; or

(b) the aggregate value of the units of all classes of the authorised fund or sub-fund cancelled exceeds the aggregate value of units of all classes issued;

(i) any adjustment must be downwards; and

(ii) the dilution adjustment must not exceed the authorised fund manager's reasonable estimate of the difference between what the price would have been had the dilution adjustment not been taken into account and what the price would have been if the scheme property had been valued on the best available market bid basis less dealing costs.

CIS 4.6.5G

Dilution adjustment guidance

4.6.5 G The effect of CIS 4.6.4R(1) (Dilution adjustment) is to prohibit authorised fund managers from making a dilution adjustment for reasons or purposes other than set out in CIS 4.6.4R(1)(a) or (b), for example, in order to create a profit or to avoid a loss for the account of the authorised fund manager.

CIS 4.8.3R(3)

(3) For the purposes of (1) and (2), any ~~fiscal charges or~~ fiscal charges, commissions, professional fees or other charges that were paid, or would be payable, on acquiring or disposing of the investment or other part of the scheme property, must be excluded from the value of an investment or other part of the scheme property.

CIS 6.5.4R(12)(a)

(a) ~~CIS 3.4.2R(4)(b) and CIS 3.4.2R(4)(d) (notice of certain changes to a prospectus);~~ CIS 3.4.2R(4)(b), (d) and (e) (Notice of certain changes to a prospectus);

CIS 7.3.3R (2)

(2) The ACD must make and retain for a period of six years from the date each record is made a daily record of the shares in the ICVC held, acquired or disposed of by the ACD, including the classes of such shares, and of the balance of any acquisitions and disposals.

CIS 7.3.3R (3)

(3) Unless the policy of the ACD stated in the prospectus is neither to require a dilution levy nor to make a dilution adjustment, it must make and retain for a period of six years from the date each record is made a daily record of:

(a) how it calculates and estimates dilution; and

(b) its policy and method for determining the amount of any dilution levy or dilution adjustment.

CIS 7.4.1R(1)(b)(ii)

(ii) the dilution levy, dilution adjustment or SDRT provision;

CIS 7.4.1R(2)

(2) The depositary must, in so far as not required under (1)(a)(i), take reasonable care to ensure on a continuing basis that:

CIS 7.4.1R(4)

(4) The depositary:

(a) must take reasonable care to ensure that:

(i) the ACD considers whether or not to exercise the power provided by CIS 4.6.3R(1)(c) and (d) (Dilution levy and SDRT provision) and the amount or rate of any SDRT provision that is imposed; and

(ii) in that consideration the ACD has, so far as the depositary is aware, taken account of all factors that are material and relevant to the ACD's decision; and

(b) subject to (a), has no duty in respect of the ACD's exercise of discretion referred to in (a).

(5) The depositary:

(a) must also take reasonable care to ensure that:

(i) the ACD considers whether or not to exercise the power provided by CIS 4.6.3R(1)(a) or (b) (Dilution levy and SDRT provision) or CIS 4.6.4R (Dilution adjustment) (as the case may be) and, if applicable, the rate or amount of any dilution levy or dilution adjustment that is imposed;

(ii) in that consideration the ACD has, so far as the depositary is aware, taken account of all factors that are material and relevant to the ACD's decision; and

(iii) when the ACD considers whether or not to exercise the power under CIS 4.6.4R (Dilution adjustment), the ACD has, so far as the depositary is aware, acted in accordance with the restrictions imposed by that rule;

(b) subject to (a), has no duty in respect of the ACD's exercise of discretion referred to in (a).

CIS 7.8.3R(4)

(4) Except when the policy of the manager stated in the prospectus is neither to require a dilution levy nor to make a dilution adjustment, it must make and retain for a period of six years from the date each record is made a daily record of:

(a) how it calculates and estimates *dilution*;

(b) its policy and method for determining the amount of any *dilution levy* or *dilution adjustment*.

CIS 7.9.1R(4)(b)

- (4) (b) subject to (a), has no duty in respect of the *manager's* exercise ~~or omission to exercise the power~~ of discretion referred to in (a).

CIS 7.9.1R(5)

- (5) The trustee of a *single-priced AUT*:
- (a) must take reasonable care to ensure that:
- (i) the *manager* considers whether or not to exercise the power provided by CIS 4.6.3R(1)(a) or (b) (Dilution levy and SDRT provision) or CIS 4.6.4R (Dilution adjustment) (as the case may be) and, if applicable, the amount or rate of any *dilution levy* or *dilution adjustment* that is imposed;
 - (ii) in that consideration the *manager* has, so far as the trustee is aware, taken account of all factors that are material and relevant to the *manager's* decision; and
 - (iii) when the *manager* considers whether or not to exercise the power under CIS 4.6.4R (Dilution adjustment), the *manager* has, so far as the *trustee* is aware, acted in accordance with the restrictions imposed by that rule; and
- (b) subject to (a), has no duty in respect of the *manager's* exercise ~~or omission to exercise the power~~ of discretion referred to in (a).

CIS 11.4.5G(3)(e)

- (e) ~~*Dilution levy*~~
The notice should also cover *dilution*:
~~what is it, how it will affect investors and the *manager's* policy on imposing a *dilution levy*~~
- (i) what it is;
 - (ii) how it will affect investors; and
 - (iii) the *manager's* policy on either imposing a *dilution levy* or making a *dilution adjustment* or doing neither.

CIS 15.1.3G(1)

- (1) This chapter helps in achieving the *regulatory objective* of protecting consumers as envisaged by sections 2 and 5 of the *Act*. In accordance with *Principle 6* (customers' interests), this chapter is intended to ensure the *manager* pays due regard to its *customers'* interests and treats them fairly.

CIS 15.6.2G(2)

- (2) Any *SDRT provision* paid or received by deduction is for the account of the *AUT*. However, there are provisions to prevent an *SDRT provision* being imposed twice, both on the *issue* and subsequent *sale* of a *unit*, or on both the *redemption* and subsequent *cancellation* of a *unit*.

CIS 15.6.2G(4)

- (4) ~~*CIS 15.6.3R(3)(b)* makes it clear that transactions that are specifically excluded from a charge to stamp duty reserve tax (such as transactions in *units* within an individual pension account) can be excluded from the imposition of an *SDRT provision* without affecting the fairness required by that *rule*.~~
- CIS 15.6.3R(3)* (*SDRT provision*) requires an *SDRT provision* to be imposed only in a manner that, so far as practicable, is fair to all *holders* and potential *holders*. However there are exceptions to this in respect of *large deals*. In addition, certain transactions (such as transactions in units within an *individual pension account*) are specifically excluded from a charge to stamp duty reserve tax.

Schedule 1 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>CIS</i> 6.3.1R	Instruments of Transfer	Full Details	From registration	6 years
<i>CIS</i> 7.3.3R(1) and (2)	General record-keeping obligations (<i>ACD</i>)	Such as to demonstrate compliance with the <i>rules</i> in <i>CIS</i>	As implicit from the <i>rules</i> in <i>CIS</i>	As implicit from the <i>rules</i> in <i>CIS</i>
<i>CIS</i> 7.3.3R(3)	<u>Dilution record-keeping obligations (<i>ACD</i>)</u>	<u>How the <i>ACD</i> calculates and estimates <i>dilution</i> and its policy and method for determining the amount of any <i>dilution levy</i> or <i>dilution adjustment</i>.</u>	<u>As implicit from the <i>rules</i> in <i>CIS</i></u>	<u>6 years</u>
<i>CIS</i> 7.8.3R(1), (2) and (3)	General record-keeping obligations (<i>manager</i>)	Such as to demonstrate compliance with the <i>rules</i> in <i>CIS</i>	As implicit from the <i>rules</i> in <i>CIS</i>	As implicit from the <i>rules</i> in <i>CIS</i> . 6 years for <i>units</i> .
<i>CIS</i> 7.8.3R(4)	<u>Dilution record-keeping obligations (<i>manager</i>)</u>	<u>How the <i>manager</i> calculates and estimates <i>dilution</i> and its policy and method for determining the amount of any <i>dilution levy</i> or <i>dilution adjustment</i>.</u>	<u>As implicit from the <i>rules</i> in <i>CIS</i></u>	<u>6 years</u>

Annex B

Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and strike through indicates deleted text

COB Transitional Rules

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

2 Table

(1)	(2) Material to which the transitional provision applies: The COB provisions in Table COB TR2 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Extra time provisions				
1.1	<i>ETP1</i>	R	<p>Transitional Relief</p> <p>(1) A pre-N2 <i>firm</i> will not contravene any of the provisions labelled <i>ETP1</i> in Table <i>COB TR 2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement, subject to any modification, wherever appropriate, to take account of the passing of the <i>Act</i>.</p> <p>(2) Paragraph (1) does not apply to the following:</p> <p>(a) (from 1 September 2002) <i>COB 6.1.1R(5) to COB 6.1.1R(6)</i> (Application);</p> <p>(b) (from 1 September 2002) <i>COB 6.5.50R to COB 6.5.52R</i> (Life policies: requests for quotations for surrender values);</p> <p>(c) (from 1 September 2002) <i>COB 6.5.53R to COB 6.5.56R</i> (Open market option);</p> <p>(d) <u>(from 1 August 2002) <i>COB 6.5.40R(3)(k) and (l)</i> (Further information for life policies, schemes, insurance or equity ISAs, PEPs and stakeholder pensions);</u></p> <p>[Further exceptions to be added later, as described in row 1.1A.]</p>	<p>(1) <i>commencement</i> to 30 June 2002, except as specified in (2) and (3) below;</p> <p>(2) for <i>COB 9.3.105R</i>, from <i>commencement</i> to 31 December 2002;</p> <p>(3) for <i>COB 3.9.10R, COB 4.2.15E(7), COB 5.3, COB 5.7, COB 6.1 to 6.8</i>, until a date yet to be specified.</p>	<i>commencement</i>

1.1 A	ETP1 (for COB 6.1 – 6.8)	G	<p>(1) The FSA is extending transitional relief for COB 6.1 – 6.8 and various other rules in COB, pending the outcome of the review of product disclosure and polarisation. As each of those reviews are completed, the transitional provisions will be revoked or modified to provide an appropriate transition into the new regime. Firms will be given notice of any revocation or modification as part of consultation on the new regime.</p> <p>(2) Firms should be aware, however, that the FSA proposes to make rules, before the disclosure review is completed, to deal with the following matters:</p> <p>(a) Stakeholder pensions: maintaining decision trees (see CP 122);</p> <p>(b) Projections for pension schemes or stakeholder pension schemes (see CP134); and</p> <p>(c) Single pricing for collective investment schemes (see CP 131).</p> <p>(3) The FSA envisages that, when the relevant rules are made, they will not benefit from the transitional relief set out in the COB Transitional Rules. For further information on the FSA's approach, firms should refer to the consultation papers mentioned above. If other interim changes to these rules are proposed, a similar approach is likely to be adopted.</p>	Commencement until a date yet to be specified.	
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COB TP 3 Miscellaneous Transitional Rules

1 Table

(1)	(2) <u>Material to which the transitional provision applies</u>	(3)	(4) <u>Transitional</u>	(5) <u>Transitional provision: dates in force</u>	(6) <u>Handbook provision: coming into force</u>
1	<u>COB 6.5.40R(3)(k) and (l)</u>	R	<u>Single pricing and dilution</u> <u>COB 6.5.40R(3)(k) and (l) do not take effect until 1 February 2003 for an</u>	<u>From 1 August 2002 until 1 February</u>	<u>1 August 2002</u>

		<u>authorised fund</u> in existence on 1 August 2002 unless the <u>authorised fund manager</u> decides to adopt a policy enabling it to make a <u>dilution adjustment</u> .	2003	
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COB 6.5 (Content of key features and important information: life policies, schemes, ISA cash deposit components and stakeholder pension schemes)

6.5.40 R A *firm* must include the following information in the *key features* separately or as part of the information required by COB 6.5.2R:

(3) for *regulated collective investment schemes* and for such *investments* held within a *PEP* or an *ISA*:

(k) for single-priced schemes:

(i) how the *scheme* may suffer dealing costs as a result of transactions in *units*; and

(ii) whether it is the *authorised fund manager's* policy that investors who carry out such transactions may be liable to contribute towards those dealing costs by means of a *dilution levy* or *dilution adjustment*, and, if not, an explanation of how this may affect the future growth of the *scheme*;

(l) in relation to *SDRT provision*:

(i) how the *scheme* may suffer stamp duty reserve tax as a result of transactions in *units*; and

(ii) whether the *authorised fund manager's* policy is such that an *SDRT provision* may be imposed.

Annex C
Amendment to the Glossary

Insert the following new definition in the appropriate alphabetical position (underlining indicates new text):

dilution adjustment

an adjustment to the price of a *unit* determined by the *ACD*, or the *manager of a single-priced AUT*, under *CIS 4.6.4R (Dilution adjustment)* for the purpose of reducing *dilution*.

Stakeholder Pension Decision Trees Instrument 2002

Powers exercised

- A. The Financial Services Authority amends the Conduct of Business sourcebook 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).
- 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 August 2002.

Amendments to the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Stakeholder Pension Decision Trees Instrument 2002.

By order of the Board
18 July 2002

Annex

Amendments to the Conduct of Business sourcebook

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

COB Transitional Rules

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

2 Table

(1)	(2) Material to which the transitional provision applies: The COB provisions in Table COB TR2 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Extra time provisions				
1.1	<i>ETP1</i>	R	<p>Transitional Relief</p> <p>(1) A pre-N2 <i>firm</i> will not contravene any of the provisions labelled <i>ETP1</i> in Table <i>COB TR 2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement, subject to any modification, wherever appropriate, to take account of the passing of the <i>Act</i>.</p> <p>(2) Paragraph (1) does not apply to the following:</p> <p>(a) (from 1 September 2002) <i>COB 6.1.1R(5)</i> to <i>COB 6.1.1R(6)</i> (Application);</p> <p>(b) (from 1 September 2002) <i>COB 6.5.50R</i> to <i>COB 6.5.52R</i> (Life policies: requests for quotations for surrender values);</p> <p>(c) (from 1 September 2002) <i>COB 6.5.53R</i> to <i>COB 6.5.56R</i> (Open market option);</p> <p>(d) (from 1 August 2002) <i>COB</i></p>	<p>(1) <i>commencement</i> to 30 June 2002, except as specified in (2) and (3) below;</p> <p>(2) for <i>COB 9.3.105R</i>, from <i>commencement</i> to 31 December 2002;</p> <p>(3) for <i>COB 3.9.10 R</i>, <i>COB 4.2.15E (7)</i>, <i>COB 5.3</i>, <i>COB 5.7</i>, <i>COB 6.1</i> to <i>6.8</i>, until a date yet to be specified.</p>	<i>commencement.</i>

			<p>6.5.40R(3)(k) and (l) (Further information for life policies, schemes, insurance or equity ISAs, PEPs and stakeholder pensions);</p> <p><u>(e) (from 1 August 2002) COB 6.5.8R to COB 6.5.9R (Stakeholder pension schemes: decision trees).</u></p> <p>[Further exceptions to be added later, as described in row 1.1A.]</p>		
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1.1 A	ETP1 (for COB 6.1 – 6.8)	G	<p>(1) The <i>FSA</i> is extending transitional relief for <i>COB</i> 6.1 – 6.8 and various other <i>rules</i> in <i>COB</i>, pending the outcome of the review of product disclosure and polarisation. As each of those reviews are completed, the transitional provisions will be revoked or modified to provide an appropriate transition into the new regime. <i>Firms</i> will be given notice of any revocation or modification as part of consultation on the new regime.</p> <p>(2) <i>Firms</i> should be aware, however, that the <i>FSA</i> proposes to make rules, before the disclosure review is completed, to deal with the following matters:</p> <p>(a) <i>Stakeholder pensions</i>: maintaining decision trees (see CP 122);</p> <p>(b) (a) Projections for <i>pension schemes</i> or <i>stakeholder pension schemes</i> (see CP 134).</p> <p>(3) The <i>FSA</i> envisages that, when the relevant rules are made, they will not benefit from the transitional relief set out in the <i>COB</i> Transitional Rules. For further information on the <i>FSA</i>'s approach, <i>firms</i> should refer to the consultation papers mentioned above. If other interim changes to these rules are proposed, a similar approach is likely to be adopted.</p>	commencement until a date yet to be specified.	
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COB 6.5 (Content of key features and important information: life policies, schemes, ISA cash deposit components and stakeholder pension schemes)

6.5.5 G There is no obligation to supply a decision tree as specified in COB 6.5.8R where a *firm* has *personally recommended a stakeholder pension scheme* to a *private customer*. *Firms* may wish to supply a copy of any decision tree used as part of the advice process along with the mandatory *suitability letter*.

6.5.8 R (1) Whether a *firm* produces decision trees within or separate from *key features*, ~~unless COB 6.5.9R applies~~, it must (unless COB 6.5.9R applies and subject to COB 6.5.8AR) reproduce the text, content and format set out in COB 6 Ann 1R.

(2) If COB 6 Ann1R is subsequently amended:

(a) the *firm* must amend its decision trees as soon as reasonably practicable and, in any case, within three *months* of the date when the amendments to COB 6 Ann 1R come into force; and

(b) the *firm* may continue to use decision trees that complied with the previous version of COB 6 Ann 1R until it has done so.

6.5.8A R A *firm* must ensure that its decision trees include:

(1) (in the place in the relevant table in the introductory text at COB 6 Ann 1R where the square brackets appear):

(a) in the heading of the table, the current tax year; and

(b) the Basic State Pension rates and Minimum Income Guarantee rates for the current tax year;

(2) (where the square brackets appear) at the bottom of the cover page and at the bottom of each page of the flow charts, the current tax year.

6.5.8B R (1) A *firm* must, subject to (2), make the changes required by COB 6.5.8AR as soon as reasonably practicable and, in any case, within three *months* of the start of the tax year.

(2) Where, in any year, a *firm* is required to make changes to the trees under COB 6.5.8R and COB 6.5.8AR, it may make both sets of changes at the same time, provided that it does so within the time limits in COB 6.5.8R(2)(a).

6.5.8C G

(1) The *FSA* expects to review the decision trees once each year and will amend them as necessary as near as possible to the start of the new tax year. The amended version of the decision trees will be published on the *FSA*'s web-site and available in printed form when the rules are amended each year. *Firms* must bring their trees into line with the amended rules within three *months*, but may continue to use their "old" trees until they have done so.

(2) *Firms* are required, by COB 6.5.8AR, to insert the Basic State Pension rates and Minimum Income Guarantee rates for the current tax year into the relevant table in the introductory text to their decision trees each year and to identify the relevant year in the heading of the table and also at the bottom of the pages specified in COB 6.5.8AR(2). The *rules* require *firms* to do this within three *months* of the start of the tax year if no other changes to the trees are required. However, COB 6.5.8BR (2) allows them to delay updating the Basic State Pension and Minimum Income Guarantee rates until the same time as they make any other amendments to their trees which they are required to make under COB 6.5.8R, provided that they do so within no more than three *months* of the date when those amendments come into force.

(3) The appropriate rates will be those announced by the Government (usually, but not necessarily, in the Chancellor of the Exchequer's annual Budget) as applying to the tax year in question. The relevant Basic State Pension and Minimum Income Guarantee rates for the current tax year

will be included in the version of the trees published by the FSA.

6.5.8D R A firm must ensure, subject to COB 6.5.8R (2), that it uses only the most recent version of its decision trees.

6.5.8E R Where a firm makes use of both electronic and hard copy versions of the decision trees specified in COB 6.5.8R, it must synchronise the timing of any changes to those trees as far as reasonably practicable.

6.5.8F G Firms are expected to ensure that they make the necessary changes to all of their trees at the same time (or as close to the same time as possible), including those used by other organisations for which they are responsible, in order to minimise the risk of consumer confusion. This may mean delaying changes to the trees in some instances until the firm is able to make all of the required changes, but all of a firm's trees must be amended within the time period allowed.

6.5.9 R The only adaptations, other than those in COB 6.5.8AR – COB 6.5.8ER, that a firm may make to the decision trees specified in COB 6.5.8R are those suitable to brand the decision tree with the corporate image of the firm, to reflect the design of its *stakeholder pension scheme* promotional material or to reflect the use of interactive delivery.

Amend COB 6 Annex 1 R as shown in the following pages.

**Decision trees for stakeholder
pension schemes (as required in
COB 6.5.8R): text, content and
format (R)**

STAKEHOLDER PENSION DECISION TREES

You should read these notes before using the decision trees.

Decision trees provide information and help you to answer the question: “Would a stakeholder pension be a good choice for me as part of my financial planning for retirement?”



[Insert current tax year]

What is a stakeholder pension?

A stakeholder pension is a ~~new private pension~~ - it's *not a State pension*. ~~You can get~~ You can contribute to a stakeholder pension ~~if~~ whether you are in employment, a fixed-contract worker, self-employed, or even not working but able to afford contributions. You can get one from a bank, building society, insurance company, investment company, or through a financial adviser.

You pay contributions regularly which are invested to build up your own pension fund. You can also ~~pay~~ make lump-sum contributions whenever you like.

When you retire, you use your pension fund to buy an "annuity". The annuity will pay you a regular income during your retirement. That income will depend on the size of your fund and the annuity rates at the time you take your pension.

You can't withdraw any money from your fund before you take your pension. But when you take your pension you can choose to have up to 25% of your fund as a tax-free lump sum.

What's ~~new~~ different about stakeholder pensions?

Stakeholder pensions must meet the standards laid down by the ~~g~~Government.

The standards include:

■ **Charges**

Providers of stakeholder pensions usually charge for managing your money. There is an upper limit on this charge. The limit is 1% of the value of your fund each year. The charge is taken from your fund. ~~So if your fund is worth £5,000, a 1% charge would be £50.~~

■ **Flexibility**

You can contribute regularly or occasionally. It is always best to make regular weekly or monthly contributions but you can change the amount. You can pay in as little as £20, and you can stop paying in without having to pay any penalty and restart later.

If you are employed and your employers provide a stakeholder pension, they may, if you wish, deduct your contributions direct from your pay and put them into your pension fund.

You can take your stakeholder pension with you when you change jobs. You can switch to another stakeholder pension at any time if you want to, without having to pay any charges for the transfer.

■ **Information**

Your stakeholder pension provider must give you regular information about your fund. This will include an annual statement to let you know how much you have paid in and how your fund is growing. It may also include a forecast of how much your pension might be.

Will I get any 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, the Inland Revenue 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.

~~Anyone~~ Most people can contribute up to £3,600 to a stakeholder pension in any tax year, including basic-rate tax relief. What this means is that you could pay in £2,808 and the income tax relief would increase your contribution to £3,600.

If you are employed or self-employed you might be able to contribute more than £3,600 and still get income tax relief, depending on your age and earnings. For example, up to age 35 you can contribute up to 17.5% of your earnings in any tax year. If you are over 35, there is a scale that allows you to contribute higher percentages of your earnings. The Inland Revenue sets the limits on what you can contribute to a pension scheme.

If you pay income tax at the higher rate you will be able to claim back the extra tax from the Inland Revenue at the end of each tax year.

Won't the State pensions be enough for me to retire on?

To answer this question, you need to think about three things:

BASIC STATE RETIREMENT PENSION

If you have a full ~~n~~National ~~i~~Insurance contribution record, you are entitled to the full basic State Retirement Pension. You cannot get your basic State Retirement Pension until you reach State pension age (currently 65 for men and 60 for women).

The ~~g~~Government reviews the basic State Retirement Pension every year. ~~The rates applying from April 2001 are shown further on in these notes.~~

ADDITIONAL STATE SECOND PENSION (CURRENTLY FORMERLY SERPS)

From 6 April 2002, the State Second Pension replaced the State Earnings Related Pension Scheme (SERPS). This provides a more generous additional state pension for low and moderate earners (particularly those earning less than about £10,000) and for certain carers and people with a long-term illness.

~~Only people in employment qualify for the State Earnings Related Pension Scheme (SERPS).~~ The ~~SERPS~~ State Second Pension is payable when you reach State pension age. It depends on your earnings while you were in employment and the ~~n~~National ~~i~~Insurance contributions you paid. ~~SERPS~~ The State Second Pension is paid in addition to the basic State Retirement Pension.

~~The government plans to change SERPS in 2002 and rename it the State Second Pension. This will give more help than SERPS to the lowest earners, particularly those earning less than about £10,000 a year.~~

Self-employed people do not qualify for the additional State Second pension (currently formerly SERPS).

GUARANTEED MINIMUM INCOME AND PENSION CREDIT

The current Minimum Income Guarantee (MIG) is a benefit that helps people with low incomes in retirement. MIG is means-tested. If you apply, the Department of ~~Social Security~~ for Work and Pensions (DWP) assesses your income and decides whether you get a top-up. If you qualify for a MIG top-up, or have an income just above the MIG level, you may also qualify for other benefits, such as housing benefit.

The ~~g~~Government has announced plans to introduce ~~a new~~ the Pension Credit from 2003, ~~that~~ which includes a guaranteed minimum income.

THE BASIC STATE RETIREMENT PENSION AND MIG RATES GIVEN HERE ARE THOSE ANNOUNCED BY THE GOVERNMENT ON 8 NOVEMBER 2000 AS APPLYING FROM APRIL 2001 IN THE TAX YEAR [*Insert current tax year*].

	Weekly	Monthly equivalent
One person	£72.50 [...]	£314.17 [...]
Man with dependent wife	£115.90 [...]	£502.23 [...]
Couples who have <i>both</i> paid full national insurance contribution	£72.50 [...] each	£314.17 [...] each
If you get the full MIG top-up, your income would rise to:		
Single person	£92.15 [...]	£399.32 [...]
Couple	£140.55 [...]	£609.05 [...]

How do I get more information on my State pensions?

Rates of State pensions and benefits change every year. These notes can only give you basic information about what is available. Other information you can get:

- A forecast of your State pensions by calling the Retirement Pension Forecasting and Advice Unit Team (RPFAT) on ~~0191 218 7585~~ 0845 300 0168 between 9am and 5pm. You can complete an application form over the phone or ask for the forecast form BR19 to be sent to you. Or you can write to:

RPFAT
The Pensions and Overseas Directorate Service
 Tyneview Park
 Whitley Road
 Newcastle upon Tyne
 NE98 1BA

You can also complete and send the form direct on the Internet at the ~~DSS~~ DWP website, www.dss.gov.uk www.dwp.gov.uk or send it by post in the normal way.

- There are changes to the State pension age which affect women born on or after 6 April 1950. Women born on or after 6 April 1955 will not get a State pension until age 65. For more information on these changes, see the ~~DSS~~ DWP guide *Pensions for women – Your guide* (PM6).
- The ~~DSS~~ DWP produces a series of guides that give basic information on pensions. You can get copies by calling the DWP Pensions Info-Line on 0845 731 3233. The line is open 24 hours a day and calls are charged at local rate. A textphone service is available on

0845 604 1210–0210. You can also order copies of these information guides on the Internet at ~~www.dss.gov.uk~~ www.dwp.gov.uk

Do I need to save more for my retirement?

You need to make your own judgment about whether State retirement pensions and any existing private pensions will be enough for you to live on when you retire.

Ask yourself:

- ***Roughly how much will I need to live on when I retire?***
- ***Is the basic State Retirement Pension likely to be enough for me?***
- ***Will I qualify for an additional pension through ~~SERPS~~ and the State Second Pension (formerly SERPS)?***
- ***Have I got any other private pensions, maybe from previous employers' schemes or from personal pension schemes? If so, how much income will they give me?***

Can I afford to contribute regularly to a stakeholder pension?

Before you answer this question, you should ask yourself:

- ***What are my other financial commitments?***
For example, mortgage repayments, rent, life assurance, and credit cards. Make sure you do your sums before using the decision trees.
- ***Would I be prepared, if necessary, to give up anything so that I can pay into a stakeholder pension?***
- ***Should I be thinking of other things first?***
For example, life assurance protection for me and my family, or building up some “rainy-day” cash savings.

Whatever you decide you can afford, think about increasing your contributions, especially when your earnings rise.

I can't afford to contribute much regularly—won't the MIG make my contributions a waste of money?_

What if I can't afford to contribute much regularly?

The government has said that it intends to ensure that all those who have saved already, or who wish to save in the future, can benefit from those savings when they retire.

To achieve this, the government has announced proposals to introduce a new Pension Credit which will overhaul the current MIG arrangements from 2003.

The proposals are designed to alter the present situation where those who have saved to build up a second pension to add to the basic State retirement pension, might be little or no better off than those who haven't saved.

The Government has announced proposals to introduce the Pension Credit, which will replace the current Minimum Income Guarantee arrangements from October 2003. The intention of Pension Credit is to ensure that all pensioners are entitled to a minimum income in retirement and that those with modest savings get some credit for having saved. This saving could be in the form of an occupational pension, a stakeholder or other personal pension, the State Second Pension or other savings.

The Pension Credit will now mean that, for most people, most of the time, it will pay to save. For a limited group of people, however, the decision will not be so clear-cut, and these people will have to think carefully about their personal circumstances. In particular, people in their fifties and over who have not been able to save much and have only a limited ability to save as they approach retirement should seek expert advice before they take out a stakeholder pension.

A lot depends on the final rules for Pension Credit and how it works out in practice. Of course, future governments can change State pensions and benefits at any time and it may be unwise to rely on any particular type or level being available when you retire.

Further information about the Pension Credit can be found on the DWP's web-site at www.dwp.gov.uk/publications/2001/index.htm

I can't afford to contribute much regularly – so what will I get from my stakeholder pension?

Stakeholder pensions allow contributions as low as £20. But, a regular monthly contribution of £20 will not produce a large pension when you retire. And the older you are when you start saving, the less time there will be for your pension fund to grow to something worthwhile. The tables in the decision trees will give you a fair idea of the pension you could get, depending on your age and contributions.

The figures in the tables, however, are only estimates and are not guaranteed. They are also shown before income tax. When you receive your pension during retirement you may be taxed on it.

The figures are calculated on the following basis:	
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% of fund a year
When you retire	
Annuity rates assume that the investment return after retirement is.....	5.5 2.4% a year <u>in excess of inflation</u>
(After a 4% charge has been deducted from your fund)	
Your pension increases <u>in line with inflation</u> . by.....	2.5% a year
Your spouse will receive half your pension on your death.	

What does contracting-out of the additional State Second pPension (~~currently~~ formerly SERPS) mean for me?

Everyone in employment earning above the lower earnings limit (a minimum level of earnings set by the Government for State benefit purposes) is automatically included in ~~SERPS~~ the State Second Pension unless they decide to leave it. The State Second Pension has now taken the place of SERPS. Leaving the State Second Pension This is called 'contracting-out'. If you contract-out, you give up ~~any SERPS~~ your State Second Pension entitlement and instead build up a replacement

for it in your own private pension arrangement ~~instead~~. The private pension ~~could~~ can be ~~an~~ your employer's pension scheme or your own stakeholder pension scheme or other personal pension.

Some employers' occupational pension schemes contract-out all scheme members automatically. Other employers' occupational schemes are 'contracted-in' and the scheme pensions ~~are~~ is paid on top of any ~~SERPS pensions~~ State Second Pension entitlement. If you are in one of these contracted-in schemes, you can still decide to contract-out on an individual basis with a personal pension or a stakeholder pension.

~~You can also decide to contract-out~~ If you are not a member of an your employer's occupational pension scheme but you have a personal pension or a stakeholder pension, you can use that pension arrangement to contract-out.

~~If you contract-out of SERPS this way~~ using a personal pension or a stakeholder pension, the Inland Revenue will pay a rebate ~~on~~ of your ~~national~~ insurance contributions into your private pension fund. The rebate is invested ~~along with your own pension contributions~~ and you build up a replacement pension for the ~~SERPS pension~~ State Second Pension given up.

~~With stakeholder and other personal pension schemes the government sets the rebate. The rebate that is paid into your pension scheme is set by the Government. The rebate is set to give a reasonable chance that the replacement pension will be at least as big as intended to provide benefits at around the same level as those you would have got if you had remained in SERPS the State Second Pension. There's no guarantee that you'll be better off by contracting-out but generally the younger you are and the more you are earning the more you stand to gain if you do contract-out.~~

Contracting-out is an important decision and you need to consider all the implications, particularly if you are around the age of 50. If you want help with your decision, you should consult a financial adviser. You may have to pay for this help. Or you can ask your ~~stakeholder scheme pension~~ provider for a comparison of the ~~SERPS pension~~ State Second Pension you'll be giving up and the possible replacement pension you might get from a private arrangement.

Deciding to contract-out in one tax year does not commit you to do the same in later years. In fact, it's a good idea to review your decision regularly. ~~You should do this, for example, when the State Second Pension starts in 2002.~~

What else do I need to check?

IF YOU ARE EMPLOYED

Employers' pension plans are always worth checking first as they usually provide extra benefits, such as added contributions from your employer or free life assurance.

You need to check:

- *Does your employer provide a pension plan?*
- *Are you a member of your employer's pension plan?*
- *If you are not a member, could you join now or later?*

If your employer does not provide a pension plan for you at the moment, ~~they may have to arrange for a stakeholder pension to be available to you by **October 2001**.~~ he or she may be required to give you access to a stakeholder pension scheme.

- *Ask your employer ~~if it is intended to arrange~~ he or she provides access to or will provide access to a new pension plan for staff as it might be better than a private pension you arrange yourself.*
- *Employers might agree to pay the stakeholder annual charge or make payments to your fund on top of your own contributions, but they don't have to.*

IF YOU ARE SELF-EMPLOYED

- *Are you contributing to a pension plan?*

If you have no pension to look forward to except the basic State Retirement Pension, you should consider setting up a personal pension, such as a stakeholder pension.

IF YOU HAVE NO FORM OF PAID EMPLOYMENT

- *Can you afford to contribute to a pension plan?*

You can now set up a ~~new~~ stakeholder pension. You can then benefit from tax relief on your contributions, even if you don't normally pay income tax.

EVERYBODY

Check on the pension plans you have contributed to in the past but no longer pay into today. You need to have some idea of the retirement income you might get from an old pension plan.

To check on the value of old pension plans, look at the most recent benefit statements you have been sent. If you cannot find any statements, contact the pension plan provider, for example the insurance company or the employer that offered the pension to you.

Alternatively, the Pension Schemes Registry provides a free tracing service. It can help you identify pension schemes you have belonged to in the past. To contact the Pensions Schemes Registry, phone them on 0191 225 ~~6393~~ 6316 and ask for a tracing request form or write to them at:

Pension Schemes Registry
PO Box 1NN
Newcastle upon Tyne
NE99 1NN

There is also an online form available at www.opra.gov.uk

AND FINALLY

You should consider getting advice if you're not sure that saving in a pension plan is right for you, or if you want to look at other ways of saving and investing for the long term.

If you are not sure what's the best thing for you to do, get help. The decision trees suggest some organisations that might be able to help you.

If you do decide that a stakeholder pension is a good choice for you, you should contact several firms selling stakeholder pensions and ask them for a brochure or a Key Features Document. The Key Features Document sets out important details about that particular firm's stakeholder pension.

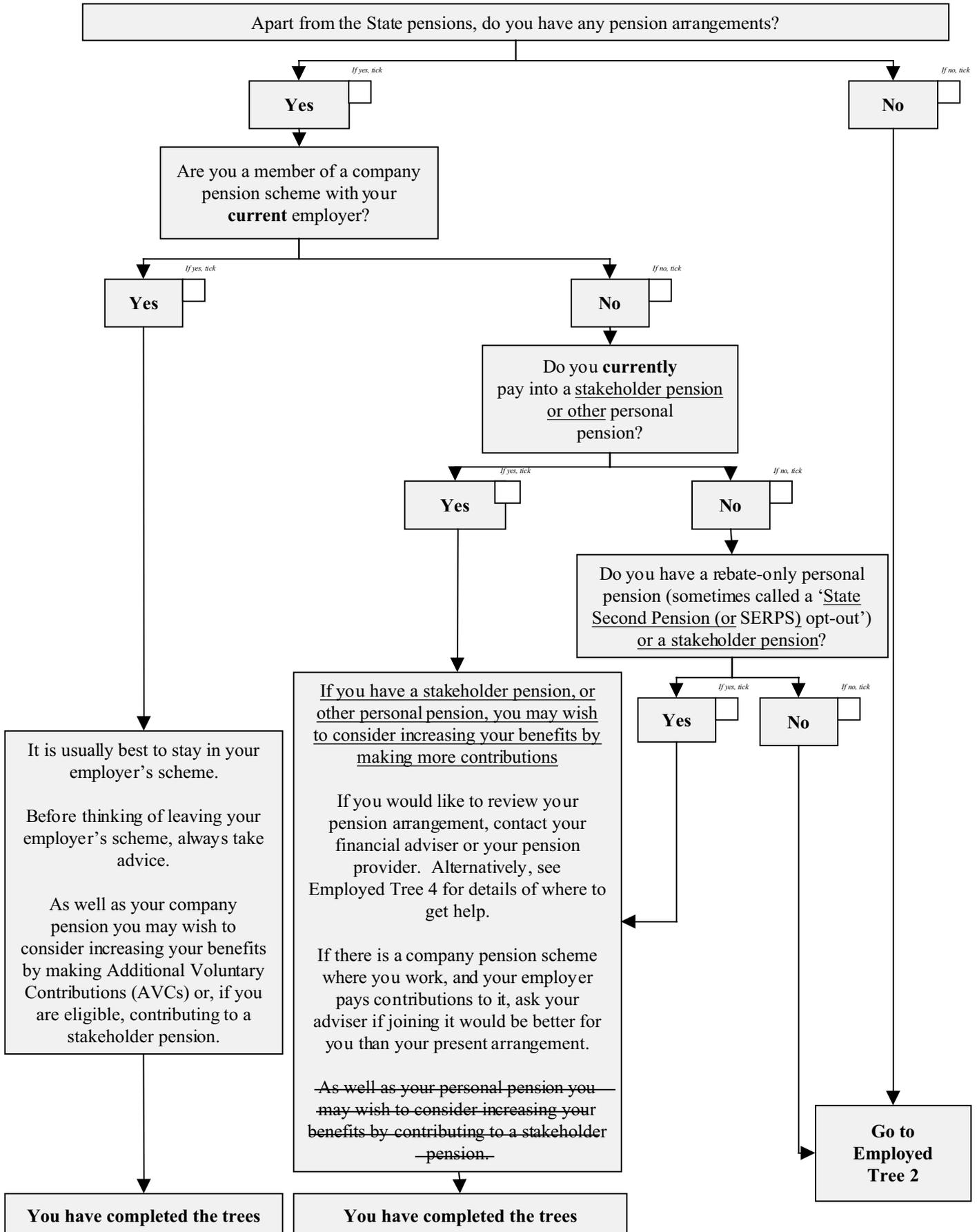
How to use the decision trees

- **These decision trees have been designed to help you decide whether a stakeholder pension would be a good choice for you. Please take the time to read and use them carefully, giving accurate answers to the questions. The decision you take will be your responsibility.**
- **There are three sets of decision trees. Make sure you use the right one. There is a different set of trees for:**
 - **Employed people**
 - **Self-employed people**
 - **People who are not employed**
- **When you are sure you have the right set of trees, start with 'tree 1' and work through the questions from the top of the page. Depending on your answers, you may only need to use the first tree or be asked to go to another tree in the set.**
- **Always work from the top of the page and tick the box for each question you answer.**
- **If the tree asks you about your present pension arrangements and you are not sure of the correct answer, find out the right information – don't guess.**
- **If the tree recommends you take advice, or if you are not sure what is right for you, then you should seek advice. You may have to pay for this advice.**

Some of the information used in these materials comes from sources outside the FSA and PIA. ~~Neither the FSA nor PIA~~ does not guarantee or warrant the accuracy of the information included in these materials, and does not accept any liability for errors or omissions. ~~Neither the FSA nor PIA~~ shall not be liable for any damages arising ~~in contract, tort or otherwise~~ from any action or decision taken as a result of using these materials or any of them.

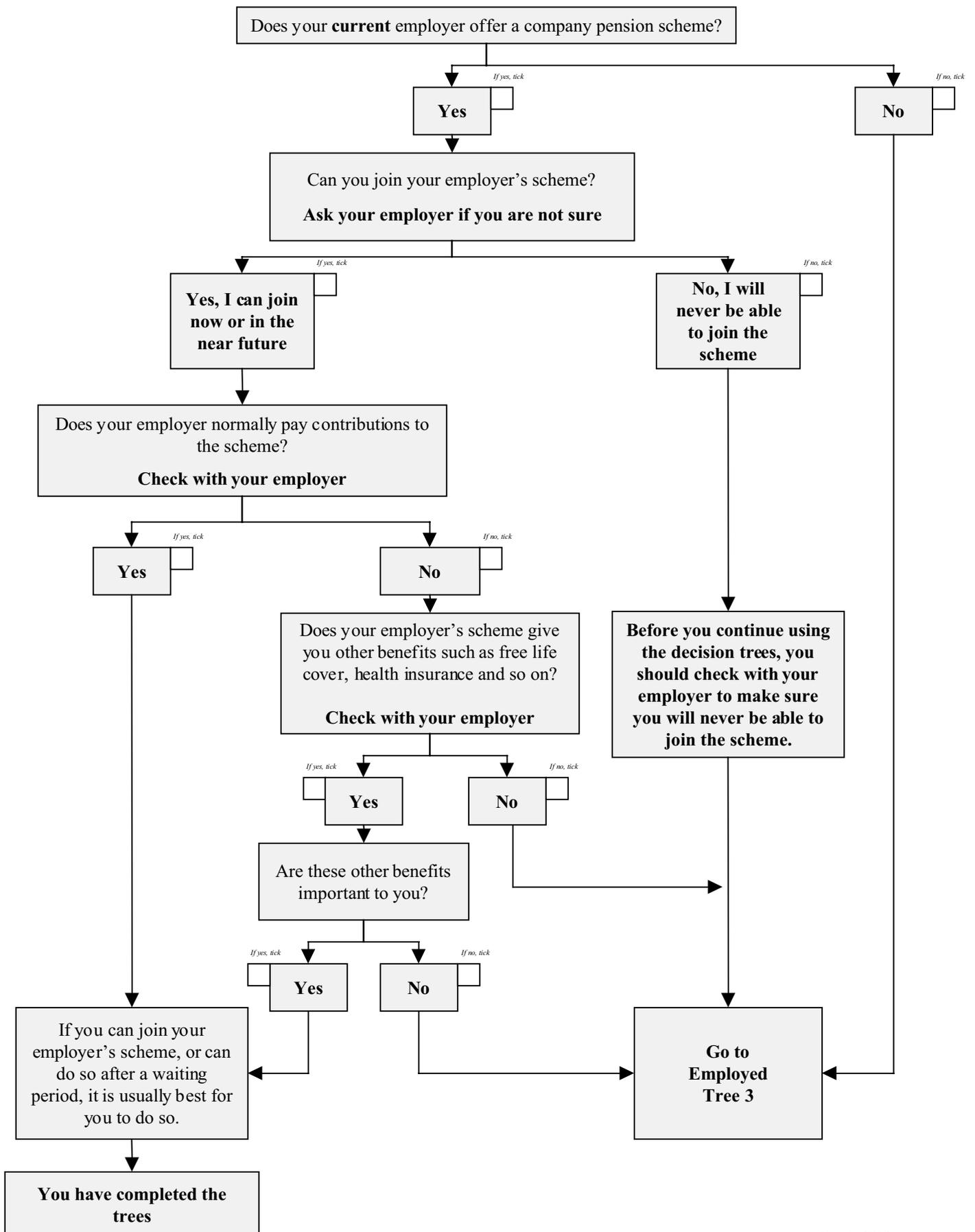
The decision tree is intended to help you make your own choice about your pension arrangements. It does not give you financial or professional advice and you should not regard it as doing so. You should get help if you require advice.

Employed Tree 1 – Current pensions



The decision tree 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.

Employed Tree 2 – No current pension



The decision tree 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.

Employed Tree 3 – 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. When you retire, 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	£133	£94	£333	£236	£667	£473	£1,334	£947
	£154	£108	£386	£272	£772	£544	£1,544	£1,089
25	£107	£75	£269	£188	£538	£376	£1,076	£753
	£124	£86	£310	£215	£620	£431	£1,240	£863
30	£85	£58	£214	£147	£428	£294	£857	£588
	£98	£67	£245	£168	£491	£336	£983	£672
35	£67	£44	£167	£112	£335	£224	£670	£448
	£76	£50	£191	£127	£382	£254	£765	£509
40	£51	£32	£127	£82	£255	£164	£511	£329
	£57	£37	£144	£92	£289	£185	£579	£371
45	£37	£22	£94	£56	£188	£113	£376	£227
	£42	£25	£105	£63	£211	£127	£422	£254
50	£26	£13	£65	£34	£130	£69	£260	£139
	£28	£15	£72	£38	£144	£77	£289	£155
55	£16	£6	£40	£16	£80	£32	£160	£64
	£17	£7	£44	£17	£88	£35	£176	£71
60	£7		£18		£37		£74	
	£8		£20		£40		£81	

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

Consider starting a stakeholder pension or restart making contributions to a stakeholder pension. Check if your employer has designated a particular stakeholder pension.

If in doubt seek help from an expert adviser. See Employed Tree 4 for details.

You have completed the trees

No, I can't find the pension I need or I can't afford the contribution

If no, tick

For details of where to get further help, Go to Employed Tree 4

The decision tree 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.

Employed Tree 4 – Where do I go from here?

DO YOU NEED FURTHER HELP?

You may need to get further help, particularly if you are in one or more of the following situations:

- You already have a pension arrangement and want to review your situation.
- Your personal circumstances do not seem to fit the questions in the decision trees.
- You wish to get advice that takes account of all your personal circumstances.
- You are not sure how to answer some of the questions in the decision trees.
- You are not sure if you are making the right decision.
- You feel you cannot afford to save for retirement.

WHERE TO GET FURTHER HELP

You can get help from a number of sources.

You could contact ~~the Stakeholder Pensions Telephone~~ the OPAS Pensions Helpline provided by the Pensions Advisory Service on 0845 6012923.

You can also visit their website at www.stakeholderhelpline.org.uk

They will be able to give you more information about your options.

This information is free but your call will be charged at local rates.

If you already have a financial adviser, you may want to speak to them about your retirement needs. If you do not have a financial adviser but want to talk to one, the following organisations can help:

Association of Independent Financial Advisers: 020 7628 1287

IFA Promotions: ~~0117 971 1177~~ 0800 085 3250 (for a list of three independent financial advisers local to your area)

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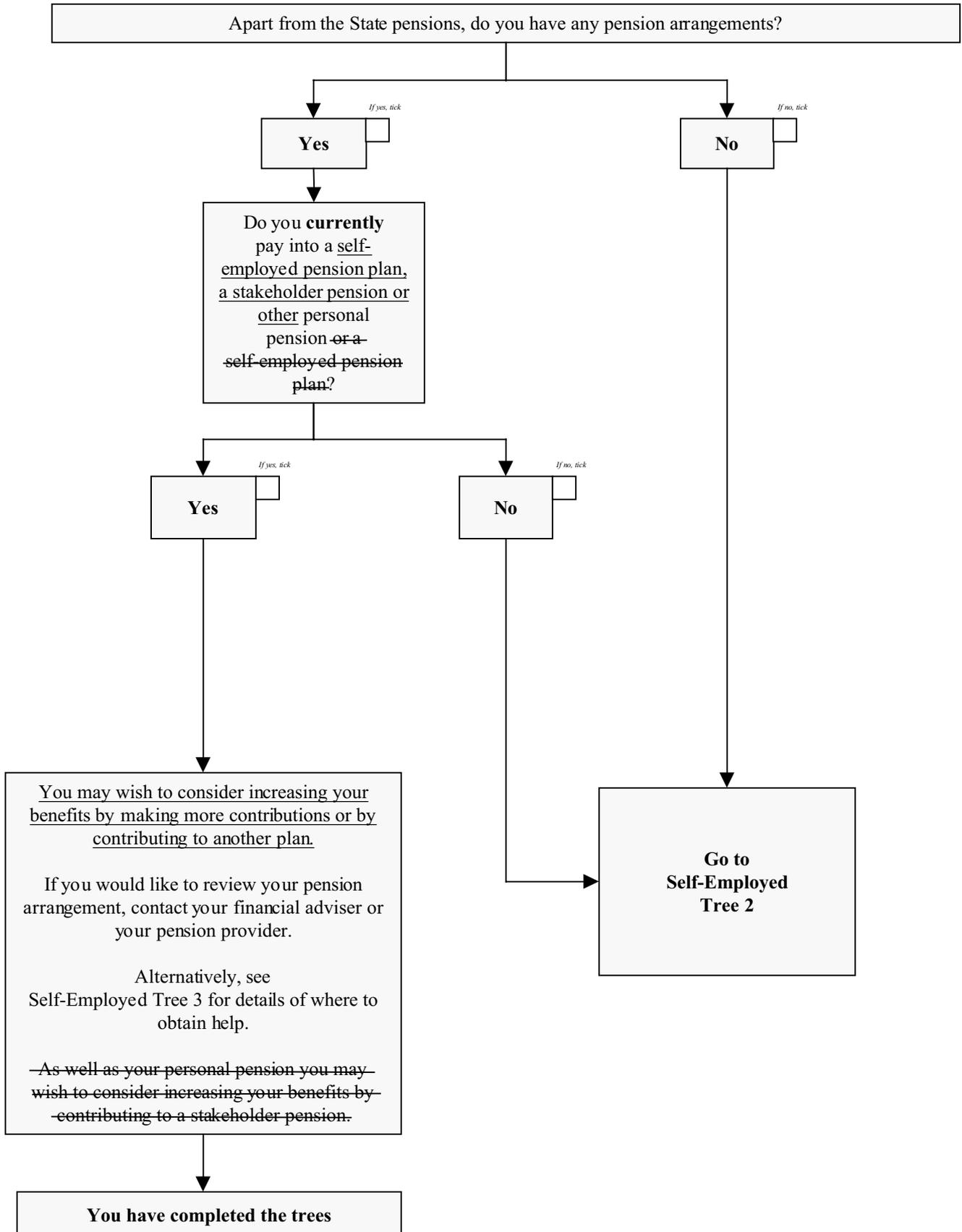
Solicitors for Independent Financial Advice: 01372 721172

Alternatively, contact the pension provider of your choice.

Please note that advisers may charge for any help or advice they give you.

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Self-employed Tree 1 – Current pensions



The decision tree 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.

Self-employed Tree 2 – 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. When you retire, 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	£133 £154	£94 £108	£333 £386	£236 £272	£667 £772	£473 £544	£1,334 £1,544	£947 £1,089
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55	£16 £17	£6 £7	£40 £44	£16 £17	£80 £88	£32 £35	£160 £176	£64 £71
60	£7 £8		£18 £20		£37 £40		£74 £81	

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

Consider starting a stakeholder pension or restarting contributions to a stakeholder pension.

If in doubt seek help from an expert adviser. See Self-Employed Tree 3 for details.

You have completed the trees

If no, tick

No, I can't find the pension I need or I can't afford the contribution

For details of where to get further help, Go to Self-Employed Tree 3

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Self-employed Tree 3 – Where do I go from here?

DO YOU NEED FURTHER HELP?

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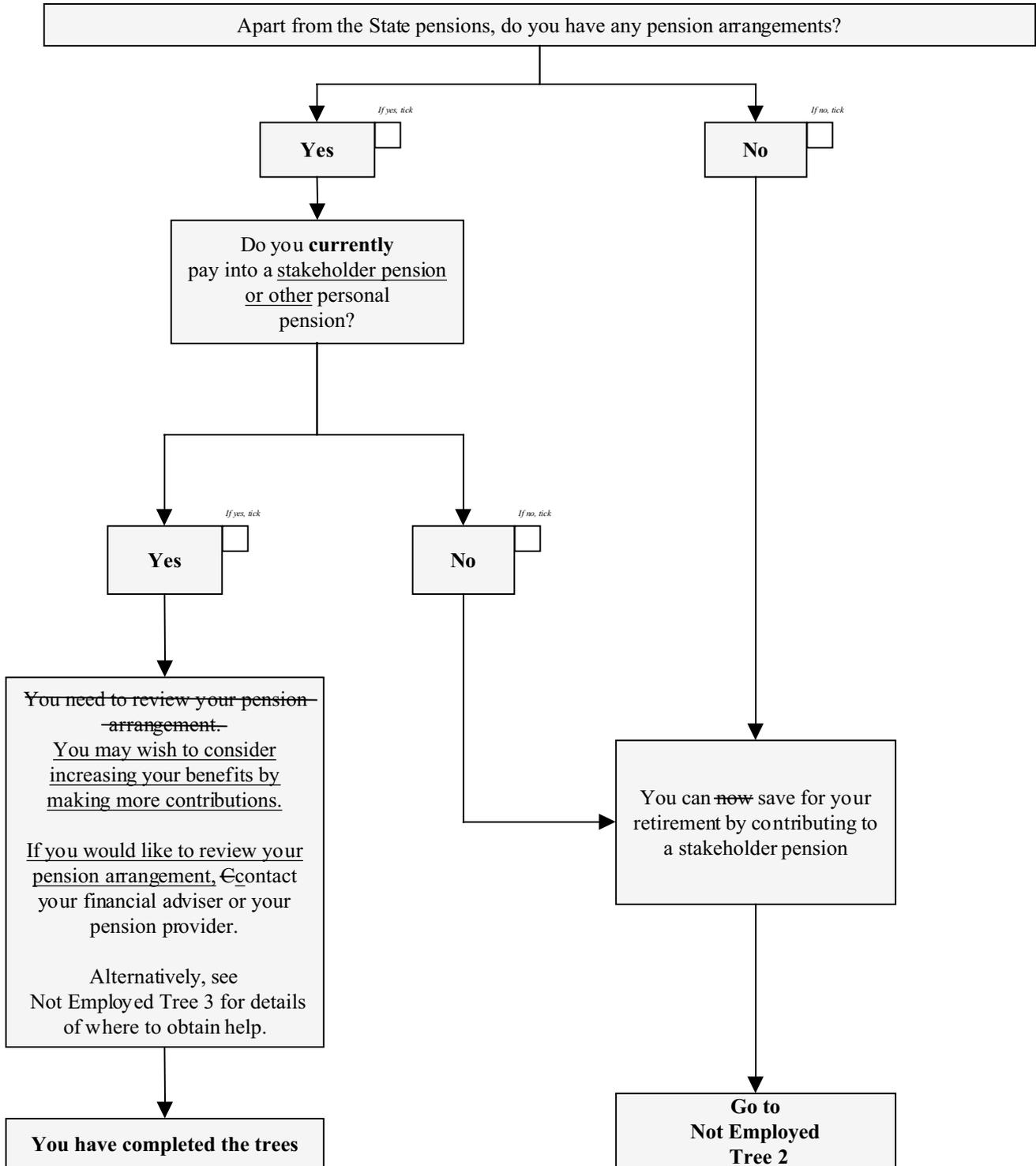
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Not employed Tree 1 – Current pensions



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Not employed Tree 2 – 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. When you retire, your pension will increase in line with inflation.

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	£8		£20		£40		£81	

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

Consider starting a stakeholder pension or restarting contributions to a stakeholder pension.

If in doubt seek help from an expert adviser. See Not Employed Tree 3 for details.

You have completed the trees

If no, tick

No, I can't find the pension I need or I can't afford the contribution

For details of where to get further help, Go to Not Employed tree 3

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Not employed Tree 3 – Where do I go from here?

DO YOU NEED FURTHER HELP?

You may need to get further help, particularly if you are in one or more of the following situations:

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Solicitors for Independent Financial Advice: 01372 721172

Alternatively, contact the pension provider of your choice.

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ELECTRONIC COMMERCE DIRECTIVE INSTRUMENT 2002

Powers exercised

A The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:

- (1) section 138 of the Financial Services and Markets Act 2000 ("the Act") as supplemented by regulation 3 of the Electronic Commerce Directive (Financial Services and Markets Act) Regulations 2002 (S.I. 2002/1775);
- (2) sections 149 (Evidential provisions) and 157 (Guidance); and
- (3) the rule-making powers listed in Schedule 4 to the General Provisions (GEN).

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

Commencement

C This instrument comes into force on 21 August 2002.

E-Commerce Directive sourcebook

D The Financial Services Authority makes the rules and gives the guidance in Annex A to this instrument (E-Commerce Directive sourcebook).

Amendments to the FSA Handbook

E 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)
COB	Annex B
AUTH	Annex C
ENF	Annex D
EMPS	Annex E
FREN	Annex F
OMPS	Annex G
SERV	Annex H
Glossary	Annex I
GEN	Annex J

Remaking of the General provisions and Glossary

F GEN 2 (Interpreting the Handbook), other than GEN 2.1.8 R, and the Glossary are made under the power at paragraph A(1) above (in addition to the powers under which they are already made).

Citation

G This instrument may be cited as the Electronic Commerce Directive Instrument 2002.

H Annex A to this instrument may be cited as the E-Commerce Directive sourcebook (or ECO).

By order of the Board
18 July 2002

Amended by Addendum
19 October 2004

Annex A

E-Commerce Directive sourcebook (ECO)

ECO TP1 Transitional Provisions

1 Table

(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
1.0	Every <i>rule</i> (including <i>evidential provision</i>) in <i>ECO</i>	R	Until 20 November 2002, an <i>electronic commerce activity service provider</i> will not contravene any provision in <i>ECO</i> to the extent that it has taken reasonable steps to comply with that provision.	21 August 2002 until 20 November 2002	21 August 2002
2.0	Every <i>rule</i> (including <i>evidential provision</i>) in <i>ECO</i>	R	Where a <i>rule</i> in <i>ECO</i> refers to another <i>rule</i> in the <i>Handbook</i> , it means that <i>rule</i> subject to any applicable transitional provisions.	With effect from 21 August 2002	21 August 2002
3.0	Every <i>rule</i> (including <i>evidential provision</i>) in <i>ECO</i>	G	As an example of the effect of 2.0 R, references in <i>ECO</i> 1.2.9E to provisions of <i>COB</i> 6 have the benefit of applicable transitional relief under the <i>COB</i> transitional rules.	With effect from 21 August 2002	21 August 2002

CHAPTER 1: INCOMING ECA PROVIDERS

1.1 Application and purpose

Application

- 1.1.1 R This chapter applies to an *incoming ECA provider*, with respect to:
- (1) the carrying on of an *electronic commerce activity*;
 - (2) from an *establishment* in an *EEA State* other than the *United Kingdom*; and
 - (3) with or for a *UK ECA recipient*.

Purpose

- 1.1.2 G *ECO* as a whole operates against the background of a key element of the *E-Commerce Directive*, namely the freedom of *ECA providers* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. An *incoming ECA provider* has to comply with the applicable laws in the *country of origin* from which the service is provided, and not the laws in the place where the *consumer* is located, subject to derogations from that principle. The applicable *UK* rules under those derogations are set out, or referred to, in this chapter.
- 1.1.3 G This freedom is conferred on *incoming ECA providers* by the *ECD Regulations*, and is carried forward by this chapter and other provisions of the *FSA's Handbook* to which this chapter refers. However, this freedom is qualified by certain other rules in this chapter. These rules are based either on the 'consumer contract derogation' or on the 'insurance derogation', which give *Host States* continuing responsibility for consumer protection in certain areas. Both derogations are set out in the Annex to the directive.
- 1.1.4 G This chapter applies only in relation to *electronic commerce activities* provided to a *UK ECA recipient*. *ECO* 1.2 (Provision of essential information to consumers) applies in relation to *electronic commerce activities* supplied to a *UK ECA recipient* who is a *consumer*. *ECO* 1.3 (Provision of insurance services) applies in relation to relevant services provided to a *UK ECA recipient*, whether or not the recipient is a *consumer*.
- 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 outlines the derogation power and the *FSA's* policy on its use in relation to *incoming ECA providers*.

Application of other parts of the Handbook

- 1.1.6 R Except for the provisions set out in *ECO 1.1.10 R*, the *Handbook* does not apply to an *incoming ECA provider* with respect to the carrying on of *incoming electronic services activities*.
- 1.1.7 G Notwithstanding the provisions of the *E-Commerce Directive*, an *incoming ECA provider's Home State* (when different from its *country of origin*) will continue to have certain responsibilities, such as prudential supervision of that provider and its *branches* and ensuring that it has the appropriate compensation scheme as required by Community law. As such, an *incoming ECA provider*, that is an *authorised person*, is subject to the relevant parts of the *Handbook*. This means that an *incoming ECA provider* that is an *EEA branch* of a *UK firm* is subject to, for example, *IPRU* and *COMP* continues to be relevant to its activities.
- 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 13*).
- 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 *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 Table Handbook provisions applicable to, or relevant for, incoming ECA providers

This Table belongs to *ECO 1.1.7 R*

Provision	Description
<i>ECO 1</i>	E-Commerce Directive sourcebook
<i>MAR 1</i>	The Code of Market Conduct
<i>DEC</i> (if the <i>incoming ECA provider</i> is <i>authorised</i>)	Decision making by the FSA
<i>AUTH 1.2.6 G</i> , <i>AUTH 2.4.3 G</i> , <i>AUTH 2.4.7 G</i> , <i>AUTH 2.8.2 G - 2.8.15 G</i> , <i>AUTH 2.9.1 G</i> , <i>AUTH 2.9.18 G</i> , <i>AUTH 5.1.1 G - 5.1.2 G</i> , <i>AUTH 5.6.5 G</i> , <i>AUTH 5 Ann 3G</i>	Authorisation guidance
<i>ENF</i>	Enforcement guidance

<i>SERV</i> 1.2.2 G	Service companies guidance
<i>OMPS</i> 1.2.2 G	Oil market participants guidance
<i>EMPS</i> 1.2.3 G	Energy market participants guidance
<i>FREN</i> 1.2.2 G	Small friendly societies guidance
<i>GEN</i> 2	Interpreting the Handbook
<i>COAF</i>	Complaints against the FSA
<i>SUP</i> 8	Waivers and modification of rules
<i>SUP</i> 9	Individual guidance
<i>SUP</i> 14 (if the <i>incoming ECA provider</i> is <i>authorised</i>)	EEA firms change of details
Any reference in <i>SUP</i> 8 to a <i>firm</i> should be taken to include a reference to an <i>unauthorised incoming ECA provider</i> .	

1.2 Provision of essential information to consumers

Requirement to provide essential information

- 1.2.1 R Before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* must supply the recipient with *essential information* in English relevant to the contract.
- 1.2.2 G *ECO* 1.2.1 R requires an *incoming ECA provider* to provide a *consumer* with *essential information*, as envisaged by the *E-Commerce Directive*. *ECO* 1.2.6 E and *ECO* 1.2.7 E suggest that an *incoming ECA provider* should meet this requirement in one of two ways:
- (1) *ECO* 1.2.6 E gives an *incoming ECA provider* the option of complying with relevant *UK Host State* requirements relating to the provision of *essential information*; or
 - (2) alternatively, *ECO* 1.2.7 E allows an *incoming ECA provider* to comply with requirements imposed by its *country of origin* which correspond to those of the *United Kingdom*.

Exceptions: insurance

- 1.2.3 R *ECO* 1.2.1 R does not apply to an *insurer* with respect to *insurance business*, where the activity:

- (1) is carried on by an *insurer* which has received official authorisation in accordance with article 6 of the *First Life Directive* or the *First Non-Life Directive*; and
- (2) falls within the scope of the *Insurance Directives*;

but the *insurer* must instead comply with *ECO* 1.3.1 R.

Exceptions: deposits, general insurance contracts, pure protection contracts and re-insurance

1.2.4 R (1) *ECO* 1.2.1 R does not apply to an *incoming ECA provider* with respect to an *electronic commerce activity* relating to:

- (a) a *deposit* (other than a *cash deposit ISA*); or
- (b) (if *ECO* 1.2.3 R does not apply) a *general insurance contract, pure protection contract* or reinsurance contract;

but, instead, the *incoming service provider* must comply with (2).

(2) Before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* must indicate to the recipient whether the contract falls within the jurisdiction of:

- (a) any dispute resolution scheme operating in the *EEA*; and
- (b) in the case of services within (1)(b), any compensation scheme operating in the *EEA*;

and, if either or both of (a) and (b) apply, must identify each such scheme.

1.2.5 G *ECO* 1.2.4 R (2)(b) does not require a deposit taking *incoming ECA provider* to mention a deposit guarantee scheme, but its *Home State* will require it to do so in accordance with the *Deposit Guarantee Directive*.

Provision of essential information to consumers: UK requirements

1.2.6 E (1) In order to comply with *ECO* 1.2.1 R, before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* should comply with the following UK requirements:

- (a) in every case where *COB* 6.2 (Provision of key features) or *COB* 6.4 (Product disclosure: special situations) would require the provision of *key features*, provide the information identified in the *rules* listed in at *ECO* 1.2.9 E;

- (b) when it *communicates* a *specific non-real time financial promotion*, *ECO 1.2.10 E* and *ECO 1.2.11 E* (Essential information: specific non-real time financial promotions);
 - (c) when it *communicates* a *direct offer financial promotion*, provide the information identified in the *rules* listed in *ECO 1.2.12 E*; and
 - (d) where relevant, *ECO 1.2.13 E* and *ECO 1.2.14 E* (Essential information: direct offer financial promotion of higher risk products).
- (2) The requirements in (1)(a) and (c) only apply to the extent that they would apply to a *firm* carrying on business from an *establishment* in the *United Kingdom* with or for the *UK ECA recipient*.
 - (3) The requirements in (1)(b) apply subject to the exemptions in *COB 3.2.5* (exemptions).

Provision of essential information to consumers: country of origin requirements

1.2.7 E If an *incoming ECA provider* engages in conduct which is in conformity with provisions:

- (1) corresponding to the *UK* requirements set out in *ECO 1.2.6 E* (1); and
- (2) made by a body or authority in an *EEA State* other than the *United Kingdom*;

that conduct is to be treated as conduct in conformity with those *UK* requirements.

Effect of compliance with ECO 1.2.6 E (UK requirements) or ECO 1.2.7 E (country of origin requirements)

- 1.2.8 E (1) Compliance with *ECO 1.2.6 E* (1), directly or through engaging in conduct as set out in *ECO 1.2.7 E*, may be relied on as tending to establish compliance with *ECO 1.2.1 R*.
- (2) Contravention of *ECO 1.2.6 E* (1) (including failure to engage in conduct as set out in *ECO 1.2.7 E*) may be relied on as tending to establish contravention of *ECO 1.2.1 R*.

Provision of essential information: key features

1.2.9 E Table Provision of essential information to consumers: key features

This table belongs to *ECO* 1.2.6 E (1)(a)

COB rule	Description
<i>COB</i> 6.5.15 R	Projections: an example
<i>COB</i> 6.5.19 R (1)	Projections: an example
<i>COB</i> 6.5.19 R (3)	Projections: an example
<i>COB</i> 6.5.40 R (1)(a) and (c)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (3)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (4) (a) - (g), (i) - (p)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (5) (a) - (b), (d) - (g)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.40 R (6)	Further information for life policies, schemes, insurance or equity ISAs, PEPs or stakeholder pension schemes
<i>COB</i> 6.5.42 R (3) - (10), (12) - (14)	Information requirements for cash deposit ISAs, friendly society tax-exempt policies, traded life policies and broker funds
<i>COB</i> 6.5.43 R	Friendly society tax exempt policies
<i>COB</i> 6.5.44 R	Traded life policies

Provision of essential information to consumers: specific non-real time financial promotions

1.2.10 E An *incoming ECA provider* should ensure, when it *communicates a specific non-real time financial promotion* to a *UK ECA recipient* who is a *consumer*, that the *financial promotion* includes:

- (1) a description of:
 - (a) the main features of the product or service;
 - (b) the total price to be paid by the *consumer* under the contract, including all related *fees, charges* and expenses or, if this cannot be given, the basis for the calculation of the price;
 - (c) any risks associated with the specific features of the contract; and
- (2) the name and address or contact point of the *person* with whom the *consumer* would enter into a contract.

1.2.11 E An *incoming ECA provider* should ensure, when it *communicates* a *specific non-real time financial promotion* to a *UK ECA recipient* who is a *consumer*, that any *essential information* provided to the *consumer* about the past performance of *specified investments* or of a *firm* includes, where relevant to the contract, a statement to the effect that past performance should not be seen as an indication of future performance.

Provision of essential information to consumers: direct offer financial promotions

1.2.12 E Table Provision of essential information to consumers in direct offer financial promotions

This Table belongs to *ECO* 1.2.6 E (1)(c)

COB rule	Description
<i>COB</i> 3.9.7 R (5)	Direct offer financial promotions: particular information required
<i>COB</i> 3.9.12 R (1)	Execution-only dealing services
<i>COB</i> 3.9.15 R (1)	Investments which can fluctuate in value
<i>COB</i> 3.9.18 R	Life policies
<i>COB</i> 3.9.21 R (1) (a)	Cancellation rights
<i>COB</i> 3.9.21 R (1) (c)	Cancellation rights
<i>COB</i> 3.9.23 R	Charges for regulated collective investment schemes

Provision of essential information to consumers: direct offer financial promotion of higher risk products

- 1.2.13 E (1) An *incoming ECA provider* should ensure, when it communicates a *direct offer financial promotion* relating to:
- (a) an *unregulated collective investment scheme*; or
 - (b) a *derivative*; or
 - (c) a *warrant*; or
 - (d) a *broker fund*;

that the *UK ECA recipient*, if a *consumer*, is provided with the *essential information* set out in the table in ECO 1.2.14 E (1), in the case of an *unregulated collective investment scheme*, (2) in the case of a *derivative*, (3) in the case of a *warrant* and (4) in the case of a *broker fund*.

- (2) An *incoming ECA provider* should ensure that the *essential information* required by (1) is included in the *direct offer financial promotion* in a manner that will bring it to the attention of the *consumer*.

1.2.14 E Table Provision of essential information to consumers: direct offer financial promotion of higher risk products

This table belongs to *ECO* 1.2.13 E

Product	Essential information required
(1) <i>Unregulated collective investment schemes</i>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <ul style="list-style-type: none"> (i) the product is not regulated and may have a complex structure; (ii) it may not be possible for the <i>consumer</i> to redeem his <i>units</i> or <i>shares</i> within a reasonable time after purchase; (iii) the <i>redemption price</i> may not directly reflect the value of the underlying assets; and (iv) consequently, the risks associated with this product are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the product.
(2) <i>Derivatives (including spread bets)</i>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <ul style="list-style-type: none"> (i) the value of the <i>investment</i> may change significantly at short notice; (ii) it may expose the <i>consumer</i> to the risk of a loss greater than the amount originally invested (if this is the case); (iii) it may expose the <i>consumer</i> to the risk of losing the entire amount invested (if this is the case); and (iv) consequently, the risks associated with this instrument are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the product.
(3) <i>Warrants</i>	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <ul style="list-style-type: none"> (i) the value of the <i>investment</i> may change

	<p>significantly at short notice;</p> <p>(ii) it may expose the <i>consumer</i> to the risk of losing the entire amount invested (if this is the case); and</p> <p>(iii) consequently, the risks associated with this product are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the <i>investment</i>.</p>
(4) Broker funds	<p>Information about risks associated with the specific features of the contract, in particular that:</p> <p>(i) <i>broker funds</i> are potentially complex and risky products;</p> <p>(ii) in particular, the <i>charges</i> may be complex and give rise to conflicts of interest; and</p> <p>(iii) consequently, the risks associated with this product are such that it may be difficult for the <i>consumer</i> to assess the benefits and drawbacks of the product.</p>

1.3 Provision of insurance services

1.3.1 R *ECO* 1.2.1 R (Requirement to provide essential information) does not apply to an *insurer* with respect to *insurance business* where the activity:

- (1) is carried out by an *insurer* which has received official authorisation in accordance with article 6 of the *First Life Directive* or the *First Non-Life Directive*; and
- (2) falls within the scope of the *Insurance Directives*;

but instead such an *insurer* must comply with the provisions of *COB* set out in Table in *ECO* 1.3.3 R when it deals with a *UK ECA recipient*.

1.3.2 G The ‘insurance derogation’ set out in the Annex to the *E-Commerce Directive* allows the *United Kingdom*, as a *Host State*, to continue to apply its own local rules to an insurer, where the latter is providing an *electronic commerce activity* to a *UK ECA recipient*, in circumstances where these *Host State* rules fall within the scope of any of the *Insurance Directives*. Against this background, the *FSA* believes it is appropriate that certain of the requirements of *COB* 3 (Financial promotion) and *COB* 6 (Product disclosure and the customer’s right to

cancel or withdraw) should continue to apply to the provision of these services.

1.3.3 R Table Provision of insurance services

This table belongs to *ECO* 1.3.1 R

The following provisions (of COB):	Description
<i>COB</i> 3 (entire chapter)	Financial promotion
<i>COB</i> 6.1	Packaged product and ISA disclosure
<i>COB</i> 6.2	Provision of key features
<i>COB</i> 6.4	Product disclosure: special situations
<i>COB</i> 6.5 (except <i>COB</i> 6.5.40 R(1)(b), <i>COB</i> 6.5.47 R, <i>COB</i> 6.5.48 G and <i>COB</i> 6.5.49 R)	Content of key features
<i>COB</i> 6.6	Projections

1.3.4 G The *COB rules* set out in *ECO* 1.3.3 do not include *COB rules* that implement mandatory provisions from the *Insurance Directives*, such as those provisions in Annex II to the *Third Life Directive*, as these fall outside the scope of the insurance derogation in the *E-Commerce Directive* and must be implemented by an *incoming ECA provider's country of origin*.

1.3.5R Any information provided by an *incoming ECA provider* that is an *insurer* to a *UK ECA recipient* must be provided in English.

CHAPTER 2 OUTGOING ECA PROVIDERS

2.1 Application and purpose

Application

2.1.1 R *ECO 2 applies to an outgoing ECA provider.*

Purpose

- 2.1.2 G
- (1) The main purpose of this chapter is to implement the provisions of the *E-Commerce Directive* as these apply to *firms* regulated by the *FSA*.
 - (2) The purpose of *ECO 2.2* (Modification of the content and territorial scope of *COB*) is to ensure that an *outgoing ECA provider*, in complying with *COB*, is able to disregard any provision of *COB* which is included in the 'consumer contract derogation' or 'insurance derogation' (set out in the Annex to the *E-Commerce Directive*), when dealing with an *EEA ECA recipient* who is a *consumer*.
 - (3) *ECO 2.2* also extends the territorial scope of *COB 3* (Financial promotion) to communications made by an *outgoing ECA provider* to an *EEA ECA recipient*, whether or not the recipient is a *consumer*.
 - (4) *ECO 2.3* (Minimum information requirements) imposes the information requirements of the *E-Commerce Directive* on *firms* when they carry on an *electronic commerce activity* with an *EEA ECA recipient* from a *UK establishment*, whether or not the recipient is a *consumer*. These requirements are in addition to the requirements otherwise applicable to *firms* when they carry on a *regulated activity*.

2.2 Modification of the content and territorial scope of *COB*

Lifting of rules included in the derogations

2.2.1 R In relation to an *electronic commerce activity* carried on from an *establishment* in the *United Kingdom* with or for an *EEA ECA recipient* who is a *consumer*, an *outgoing ECA provider* is not required to comply with any of the provisions mentioned in *ECO 1.2.6 E 1(a)* and *1(c)* (essential information) or, if it is an *insurer* carrying on *insurance business* falling within the scope of the *Insurance Directives*, *ECO 1.3.3 R*.

2.2.2 G The provisions mentioned in *ECO 1.2.6 E 1(a)* and *1(c)* and *ECO 1.3.3 R* are those that the *United Kingdom*, as a *Host State*, applies to *incoming ECA providers* under the 'consumer contract derogation' and 'insurance derogation' respectively. A corollary of this approach is that these provisions are disappplied to an *outgoing ECA provider* when it

provides *electronic commerce activities* to an *EEA ECA recipient* who is a *consumer*. The provisions at *ECO 1.2.6 E (1)(b)* and *(1)(d)* do not apply to an *outgoing ECA provider* in any event.

Financial promotion

- 2.2.3 R (1) An *outgoing ECA provider* must comply with *COB 3* (Financial promotion) as if every *EEA ECA recipient* were a *UK ECA recipient*.
- (2) Accordingly, (1) overrides *COB 3.3* (Application: where?).
- (3) But (1) is subject to *ECO 2.2.1 R*, which disapplies certain rules applicable to *incoming ECA providers* when dealing with *consumers*.
- 2.2.4 G The effect of *ECO 2.2.3 R* is to apply the whole of *COB 3*, where relevant, to communications made by an *outgoing ECA provider* to an *EEA ECA recipient*, except those provisions of *COB 3* identified in *ECO 2.2.1 R*. (See *ECO 2.2.2 G* for an explanation of this approach.)

2.3 Minimum information requirements

- 2.3.1 R When providing *electronic commerce activities* to an *EEA ECA recipient*, an *outgoing ECA provider* must comply with the requirements set out in *ECO 3 Ann 1 R (1)*, *(2)* and, if it is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*), *(3)*.
- 2.3.2 G *ECO 3 Ann 1 R* implements provisions contained in the *E-Commerce Directive*, as follows:
- (1) *ECO 3 Ann 1 R (1)* implements articles 5 (except paragraph 1(f)), 6 and 10 of the directive; these provisions require certain information to be provided by an *outgoing ECA provider* before any contract is entered into;
 - (2) *ECO 3 Ann 1 R (2)* implements article 11 of the directive, which relates to matters arising after the contract has been entered into; and
 - (3) *ECO 3 Ann 1 R (3)* implements article 5.1(f) of the directive; these requirements apply where the *outgoing ECA provider* is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*); this Annex will therefore mainly be relevant to *firms* which are solicitors, accountants, or actuaries.

CHAPTER 3 DOMESTIC (AND NON-EEA) ECA PROVIDERS

3.1 Application and purpose

Application

3.1.1 R This chapter applies to a *domestic ECA provider*.

Purpose

3.1.2 G The main purpose of this chapter is to implement the provisions of the *E-Commerce Directive* as these affect *firms* regulated by the *FSA*. In particular, this chapter imposes the information requirements of the *E-Commerce Directive* on *firms* when they carry on an *electronic commerce activity* with an *ECA recipient* who is in the *United Kingdom* or located outside the *EEA*. These requirements are in addition to the requirements otherwise applicable to *firms* when they carry on a *regulated activity*.

3.1.3 G Accordingly, *ECO 3.2.1 R* requires a *domestic ECA provider* to supply minimum information to an *ECA recipient* regardless of the recipient's location.

3.2 Minimum information requirements

3.2.1 R In relation to an *electronic commerce activity* carried on from an *establishment* in the *United Kingdom* with or for a *UK ECA recipient*, or an *ECA recipient* in a non-*EEA State*, a *domestic ECA provider* must comply with the requirements set out in *ECO 3 Ann 1 R* (1), (2) and, if it is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*), (3).

3.2.2 G *ECO Ann 1 R* implements provisions contained in the *E-Commerce Directive* as follows:

- (1) *ECO 3 Ann 1 R* (1) implements articles 5 (except paragraph 1(f)), 6 and 10 of the directive; these provisions require certain information to be provided by a *domestic ECA provider* before any contract is entered into;
- (2) *ECO 3 Ann 1 R* (2) implements article 11 of the directive, which relate to matters arising after the contract has been entered into; and
- (3) *ECO 3 Ann 1 R* (3) implements article 5.1(f) of the directive; these requirements apply where a *domestic ECA provider* is a *professional firm* (or a *person* that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*); this annex is therefore mainly relevant to *firms* which are solicitors, accountants, and actuaries.

3.2.3 G In contrast to an *outgoing ECA provider* (see *ECO 2.2.1 R*), a *domestic ECA provider* is not relieved of the obligation to comply with the *COB* requirements specified in *ECO 1.2.6 E*, or, in the case of an *insurer*, *ECO*

1.3.3 E. A *domestic ECA provider* must therefore comply with *COB* in full, as well as the provisions set out in *ECO 3.2.1 R*.

ECO 3 ANNEX 1 R

E-COMMERCE DIRECTIVE: MINIMUM INFORMATION REQUIREMENTS

1 Information about the ECA provider and its products or services

- (1) An *outgoing* or *domestic ECA provider* must make the following information easily, directly and permanently available to any *ECA recipient*, in relation to any *electronic commerce activity* which it provides:
 - (a) the name of the *provider*;
 - (b) the address in the *United Kingdom* at which it is established;
 - (c) the provider's e-mail address (if it has one);
 - (d) a statement that the provider is authorised or regulated by the Financial Services Authority;
 - (e) a statement that the provider is entered in the *FSA's* Register and its FSA Register number;
 - (f) if the service is subject to Value Added Tax, the relevant identification number.
- (2) If an *outgoing* or *domestic ECA provider* refers to the price (including any *charges*) of its services or products, it must do so clearly and unambiguously and, where relevant, indicate whether the price is inclusive of tax and delivery costs.
- (3) An *outgoing* or *domestic ECA provider* must ensure that commercial communications which are part of or constitute an *electronic commerce activity* comply with the following requirements:
 - (a) the commercial communication must be clearly identifiable as such;
 - (b) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
 - (c) promotional offers, competitions or games must be clearly identifiable as such and any qualifying conditions must be set out clearly and unambiguously.
- (4) An *outgoing* or *domestic ECA provider* must ensure that any unsolicited commercial communication sent by it by electronic mail is clearly and unambiguously identifiable as such as soon as it is received.

Information about the technical steps required to place an order

- (5) An *outgoing* or *domestic ECA provider* must make the following information clearly, comprehensibly and unambiguously available to an *ECA recipient*, before the recipient places an order:
 - (a) the technical steps the recipient should follow in order to conclude the contract;

- (b) an indication of whether the provider will keep a record of the contract and whether it will be accessible to the *ECA recipient*;
 - (c) the technical means of identifying and correcting input errors before the *ECA recipient* submits the order; and
 - (d) the language or languages in which the contract may be concluded.
- (6) An *outgoing* or *domestic ECA provider* must mention any relevant code of conduct to which it subscribes and provide information on how to access the code electronically.
 - (7) An *outgoing* or *domestic ECA provider* must ensure that the terms and conditions of the contract are made available in a way that allows an *ECA recipient* to store and reproduce them.
 - (8) Where the recipient of the service is not a *consumer*, an *outgoing* or *domestic ECA provider* may agree with him that some or all of paragraphs (5), (6) and (7) do not apply.
 - (9) Paragraphs (5) and (6) do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

2 Requirements relating to the receipt of orders

- (1) When an *ECA recipient* places an order by electronic means, an *outgoing* or *domestic ECA provider* must ensure that receipt of the order is acknowledged without delay.
- (2) For the purposes of (1) the order and the acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access them
- (3) An *outgoing* or *domestic ECA provider* must ensure that it makes available to an *ECA recipient*, appropriate, effective and accessible technical means allowing him to identify and correct technical errors before placing an order.
- (4) Where the recipient of the service is not a *consumer*, an *outgoing* or *domestic ECA provider* may agree with him that some or all of paragraphs (1), (2) and (3) do not apply.
- (5) Paragraphs (1) and (3) do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

3 Requirements for professional firms and EEA equivalent firms

- (1) If an *outgoing* or *domestic ECA provider* is a *professional firm*, or a person that is regulated by the equivalent of a *designated professional body* in an *EEA State* other than the *United Kingdom*, it must make the following information easily, directly and permanently available to any *ECA recipient*:
 - (a) the name of the professional body (including *designated professional body*) or similar institution with which the provider is registered;
 - (b) the provider's professional title and the *EEA State* where it was granted;
 - (c) details of the professional rules to which the provider is subject in the *EEA State* where it has its establishment.

Annex B

Changes to the Conduct of Business sourcebook

New text is shown underlined and striking through indicates deleted text. Where an entire new section is inserted, the place where the text is to be inserted is indicated, but the text is not underlined.

COB 1.2.1 R (2) for a *UCITS qualifier* and a *service company*, only COB 1.9 (Application to electronic commerce activity providers) and COB 3 (Financial promotion), and any provision of *COB* incorporated into COB 1.9 or COB 3 by reference, applies;

COB 1.4.1R The territorial scope of the application of *COB* to *firms* is set out in *COB* 1.4.3 R except:

(1) that its application to *electronic commerce activity providers*, is modified by *ECO*, as explained in *COB* 1.9; and

(2) for the application of *COB* 3 (Financial promotion), which is set out in *COB* 3.3 (Application: Where?).

Insert the following new section COB 1.9:

COB 1.9 Application to electronic commerce activity providers

Application and purpose

- COB 1.9.1 G
- (1) *COB* 1.9.1 G and *COB* 1.9.2 G apply to a *firm* which is an *electronic commerce activity provider*, that is, any *firm* which carries on an *electronic commerce activity*.
 - (2) Paragraph (1) means that *firms* need to be aware of this section whenever they are providing a service which:
 - (a) is normally provided for remuneration;
 - (b) is provided at a distance;
 - (c) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; and
 - (d) is so provided at the individual request of a recipient of the service.
 - (3) The purpose of this section is to indicate, for the benefit of such *firms*, the extent to which and the general manner in which the normal provisions of *COB* are modified by *ECO*.

Modification of COB for ECA providers

COB 1.9.2 G

The modifications made to *COB* in respect of *electronic commerce activity providers* are of three kinds:

- (1) *ECO 1.1.6 R* modifies *COB* so that a *firm* providing an *electronic commerce activity* from an *establishment* elsewhere in the *EEA* to a recipient who is in the *United Kingdom* (an *incoming ECA provider*) is not required to comply with any provision of *COB*, except to the extent required by *ECO 1*. These exceptions relate to the ‘consumer contract derogation’ (see *ECO 1.2*) and to the ‘insurance derogation’ (see *ECO 1.3*);
- (2) *ECO 2*:
 - (a) modifies *COB* so that, for a *firm* providing an *electronic commerce activity* from an *establishment* in the *United Kingdom* to a recipient who is elsewhere in the *EEA* (an *outgoing ECA provider*), *COB 3* has an extended application to cover the whole of the *EEA*;
 - (b) obliges such a *firm*, in providing an *electronic commerce activity* within the *EEA*, to comply with the minimum information and other requirements in the *E-Commerce Directive*; and
 - (c) relieves such a *firm* of the obligations covered by the derogations in *ECO 1*.

Otherwise *COB* applies in the usual way to such a *firm*.

- (3) *ECO 3* applies to a *firm* providing an *electronic commerce activity* from an *establishment* in the *United Kingdom* to a recipient who is in the *United Kingdom* or in a non-*EEA State* (a *domestic ECA provider*). Such a *firm* has to comply with *COB* in the usual way and so the requirements in *ECO 3* are in addition to *COB*. *ECO 3* sets out the minimum information and other requirements in the *E-Commerce Directive*.

COB 3.3.2 G

- (3) In the context of the provision of an *electronic commerce activity* to an *EEA ECA recipient*, the scope of *COB 3* is extended by *ECO 2.2.6 R*. This means that *COB 3* will apply for communications by an *outgoing ECA provider* to an *EEA ECA recipient*, subject to the lifting of rules in the derogations to the *E-Commerce Directive* as set out in *ECO 2*.

COB 5.3.19 R(2)

if the *firm* is not acting as an *outgoing ECA provider*, and the *customer* is habitually resident in another *EEA State* at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates.

COB 5.3.19 R(3) if the *customer* is habitually resident outside the *EEA* and the *customer* is not present in the *United Kingdom* (or *EEA* in the case of a *firm* acting as an *outgoing ECA provider*) at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates.

COB 5.4.6 E (4) For a *firm* acting as an *outgoing ECA provider*, the exemption contained in COB 5.4.6 E (2) applies only if the *private customer* is ordinarily resident outside the *EEA* and if the *outgoing ECA provider* has taken reasonable steps to ensure that the *private customer* does not want to receive the notice.

COB 5.7.9 R COB 5.7.5 R does not apply if:

(1) the *firm* is acting as an *investment manager*; or

(2) the *firm* is not acting as an *outgoing ECA provider* and the transaction is effected for a *private customer* who is habitually resident overseas; or

(3) the *firm* is not acting as an *outgoing ECA provider* and the *packaged product* is a *life policy* and the *private customer* is not present in the *United Kingdom* at the time the application is made; or

(4) the *firm* is acting as an *outgoing ECA provider* and the transaction is effected for a *private customer* who is *habitually resident* outside the *EEA*; or

(5) the *firm* is acting as an *outgoing ECA provider*, the *packaged product* is a *life policy* and the *private customer* is not present in the *EEA* at the time the application is made.

COB 6.2.21 R (1) There is no requirement for *key features* to be provided for a new *life policy* or a variation to an existing *policy* if, at the time that the *private customer* signs the application, he is *habitually resident*:

~~(1)~~(a) in an *EEA State* other than the *United Kingdom*; or

~~(2)~~(b) outside the *EEA* and he is not present in the *United Kingdom*.

(2) Paragraph (1)(a) does not apply to a *firm* acting as an *outgoing ECA provider*.

6.7.15 R Cancellable investment agreements - life
This table belongs to COB 6.7.7 R (1)

Column 1	Column 2
	<p>8. The customer, <u>other than an EEA ECA recipient</u>, at the time he signs the application, is <i>habitually resident</i>:</p> <p>(a) in an <i>EEA State</i> other than the <i>United Kingdom</i> (see note 4 COB 6.7.16R); or</p>

6.7.16 R 4. For a *customer*, other than an EEA ECA recipient, habitually resident in an *EEA State* other than the *United Kingdom*, *firms* are reminded that they may need to apply cancellation in accordance with the requirements in that *EEA State*.

6.8.3 R A *firm* must ensure that, before entering into a *pure protection contract* with a *customer*, it provides the *customer* with the information specified in COB 6.8.5, unless, at the time of application, the *customer*, other than an EEA ECA recipient, is *habitually resident*:

6.8.6 R COB 6.8.7 R and COB 6.8.8 R apply to a *long-term insurer* if the policyholder is in the *United Kingdom* or is an EEA ECA recipient at the time of signing the application for the *pure protection contract* or *life policy*.

6.8.12 R Before entering into a *general insurance contract* with a *customer*, covering a risk situated in the *United Kingdom*, or an EEA ECA recipient, a *firm* must, subject to COB 6.8.13 R provide the *customer* with:

COB 9.1.53 R (1) A *firm* need not obtain the written agreement of a *private customer*, or give notice to a *market counterparty* or an *intermediate customer*, as required by COB 9.1.51 R if:

~~(1)~~(a) the *client* is ordinarily resident outside the *United Kingdom*;

~~(2)~~(b) the *firm* has taken reasonable steps to determine that the *client* does not wish to execute that agreement; and

~~(3)~~(c) the *firm* makes and retains a record of those steps and their results.

(2) For a *firm* acting as an outgoing ECA provider, the exemption in (1) applies only if the *client* is ordinarily resident outside the EEA.

COB 9.1.61 R (1) A *firm* may, with the *client's* prior written agreement, retain statements required to be sent to a *client* who is ordinarily resident outside the *United Kingdom*.

(2) For a firm acting as an *outgoing ECA provider*, the exemption in (1) applies only if the *client* is ordinarily resident outside the *EEA*.

COB 10.7.5 R

(1) An operator of an *unregulated collective investment scheme* need not provide a *periodic statement*:

~~(1)~~(a)(i) to a *participant* in the *scheme* who is a *private customer* ordinarily resident outside the *United Kingdom*; or

(ii) to a *participant* in the *scheme* who is an *intermediate customer*;

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

~~(2)~~(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 in (1)(a)(i) applies only to a *participant* in the *scheme* who is a *private customer* ordinarily resident outside the *EEA*.

COB 10.7.7 E (3)

(a) A periodic statement should contain:

~~(a)~~(i)(A) the information set out in COB 10.7.9E; and

~~(ii)~~(B) where the portfolio of the *scheme* includes uncovered open positions in *contingent liability investments*, the additional information in COB 10.7.10E; or

~~(b)~~(ii) such information as a *participant* who is a *private customer* ordinarily resident outside the *United Kingdom*, or an *intermediate customer*, has on his own initiative agreed with the *operator* as adequate.

(b) For a firm acting as an *outgoing ECA provider*, (3)(a)(ii) should be read as though the words '*United Kingdom*' were replaced by '*EEA*'.

Annex C

Changes to the Authorisation manual

New text is shown underlined and striking through indicates deleted text.

- AUTH 1.2.6 G (1) Electronic commerce activities, other than insurance business falling within the scope of the Insurance Directives, carried on by an incoming ECA provider are excluded from being regulated activities. The provider does not require authorisation if it does not carry on any other regulated activities in the United Kingdom (see AUTH 2.9.18G).
- (2) An outgoing ECA provider providing electronic commerce activities that are regulated activities from an establishment in the United Kingdom is regarded as carrying on such activities in the United Kingdom regardless of whether they are provided to an EEA ECA recipient or a UK ECA recipient (see AUTH 2.4.3 G (5)). The provider should be authorised before it starts providing the services.
- (3) ECO sets out rules and guidance that apply to both incoming and outgoing ECA providers.
- AUTH 2.4.3 G Section 418 of the Act (Carrying on regulated activities in the United Kingdom) takes this one step further. It extends the meaning that 'in the United Kingdom' would ordinarily have by setting out ~~four~~ five additional cases. The Act states that, in these ~~four~~ five cases, a person who is carrying on a regulated activity but who would not otherwise be regarded as carrying on the activity in the United Kingdom is, for the purposes of the Act, to be regarded as carrying on the activity in the United Kingdom.
- (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.
- AUTH 2.4.7 G Electronic commerce activities, other than insurance business falling within the scope of the Insurance Directives, provided by an incoming ECA provider will not be regulated activities (see AUTH 2.9.18 G (2)).
- AUTH 2.8.2 G ~~No~~ Only one ~~exclusions~~ applies to the regulated activity of accepting deposits. A deposit taker providing its services as an electronic commerce activity from another EEA State into the United Kingdom (see AUTH 2.9.18 G) does not carry on a regulated activity. But, In addition to the situations that are excluded from being 'deposits' (see AUTH 2.6.2 G to AUTH 2.6.4 G), several persons are exempt persons in

relation to the *regulated activity of accepting deposits* (see AUTH 2.10.8 G(2)).

AUTH 2.8.3 G (1)...

(3) *Electronic commerce activities provided by an incoming ECA provider where those activities are outside the scope of the Insurance Directives* (see AUTH 2.9.18 G).

AUTH 2.8.4 G (1)...

(6) *A person* will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in AUTH 2.9), he enters as principal into a transaction:
(f) as an *overseas person*;
(g) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.5 G

(3) In addition, exclusions apply in specified circumstances (outlined in AUTH 2.9) where a person enters as agent into a transaction:
(a) ...
(f) as an *overseas person*;
(g) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.6 G

(11) The following exclusions from both article 25(1) and (2) (outlined in AUTH 2.9) apply in specified circumstances where a *person* makes arrangements:
(a) ...
(g) as an *overseas person*;
(h) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.7 G

(1)...

(3) ... in a *joint enterprise*;

(4) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.8 G

(4) The following exclusions (outlined in AUTH 2.9) apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
(e) ... *employee share scheme*;
(f) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.9 G

(1)...

(2) on behalf of a *group member*;

(3) as an *incoming ECA provider* (see AUTH 2.9.18 G).

Establishing etc collective investment schemes

AUTH 2.8.10 G ~~There are no~~ is only one exclusions from the range of activities specified as being regulated in relation to collective *investment schemes*. This exclusion relates to *incoming ECA providers* (see AUTH 2.9.18 G). In other cases, ~~the key issue here~~ is whether or not what is being done relates to something that is a *collective investment scheme*. Exclusions exist in relation to that issue (see AUTH 2.6.18 G).

AUTH 2.8.11 G Establishing etc stakeholder pension schemes
~~There are no~~ only exclusion from the range of activities specified as being regulated in relation to *stakeholder pension schemes* relates to *incoming ECA providers* (see AUTH 2.9.18 G).

AUTH 2.8.12 G (1)...

(6) as an overseas person;

(7) as an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.13 G Lloyd's activities
~~There are no exclusions from~~ *Electronic commerce activities* provided by an *incoming ECA provider* are excluded from the regulated activities that relate expressly to business carried on at Lloyd's (see AUTH 2.9.18 G). Otherwise the only exclusions that apply concern the *regulated activity of arranging deals* in its application to business carried on at Lloyd's.

AUTH 2.8.14 G (1)...

(3) ...1 January 2002;

(4) it is provided as an *electronic commerce activity* by an *incoming ECA provider* (see AUTH 2.9.18 G).

AUTH 2.8.15 G Agreeing
A person who agrees to carry on certain other *regulated activities* (which is itself a *regulated activity* – see AUTH 2.7.21 G) does not require *authorisation* where the person concerned is an *overseas person* and the agreement is reached as a result of a legitimate approach (see AUTH 2.9.12 G). For this exclusion to apply, the agreement must be one to arrange deals, *manage investments, safeguard and administer investments or send dematerialised instructions*. The provision of *electronic commerce activities* by an *incoming ECA provider* is also excluded from the regulated activity of *agreeing to carry on certain other regulated activities* (see AUTH 2.7.21 G). But this is not the case where the agreement relates to the *regulated activity of effecting or carrying out contracts of insurance* falling under the *Insurance Directives* (see AUTH 2.8.3 G). This is still a *regulated activity* when provided as an *electronic commerce activity*.

AUTH 2.9 Regulated activities: Additional exclusions for activities relating to securities and contractually based investments applicable into certain circumstances

AUTH 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in AUTH 2.9.3 G to AUTH 2.9.17 G has some application to several *regulated activities* relating to *securities* or *contractually based investments*. They have no effect in relation to the separate *regulated activities* of *accepting deposits, effecting or carrying out contracts of insurance, advising on syndicate participation at Lloyd's, managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's, entering as provider into a funeral plan contract* or any regulated activities relating to regulated mortgage contracts. Within each set of circumstances, *the Regulated Activities Order* (see Chapter XVII of Part II of the Order) makes separate provision for each *regulated activity* affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the regulated activity involved and the different language required (for example, some activities directly involve entering into transactions while others relate to the provision of services).
- (2) The exclusion described in AUTH 2.9.18 G relates to *electronic commerce activities* provided by an *incoming ECA provider*. This exclusion applies to all *regulated activities* except *effecting or carrying out contracts of insurance*.

Incoming ECA providers

- AUTH 2.9.18 G
- (1) In accordance with article 3(2) of the *E-Commerce Directive*, all requirements on *persons* providing *electronic commerce activities* into the *United Kingdom* from the *EEA* are lifted, where these fall within the co-ordinated field and would restrict the freedom of such a firm to provide services. The coordinated field includes any requirement of a general or specific nature concerning the taking up or pursuit of *electronic commerce activities*. *Authorisation* requirements fall within the coordinated field. The services affected are generally those provided electronically, for example through the Internet or solicited e-mail.
 - (2) The *Regulated Activities Order* was amended by the *Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(Electronic Commerce Directive) Order 2002* (SI 2002/[number to be added later]). This Order creates a general exclusion from *regulated activities* (except for the *regulated activities* of *effecting or carrying out contracts of insurance*). Where activities consist of *electronic commerce activities*, an *incoming ECA provider* will not require *authorisation*

for such activities in the United Kingdom. This does not extend to the regulated activity of effecting or carrying out contracts of insurance falling under the Insurance Directives (see AUTH 2.8.3 G). 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 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.

(3) Incoming ECA providers should note that notification requirements under the Single Market Directives still apply (see AUTH 5).

AUTH 5.1.1 G (1)...

(3) The provisions implementing the Single Market Directives are within the coordinated field (see AUTH 2.9.18 G(1)). So, where an incoming ECA provider intends to provide electronic commerce activity that consist of activities that fall within one of the Single Market Directives, the passporting requirements on exercising an EEA right in this chapter will apply.

AUTH 5.1.2 G (1)...

(2) ... Schedule 3 to the Act;

(3) a Treaty firm that wishes to provide electronic commerce activities into the United Kingdom.

AUTH 5.6.5 G AUTH 5 Ann 3G does not apply to incoming ECA providers. Such persons should refer to ECO for information on how the Handbook applies to them.

AUTH 5 Annex 3G Table

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 ECO 1 for guidance on how the Handbook applies to them.

Annex D

Changes to the Enforcement manual

New text is shown underlined and striking through indicates deleted text. When an entire new section is inserted the location of the new section is identified, but the text is not underlined.

- ENF 1.4.18 G ENF 19 (Directions against incoming ECA providers) describes the FSA's policy on its power to make a direction against an incoming ECA provider.
- ENF 1.5.1 G (1) Since most of the FSA's enforcement powers are derived from the *Act*, the manual contains a large number of references to the *Act*.
- ENF 1 Annex 1G 1 Table This table gives the main location in the Enforcement manual where *guidance* appears on the powers referred to in the *Act*, in secondary legislation made under the Act, and in other legislation listed below.
- ENF 1 Annex 1G Amend by adding the following further power:
- Directions against incoming ECA provider**
- Power to make a direction against an incoming ECA provider - ECD Regulations - ENF 19
- ENF 2.2.1 G (3)(a) to gather information from *firms* and unauthorised incoming ECA providers and to conduct investigations of *firms, approved persons, individuals involved in firms, and appointed representatives, and small e-money issuers* and unauthorised incoming ECA providers, including issuing preliminary findings letters;
- ENF 2.3.13 G Under the ECD Regulations, the FSA may exercise the powers in sections 165 and 166 of the Act in relation to an incoming ECA provider, whether the provider is a firm or not. The FSA's policy on how it will use this power (and other information gathering investigation powers) in support of its enforcement function is set out in ENF 2.5 (The FSA's policy on exercising its powers: firms, approved persons, and others). In addition, under these regulations, the FSA may exercise the power under section 167 in relation to an unauthorised incoming ECA provider (the Act enables the FSA to appoint an investigator under section 167 to investigate any part of the business of an incoming ECA provider which is a firm).
- ENF 2.3.14 G (4) As a result of regulation 12 of the ECD Regulations, the FSA may also appoint investigators under section 168(4)(c) and (5) where it appears to the FSA that there are circumstances suggesting that an incoming ECA

provider, whether a firm or not, may have breached a requirement imposed by the FSA under those regulations.

- ENF 2.3.15 G (1) *ENF 2.5 deals with the use of this power and other powers in relation to firms, approved persons, individuals employed by firms, ~~and~~ appointed representatives, ~~and~~ small e-money issuers and unauthorised incoming ECA providers;*
- ENF 2.5.1 G They also set out the *FSA's* policy on using its powers to carry out investigations into the affairs of *firms, approved persons*, individuals involved in *firms, appointed representatives, ~~and~~ small e-money issuers and unauthorised incoming ECA providers*.
- ENF 2.5.2 G Section 165 of the *Act* (*FSA's* power to require information) gives the *FSA* powers to require the provision of information and *documents* from *firms*. Under the *ECD Regulations*, the *FSA* may exercise the power under section 165 (and section 166) in relation to an *incoming ECA provider, whether the provider is a firm or not*.
- ENF 2.5.4 G If the information available to the *FSA* raises a regulatory concern about a *firm*, an *approved person's* conduct or fitness and propriety, ~~or~~ a *small e-money issuer* or an *unauthorised incoming ECA provider*, the *FSA* may need to make further enquiries by using its powers to require reports by *skilled persons* or to appoint investigators. The nature of the *FSA's* enquiries will depend on the nature and seriousness of its concerns and on the attitude of the *firm, ~~or~~ small e-money issuer or unauthorised ECA provider* concerned.
- ENF 2.5.8 G (1) In some circumstances, the provision of a report by a *skilled person* under section 166 may not be appropriate, or may be insufficient (because of the limited nature of the power) to address the seriousness of the *FSA's* concerns. This will include cases where an effective and thorough investigation by the *FSA* is likely to call for the exercise of the powers to require the *firm, ~~or~~ connected persons, ~~or~~ small e-money issuer, or unauthorised incoming ECA provider* to answer questions and/or produce *documents*. In those cases, the *FSA* will appoint an investigator under section 167 or 168 of the *Act*; if appropriate the *FSA* may also require the *firm, ~~or~~ small e-money issuer or unauthorised incoming ECA provider* to provide a *skilled person's* report under section 166. In other, cases the *FSA* may appoint an investigator, under section 167 or 168, as a result of information in a report under section 166.
- ENF 2.5.9 G Where the *FSA* has general concerns about a *firm, ~~or~~ an appointed representative or an unauthorised incoming ECA provider*, but the circumstances do not at that stage suggest any specific breach or contravention, it will rely on its power under section 167 of the *Act* and, if it appears that there are good reasons for doing so, the *FSA* will appoint investigators to investigate the business of a *firm, ~~or~~ an appointed representative or an unauthorised incoming ECA provider*.

ENF 2.5.11 G In some cases, where the *FSA* has appointed investigators into a *firm* or an *unauthorised incoming ECA provider* under section 167 of the *Act*, it may decide that it is appropriate to extend the appointment to cover matters under section 168 of the *Act* as well, if circumstances suggest that one of the specific contraventions, breaches or offences listed in *ENF 2.13.14 G* may have occurred.

Insert the following new chapter *ENF 19*:

Directions against incoming ECA provider

19.1 Application and purpose

Application

19.1.1 G This chapter applies to *incoming ECA providers*.

Purpose

19.1.2 G This chapter outlines:

- (1) the *FSA*'s power under the *ECD Regulations* to direct that an *incoming ECA provider*, whether a *firm* or not, may no longer carry on a specified *incoming electronic commerce activity*, or may only carry it on subject to specified requirements;
- (2) the *FSA*'s policy on the exercise of that power.

19.2 Introduction

19.2.1 G A key element of the *E-Commerce Directive* is the freedom of *electronic commerce activity providers* from one *EEA State* to provide *information society services* freely into another *EEA State*. Consistent with this principle, and subject to certain *rules* in *ECO 1*, the *Handbook* enables an *incoming ECA provider* to provide services in that capacity to *UK ECA recipients* without the need to comply with *FSA* requirements which fall within the Directive's coordinated field.

19.2.2 G However, the Directive contains a 'derogation' which allows an *EEA State* where the recipient is based to restrict the freedom to provide an *electronic commerce activity* from another *EEA State* where certain conditions are met. The derogation is implemented in the *United Kingdom* through provisions of the *ECD Regulations*. This chapter outlines the relevant provisions of the *ECD Regulations* and the *FSA*'s policy on the use of the power to make directions against *incoming ECA providers*.

19.3 The FSA's power to make an electronic commerce activity direction

19.3.1 G Under regulation 6 of the *ECD Regulations*, provided certain policy and procedural conditions are met (see *ENF* 19.3.2G to *ENF* 19.3.3G), 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. The requirements may include a requirement that the provider must comply with one or more *rules* (with such modifications, if any, as may be specified) with respect to the carrying on of the activity. If an assets requirement of a kind mentioned in section 48(3) of the *Act* is specified in a direction, the requirement has the same effect in relation to the provider to whom the direction applies as if it had been imposed on that provider by the *FSA* acting under section 45 of the *Act*.

Grounds for exercising the power

19.3.2 G The policy conditions for the making of an *electronic commerce activity direction* are that:

- (1) the *FSA* considers:
 - (a) the making of the direction to be necessary for:
 - (i) the prevention, investigation, detection or prosecution of criminal conduct; or
 - (ii) the protection of *consumers*; or
 - (iii) other reasons of public policy relevant to the *regulatory objectives*; and
 - (b) that the carrying on of the *incoming electronic commerce activity* by the *person* to whom the direction is to apply prejudices, or presents a serious and grave risk of prejudice to, any of the objectives referred to in (a); and
- (2) the direction appears to the *FSA* to be a proportionate means of achieving, or addressing the prejudice or risk of prejudice to, any of those objectives.

19.3.3 G The procedural conditions are that:

- (1) the *FSA* has requested the relevant EEA regulator to take measures to remedy the situation giving rise to the request;
- (2) the relevant EEA regulator:
 - (a) has not, within what appears to the *FSA* to be a reasonable time, taken such measures; or

- (b) has taken such measures, but the measures appear to the *FSA* to be inadequate in the circumstances;
- (3) the *FSA* has notified the *Commission* and the relevant EEA regulator of its intention to make the direction; and
- (4) the *FSA* has notified the *person* to whom the direction is to apply of its proposal to make the direction, and given the *person* the opportunity to make representations to the *FSA* in such manner, and within such period, as the *FSA* may determine.

19.3.4 G However, where the case appears to it to be one of urgency, the *FSA* may make a direction regardless of whether the procedural conditions in *ENF* 19.3.3 G are met provided it:

- (1) notifies the *Commission* and the relevant EEA regulator as soon as possible of the direction; and
- (2) gives each of these bodies a statement of its reasons for the urgency.

Procedures

19.3.5 G Regulation 6(2) of the *ECD Regulations* states that an *electronic commerce activity direction* must be in writing.

19.3.6 G The *FSA* may vary or revoke a direction on its own initiative, or on the application of the *incoming ECA provider* to whom the direction applies. Under regulation 10(4) of the *ECD Regulations*, the *FSA* must not vary a direction on its own initiative unless it has given the provider concerned the opportunity to make representations to the *FSA* in such manner, and within such period, as the *FSA* may determine. However, this requirement does not apply where the case appears to the *FSA* to be one of urgency.

Right to refer to the Tribunal

19.3.7 G Where the *FSA* makes a direction, varies a direction on its own initiative, or refuses to vary or revoke a direction on the application of the *incoming ECA provider*, the *incoming ECA provider* to whom the direction applies may refer the matter to the *Tribunal*.

19.4 The *FSA*'s policy on the making of electronic commerce activity directions

19.4.1 G 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 *ENF* 19.3.2G.

19.4.2 G 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.

19.4.3 G 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*.

19.4.4 G 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 (in (1) to (5)) 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*.

19.4.5 G 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.

19.4.6 G 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 *ENF* 19.3.3G is an appropriate response to such concerns. The factors the *FSA* may consider include those listed in *ENF* 19.4.4G (1) to (4). There may be other relevant factors.

19.5 The FSA's powers where an incoming ECA provider fails to comply with a direction

19.5.1 G An *incoming ECA provider* may have the status of an *authorised person*, for example, because that it passports into the *United Kingdom* in respect of other activities which are *regulated activities*. The enforcement powers available to the *FSA* where an *incoming ECA provider* who is an *authorised person* breaches an *electronic commerce activity direction* include powers to seek *injunctions* (see *ENF 6*), to require or apply to court for restitution (see *ENF 9*), and to impose public censures and financial penalties (see *ENF 11 to 13*).

19.5.2 G The enforcement powers available to the *FSA* where an *unauthorised incoming ECA provider* breaches an *electronic commerce activity direction* include powers to seek *injunctions* (see *ENF 6*) and to apply to court for restitution (see *ENF 9*).

19.5.3 G The *FSA* may use the information gathering and investigation powers under sections 165 to 167 and section 168(4) and (5) of the *Act* where it considers an *incoming ECA provider* may have contravened an *electronic commerce activity direction*. These powers are discussed in *ENF 2*.

19.6 Decision making

19.6.1 G 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 taking into account the provider's representations, the *RDC* will then decide whether to make the direction, or to vary the existing direction.

19.6.2 G 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 (see *ENF 19.3.3G* and *ENF 19.3.6G*), the *RDC* Chairman will determine in each case the manner and the period within which those representations should be made.

19.7 Publicity

19.7.1 G 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 *ENF* 19.3.2(1)(a). 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*.

19.7.2 G 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*.

Annex E

Amendments to the Special Guide for Energy Market Participants (EMPS)

New text is shown underlined.

EMPS 1.2.3G Amend the following rows of the table in *EMPS 1.2.3G*:

	Part of Handbook	Applicability to energy market participants
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>CIS</i>)	CIS will ordinarily apply to an <i>energy market participant firm</i> that carries on <i>regulated activities</i> in relation to an <i>energy collective investment scheme</i> .
	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to an <i>energy market participant which is an electronic commerce activity provider</i>.</u>
	Professional firms sourcebook (<i>PROF</i>)	None of the other specialist sourcebooks applies.
	Lloyd's sourcebook (<i>LLD</i>)	
	Recognised Investment Exchange and Recognised Clearing House sourcebook (<i>REC</i>)	

Annex F

Amendments to the Special Guide for Small Friendly Societies (FREN)

New text is shown underlined and striking through indicates deleted text.

FREN 1.2.2G Amend the following rows of the table in *FREN 1.2.2G*:

	Part of Handbook	Applicability to small friendly societies
Business standards	Conduct of Business sourcebook (<i>COB</i>)	... Only the following parts of <i>COB</i> apply in relation to <i>general insurance business</i> and <i>pure protection contracts</i> : <i>COB</i> 1.1 to 1.4, <i>COB</i> 1.8, <u><i>COB</i> 1.9</u> , ...
	Specialist sourcebooks	
	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to a small friendly society which is an <i>electronic commerce activity provider</i>.</u>
	Collective Investment Schemes sourcebook (<i>CIS</i>)	The None of the other specialist sourcebooks do not apply.
	Professional firms sourcebook (<i>PROF</i>)	
	Lloyd's sourcebook (<i>LLD</i>)	
	Recognised Investment Exchange and Recognised Clearing House sourcebook (<i>REC</i>)	

Annex G

Amendments to the Special Guide for Oil Market Participants (OMPS)

New text is shown underlined.

OMPS 1.2.2G Amend the following rows of the table in *OMPS* 1.2.2G:

	Part of Handbook	Applicability to oil market participants
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>CIS</i>)	CIS will ordinarily apply to an <i>oil market participant</i> that carries on <i>regulated activities</i> in relation to an <i>oil collective investment scheme</i> .
	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to an <i>oil market participant</i> which is an <i>electronic commerce activity provider</i>.</u>
	Professional firms sourcebook (<i>PROF</i>)	None of the other specialist sourcebooks applies.
	Lloyd's sourcebook (<i>LLD</i>)	
	Recognised Investment Exchange and Recognised Clearing House sourcebook (<i>REC</i>)	

Annex H

Amendments to the Special Guide for Service Companies (SERV)

New text is shown underlined and striking through indicates deleted text.

SERV 1.2.2G Amend the following rows of the table in *SERV* 1.2.2G:

	Part of Handbook	Applicability to service companies
Business standards	Conduct of Business sourcebook (<i>COB</i>)	<u><i>COB</i> 1.9 (Application to electronic commerce activity providers) and <i>COB</i> 3 (Financial promotion rules)</u> , and any provision of <i>COB</i> incorporated by reference in <u><i>COB</i> 1.9 or <i>COB</i> 3</u> , applies apply . The rest of <i>COB</i> does not apply: see <i>COB</i> 1.2.1R(2). ...
Specialist sourcebooks	<u>E-Commerce Directive sourcebook (<i>ECO</i>)</u>	<u>This applies to a <i>service company</i> which is an <i>electronic commerce activity provider</i>.</u>
	Collective Investment Schemes sourcebook (<i>CIS</i>)	None of the <u>other</u> specialist sourcebooks applies.
	Professional firms sourcebook (<i>PROF</i>)	
	Lloyd's sourcebook (<i>LLD</i>)	
	Recognised Investment Exchange and Recognised Clearing House sourcebook (<i>REC</i>)	
Special guides	Special guide for service companies (<i>SERV</i>)	This applies.
	Special guide for energy market participants (<i>EMPS</i>)	This does not apply because an <i>energy market participant</i> is defined to exclude a <i>service company</i> .
	<u>Special guide for small friendly societies (<i>FREN</i>)</u>	<u>This does not apply.</u>
	Special guide for energy market participants (<i>OMPS</i>)	This does not apply because an <i>oil market participant</i> is defined to exclude a <i>service company</i> .

Annex I

Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

New definition title	New definition text
<i>country of origin</i>	in relation to an <i>electronic commerce activity</i> , the <i>EEA State</i> in which the <i>establishment</i> from which the service in question is provided is situated.
<i>domestic ECA provider</i>	a <i>firm</i> which provides an <i>electronic commerce activity</i> , from an <i>establishment</i> which it has in the <i>United Kingdom</i> , with or for a <i>UK ECA recipient</i> or an <i>ECA recipient</i> in a non- <i>EEA State</i> .
<i>ECA recipient</i>	a <i>person</i> who is a user of an <i>electronic commerce activity</i> .
<i>ECD Regulations</i>	the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775).
<i>ECO</i>	the E-Commerce Directive sourcebook.
<i>E-Commerce Directive</i>	the Council Directive of 8 June 2000 on legal aspects of <i>information society services</i> , in particular electronic commerce, in the Internal Market (No 2000/31/EC).
<i>EEA ECA recipient</i>	an <i>ECA recipient</i> who is present in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>electronic commerce activity</i>	an activity which: <ul style="list-style-type: none"> (a) consists of the provision of an <i>information society service</i> from an <i>establishment</i> in an <i>EEA State</i>; and (b) is, or but for article 72A (Information society services) of the <i>Regulated Activities Order</i> (Information society services) (and irrespective of the effect of article 72 of that Order (Overseas persons)) would be, a <i>regulated activity</i>.
<i>electronic commerce activity direction</i>	a direction made, or proposed to be made, by the <i>FSA</i> under regulation 6 of the <i>ECD Regulations</i> .
<i>electronic commerce activity provider</i>	a <i>person</i> who carries on an <i>electronic commerce activity</i> .
<i>essential information</i>	information which:

	<p>(a) relates to the essential elements of the contract, including any rights that would thereby be conferred on the <i>consumer</i>;</p> <p>(b) is likely to have a determining influence on the <i>consumer's</i> decision whether or not to enter into the contract; and</p> <p>(c) is of a kind referred to in regulation 4 of the <i>ECD Regulations</i>.</p>
<i>establishment</i>	<p>(in relation to an <i>information society service</i>) (in accordance with section 417(4) of the <i>Act</i> (Definitions)) the place at which the provider of the service effectively pursues an economic activity for an indefinite period;</p> <p>in this definition:</p> <p>(a) the presence or use in a particular place of equipment or other technical means of providing an <i>information society service</i> does not, of itself, constitute that place as an establishment; and</p> <p>(b) where it is unclear from which of a number of establishments a particular <i>information society service</i> is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.</p>
<i>incoming ECA provider</i>	<p>a <i>person</i>, other than an <i>exempt person</i> or a <i>person</i> who has been given a waiver in accordance with article 8 (1) of the <i>E-Money Directive</i>, who:</p> <p>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>, with or for a <i>UK ECA recipient</i>; and</p> <p>(b) is a national of an <i>EEA State</i> or a company or firm mentioned in article 48 of the <i>Treaty</i>.</p>
<i>incoming electronic commerce activity</i>	<p>(in accordance with regulation 2(1) of the <i>ECD Regulations</i>) an activity:</p> <p>(a) which consists of the provision of an <i>information society service</i> from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> to a <i>person</i> or <i>persons</i> in the <i>United Kingdom</i>; and</p>

	(b) which would, but for article 72A of the <i>Regulated Activities Order</i> (Information society services) (and irrespective of the effect of article 72 of that Order (Overseas persons)), be a <i>regulated activity</i> .
<i>information society service</i>	<p>an activity which falls within the scope of article 2(a) of the <i>E-Commerce Directive</i>, that is to say, generally speaking, and subject to the exclusions from the scope of article 3 of that Directive in the Annex to it, a service that:</p> <p>(a) is normally provided for remuneration;</p> <p>(b) is provided at a distance;</p> <p>(c) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; -and</p> <p>(d) is so provided at the individual request of a recipient of the service.</p>
<i>outgoing ECA provider</i>	<p>a <i>firm</i> which:</p> <p>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in the <i>United Kingdom</i>, with or for an <i>EEA ECA recipient</i>; and</p> <p>(b) is a national of an <i>EEA State</i> or a firm or company mentioned in article 48 of the <i>Treaty</i>.</p>
<i>UK ECA recipient</i>	an <i>ECA recipient</i> who is present in the <i>United Kingdom</i> .

Amend the following definition as shown (new text is underlined):

<i>consumer</i>	<u>(4) (in <i>ECO</i> and <i>ENF 19</i>) an individual who is acting for purposes other than those of his trade, business or profession.</u>
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Annex J
Amendments to the General provisions.

New text is shown underlined.

Schedule 4 The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *GEN*.

...

The following articles of the *Regulated Activities Order*:

...

article 9H(1) (Rules prohibiting the issue of electronic money at a discount)

regulation 3 of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I 2002/1775).

ADDENDUM

ELECTRONIC COMMERCE DIRECTIVE INSTRUMENT 2002

In this Addendum, underlining indicates new text.

Annex B of this instrument is amended as follows:

...

COB 10.7.5 R (1) *An operator of an unregulated collective investment scheme need not provide a periodic statement:*

(a) (i) ...

(ii) to a *participant in the scheme who is an intermediate customer or a market counterparty*;

...

**FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
(2002/2003) (No 2) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes the rules in this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 156 (General supplementary powers);
 - (2) section 157(1) (Guidance); and
 - (3) paragraph 17(1) of Schedule 1 (Fees).
- B. The provisions of the Act relevant to making rules and listed above are specified for the purpose of section 153(2) (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 August 2002.

Amendment to Unauthorised mutuals registration fees rules

- D. The Unauthorised mutuals registration fees rules are amended as set out in the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Unauthorised Mutual Societies Registration) (2002/2003) (No 2) Instrument 2002.

By order of the Board
18 July 2002

ANNEX

1. The guidance at 1.5G is amended as shown (underlining indicates new text and striking through indicates deleted text):

1.5 G The periodic fee set for *registered societies* is a ~~flat~~ tiered fee, which is payable annually. The amount payable is dependent upon the total assets declared by the registered society in the most recent annual return required to be filed with the FSA. The periodic fee payable by the sponsoring bodies for their model rules is ~~also~~ a flat fee, payable annually.

2. Insert immediately after rule 2.5R, the following:

2.5A R A *registered society* which has not been required to file an *annual return* before the commencement of a given fee year must pay the lowest periodic fee for a *registered society* specified in Annex 1R for that year.

2.5B R If a *registered society* fails to file an *annual return* by the date it is required to be filed:

- (1) the *total assets* used to determine the amount of the periodic fee payable by the *registered society* will be that shown in the *annual return* last filed with the *FSA* or its predecessor; and
- (2) the *registered society* must pay an administrative fee equal to the lower of the periodic fee payable by the *registered society* under Annex 1R for that year, and £250.

3. Delete the text in Annex 1R and insert the following:

FEES PAYABLE IN RELATION TO THE PERIOD FROM 1 APRIL 2002 TO 31 MARCH 2003

Periodic Fee Payable by Registered Societies (on 1 October 2002)

(This fee is not payable by a credit union.)

Transaction	Total Assets (£'000)	Amount Payable (£)
Periodic fee 2002/03	0 to 50	60
	> 50 to 100	100
	> 100 to 250	150
	>250 to 1,000	200
	> 1,000	370

Periodic fee rebate or additional periodic fee for Registered Societies who have paid or are due to pay the periodic fee for the period from 1 December 2001 to 31 March 2002.
(This fee is not payable by a credit union.)

Transaction	Total Assets £'000	Amount (£)
Rebate or additional periodic fee	0 to 50	(50)
	> 50 to 100	(35)
	> 100 to 250	(10)
	>250 to 1,000	15
	> 1,000	95

Note: The rebate or additional periodic fee will be applied to those *registered societies* which have paid or are due to pay the periodic fee of £80 specified for the period 1 December 2001 to 31 March 2002. Such a *registered society* will receive a single invoice for both periods, showing the periodic fee and rebate/additional periodic fee applicable for the year ended 31 March 2003, and the periodic fee for the previous period.

Application fees payable to register a new society other than a credit union

Transaction	Amount Payable (£)
Application using <i>model rules</i> without any amendment to the model	100
Application using <i>model rules</i> with between 1 and 6 amendments to the model	120
Application using <i>model rules</i> with between 7 and 10 amendments to the model	350
Application using <i>model rules</i> with 11 or more amendments to the model, or using free draft rules	950

Application fees payable to register a new credit union (before 2 July 2002)

Transaction	Amount Payable (£)
Application to register a new credit union using <i>model rules</i> (endorsed by a <i>sponsoring body</i>)	420
Application to register a new credit union using <i>model rules</i> (endorsed by a <i>sponsoring body</i> and with the common bond supported by a statutory declaration)	360
Application to register a new credit union using free draft rules	975
Application to register a new credit union using free draft rules (with the common bond supported by a statutory declaration)	900

Periodic fee payable by sponsoring bodies (on 1 July 2002).

(This fee is not payable by sponsoring bodies in respect of the *model rules* of credit unions.)

Transaction	Amount Payable (£)
Periodic Fee payable for each set of <i>model rules</i>	150

Application fees payable by sponsoring bodies

(This fee is not payable by sponsoring bodies in respect of the *model rules* of credit unions.)

Transaction	Amount Payable (£)
Application for a new set of <i>model rules</i>	950

Methods of payment of periodic fees

Payment Method	Additional amount or discount applicable
Direct Debit	Discount of £20
Credit Transfer (BACS, CHAPS)	Discount of £10
Cheque	None
Switch	None
Credit card (Visa or Mastercard only)	Addition of 2% of sum paid

Method of payment of application fees

Payment Method	Additional amount or discount applicable
Cheque	None

4. Amend rule 4.1R as shown (underlining indicates new text and striking through indicates deleted text):

- 4.1 R** If a *registered society* ceases to be a *registered society* between 1 December 2001 and ~~30 June 2002~~ 1 September 2002, the *registered society* is not liable to pay the periodic fee or fees for the period or periods 1 December 2001 to 31 March 2002, and 1 April 2002 to 31 March 2003 (as appropriate).

5. Amend Annex 4R by inserting the following definitions:

<i>annual return</i>	The annual return required to be submitted to the FSA under s.43 of the Friendly Societies Act 1974 or s.39 of the Industrial and Provident Societies Act 1965.
<i>total assets</i>	The figure shown in the <i>annual return</i> against the heading 'Total Assets' or, where there is no such heading, the value of the gross assets shown in the balance sheet of the firm.

**GENERAL PROVISIONS AND GLOSSARY (AMENDMENT NO 4)
INSTRUMENT 2002**

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 213 (The compensation scheme); and

(4) section 214 (General).

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 immediately.

Amendment to the Glossary

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

Citation

E. This instrument may be cited as the General Provisions and Glossary (Amendment No 4) Instrument 2002.

By order of the Board
19 September 2002

ANNEX

Amendment to the Glossary

In this Annex, underlining indicates new text.

*liability subject
to compulsory
insurance*

any liability required under any of the following enactments to be covered by insurance or (as the case may be) by insurance or by some other provisions for securing its discharge:

- (a) section 1(4A)(d) of the Riding Establishments Act 1964 (or any corresponding enactment for the time being in force in Northern Ireland);
- (b) section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 or Article 5 of the Employers' Liability Order (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972;
- (c) Part VI of the Road Traffic Act 1988 or Part VIII of the Road Traffic (Northern Ireland) Order 1981;
- (d) section 19 of the Nuclear Installations Act 1965.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES
(MINOR CHANGES) INSTRUMENT 2002**

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).
- 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 December 2002.

Amendments to the Interim Prudential Sourcebook for Investment Businesses

- D. IPRU(INV) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Minor Changes) Instrument 2002.

By order of the Board
19 September 2002

Annex

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

Section 1

5.7.1 CONSOLIDATED SUPERVISION

CASES WHERE CONSOLIDATED SUPERVISION BY THE FSA
WILL NOT APPLY

5.7.1(2) R A *firm* will not be subject to consolidated supervision under this Chapter of IPRU (INV) by the FSA where ~~either~~ any of the following conditions are fulfilled:

(a) the *financial resources rules* do not apply to the *firm* by virtue of Table 5.1.1(1)(a); or

(b) the *firm* is included in the supervision on a consolidated basis of the group of which it is a member by ~~another~~ a competent authority other than the FSA; or

(c) the *firm* is already included in the supervision on a consolidated basis of the group of which it is a member by the FSA under IPRU (BANK), IPRU (BSOC) or another chapter of IPRU (INV).

Section 2

APPENDIX 1 (INTERPRETATION)

GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

~~*OPS firm* — see the meaning given to the term in the *Glossary*.~~

OPS firm means:

(a) a *firm* which:

(i) carries on *OPS activity* but not with a view to profit;
and

(ii) is one or more of the following:

(A) a trustee of the *occupational pension scheme* in question;

(B) a *company* owned by the trustees of the *occupational pension scheme* in question;

(C) a *company* which is:

- (I) an employer in relation to the occupational pension scheme in question in respect of its employees or former employees or their dependants; or
- (II) a company within the group which includes an employer within (I); or
- (III) an administering authority subject to the Local Government Superannuation Regulations 1986; or

(b) a firm which:

- (i) has satisfied the requirements set out in (a) at any time during the past 12 months; but
- (ii) is no longer able to comply with those requirements because of a change in the control or ownership of the employer referred to in (a)(i) during that period.

Section 3

Annex D Interim Prudential Sourcebook for Investment Businesses: Required Forms

13.1 FORM OF SUBORDINATED LOAN AGREEMENT FOR PERSONAL INVESTMENT FIRMS (SEE IPRU(INV)13)

EXECUTED AS A DEED and DELIVERED by the FINANCIAL SERVICES AUTHORITY Ltd and signed by:

~~Director~~ **Authorised Signatory**

~~Director~~ **Authorised Signatory/Secretary**

Section 4

Chapter 13: Financial Resource Requirements for Personal Investment Firms

13.1 Application

GENERAL REQUIREMENTS

13.1.2 R A *firm* must:

(1) have and maintain at all times financial resources of the kinds and amounts specified in , and calculated in accordance with, the *rules* of this chapter; and

(2) be able to meet its liabilities as they fall due.

13.12 Financial Resources Test 2 – Expenditure-based Requirement.

REQUIREMENT

13.12.1B R A *Category B firm* must have at all times financial resources calculated in accordance with *rules* 13.12.2 to 13.12.5A which equal or exceed the amount specified in *rules* 13.12.1B ~~C~~ C to F as applicable.

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 8)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 November 2002.

Amendments to the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.

Amendments to the Glossary

- E. The Glossary is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 8) Instrument 2002.

By order of the Board
19 September 2002

Annex A

Amendments to the Conduct of Business sourcebook

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

3.2.5 R Table Exemptions

This table belongs to COB 3.2.4R

(5)	a <i>financial promotion</i> which contains only one or more of the following:	
(a)	...	the name of the <i>firm</i> (or its <i>appointed representative</i>);
(e)	...	a brief, factual description of the <i>firm's</i> (or its <i>appointed representative's</i>) activities;
(f)	...	a brief, factual description of the <i>firm's</i> (or its <i>appointed representative's</i>) fees;
(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 related operations in another <i>EEA State</i> ;	
(8)	a <i>financial promotion</i> in the form of a decision tree for a <i>stakeholder pension scheme</i> , provided the text, content and format of the decision tree comply with the requirements of <u>COB 6.5.8 R.</u>	

Guidance on the exemptions

3.2.7 G (3) In COB 3.2.5R:

...

- (b) Items (5)(e), (f) and (g) exempt a *financial promotion* made by a *firm* which refers only to its activities in general terms in image advertising. Acceptable examples include 'life and pensions' and 'life assurance and pensions business'. In addition a *firm* or its *appointed representative* may include its name, address and telephone number in accordance with items 5(a) and (c).

...

- (d) Item (8) exempts *financial promotions* that are decision trees if the decision tree satisfies the requirements of COB 6.5.8 R. A decision tree will not be a *financial promotion* if it is neither an invitation nor an inducement to engage

in investment activity; for example, when it is prepared for training or educational purposes.

- 3.8.2 R A *non-real time financial promotion* must contain the name of the *firm* or the name of its appointed representative and either an address of the *firm* or a contact point from which an address is available.
- 3.8.8 R (2) if it relates to an *investment* or service of a *person* other than the *firm*, contain the name of that *person*, in addition to the name and address or contact point of the *firm* or its appointed representative. (see COB 3.8.2R).
- 6.7.3 G (5) A *firm* has the option to replace a post-sale right to cancel certain *pension annuities* with a pre-sale right to withdraw, referred to as "cancellation substitute"(see COB 6.7.14 R (2)). This option is also available for ~~money purchase and defined benefits (or final salary)~~ *pension transfers*. If a *firm* chooses not to offer the cancellation substitute, it has to offer cancellation. The cancellation substitute is available as it is very difficult for post-sale cancellation to work effectively in the case of pension transfers because of the difficulty of putting the *customer* back in his original position.
- 6.7.5 G Table Cancellable investment agreements.
This table belongs to COB 6.7.4G

Cancellable Investment agreements			
	Post-sale right to cancel?	Pre-sale right to withdraw?	Maximum period of reflection
A. Agreements where the right arises regardless of whether advice is given.			
... <i>stakeholder pension scheme (SHP)</i>	Yes ¹	No -Yes ¹	14-30 days ^{2,5}

6.7.15 R Table Cancellable investment agreements – life
 This table belongs to COB 6.7.7R (1).

Cancellable investment agreements – life Investment agreements for a long-term insurance contract for which an individual customer has:	
Column 1	Column 2
	... 4. <u>Pension policy or stakeholder pension scheme</u> funded (wholly or in part) from payments derived from: ...

6.7.17 R Table Cancellable investment agreements – non-life
 This table belongs to COB 6.7.7R(1) and COB 6.7.14 R(1)

Cancellable investment agreements – non-life Investment agreements for which an individual customer has:	
Column 1	Column 2
	... 12. <u>Pension contract or stakeholder pension scheme</u> funded (wholly or in part) from payments derived from a <i>pension transfer</i> for which a right to cancel is replaced by a right to withdraw (see COB 6.7.14R(2) using the cancellation substitute in COB 6.7.19R).

8.2.12 E Table Periodic statements – additional information required for a discretionary managed portfolio
 This table belongs to COB 8.2.10 E

Periodic statements: additional information required for a discretionary managed portfolio* * (except OPS firms conducting OPS activity - see 8.2.15E)	
... 3	<i>Charges and remuneration</i>
	...
	(b) a statement of <u>the amount (or, if provision of this information is not practicable, the basis) of any remuneration</u> received by the <i>firm</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. (<i>Firms</i> should also note the requirements of <u>COB 2.2.18R (Periodic disclosure)</u>).

Annex B

Amendments to the Glossary

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

pension transfer

a transaction resulting from a decision made, with or without advice from a *firm*, by a *customer* who is an individual, to transfer deferred benefits from:

...

(b) an *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)) a *stakeholder pension scheme* or a *personal pension scheme*;

to a *stakeholder pension scheme* or a *personal pension scheme* (including a self-invested *personal pension scheme*).

**TRAINING AND COMPETENCE SOURCEBOOK
(AMENDMENT NO 5) INSTRUMENT 2002**

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).
- 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 October 2002.

Amendments to the Training and Competence sourcebook

- D. The Training and Competence sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Amendment No 5) Instrument 2002.

By order of the Board
19 September 2002

Annex

Amendment to the Training and Competence Sourcebook

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

Where?

- 2.1.2 R (1) 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 2.1.4 R*) ~~wherever they are carried on;~~
- (a) from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*; or
 - (b) with or for a *client* in the *United Kingdom*.

AUTHORISATION MANUAL (AMENDMENT NO 5) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 October 2002.

Amendments to the Authorisation manual

- C. The Authorisation manual is amended:
- (1) by inserting, as AUTH App 2, the provisions in Annex A to this instrument; and
 - (2) in accordance with Annex B to this instrument.

Amendments to the Glossary

- D. The Glossary is amended in accordance with Annex C to this instrument.

Citation

- E. This instrument may be cited as the Authorisation Manual (Amendment No 5) Instrument 2002.

By order of the Board
19 September 2002

Annex A

AUTH Appendix 2

2 Meaning of open-ended investment company

2.1 Application and Purpose

Application

2.1.1 G This appendix applies to *persons* who need to know whether a *body corporate* is an *open-ended investment company* as defined in section 236 of the *Act* (Open-ended investment companies). This would mean that it is a *collective investment scheme*.

Purpose

2.1.2 G The purpose of this *guidance* is to outline the circumstances in which a *body corporate* will be an *open-ended investment company* and, in so doing, to:

- (1) give an overview of the definition (see *AUTH* App 2.3 (The definition)) and describe its three main elements:
 - (a) an *open-ended investment company* must be a *collective investment scheme* (see *AUTH* App 2.4 (Collective investment scheme (section 235 of the Act)));
 - (b) it must satisfy the ‘property’ condition in section 236(2) of the *Act* (see *AUTH* App 2.5 (The property condition (section 236(2) of the Act))); and
 - (c) it must satisfy the ‘investment’ condition in section 236(3) of the *Act* (see *AUTH* App 2.6 (The investment condition (section 236(3) of the Act): general) to *AUTH* App 2.9 (The investment condition: the ‘satisfaction test’ (section 236(3)(b) of the Act))); and
- (2) outline the implications for a *body corporate* if it does, or does not, fall within the definition of an *open-ended investment company* (see *AUTH* App 2.10 (Significance of being an open-ended investment company)).

Effect of guidance

2.1.3 G This *guidance* is issued under section 157 of the *Act* (Guidance). It is designed to throw light on particular aspects of regulatory requirements, not to be an exhaustive description of a *person’s* obligations. If a *person* acts in line with the *guidance* in the circumstances it contemplates, the *FSA* will proceed on the footing

that the *person* has complied with aspects of the requirement to which the *guidance* relates. Rights conferred on third parties cannot be affected by *guidance* given by the *FSA*. This *guidance* represents the *FSA*'s view, and does not bind the courts. For example, it would not bind the courts in relation to an action for damages brought by a *private person* for breach of a *rule* (see section 150 of the *Act* (Action for damages)), or in relation to the enforceability of a contract where there has been a breach of the *general prohibition* on carrying on a *regulated activity* in the *United Kingdom* without *authorisation* (see sections 26 to 29 of the *Act* (Enforceability of agreements)). A *person* may need to seek his own legal advice. Anyone reading this *guidance* should refer to the *Act* and to the various Orders that are referred to in this *guidance*. These should be used to find out the precise scope and effect of any particular provision referred to in this *guidance*.

Other guidance that may be relevant

- 2.1.4 G The only kind of *body corporate* of an open-ended kind that may currently be formed under the law of the *United Kingdom* is one that is authorised by the *FSA*. A *person* intending to form an open-ended *body corporate* that has its head office in Great Britain should refer to the Open-ended Investment Companies Regulations 2001 (SI 2001/1228). *Bodies corporate* formed under these Regulations are referred to in the *Handbook* as *investment companies with variable capital* (or '*ICVCs*'). *CIS 16* (Application and notification) contains *rules* and *guidance* on forming such *bodies corporate*. The Northern Ireland Assembly was in September 2002 considering a Bill to enable the establishment of open-ended *bodies corporate* whose head office is in Northern Ireland.
- 2.1.5 G *Open-ended investment companies* constituted in other *EEA States* which are seeking to exercise rights conferred by the *UCITS Directive* should refer to *CIS 17* (Recognised Schemes) for *guidance* on the requirements of section 264 of the *Act* (Schemes constituted in other *EEA States*).
- 2.1.6 G *Electronic commerce activities* carried on by, or in relation to, any *open-ended investment company* will be subject to the provisions of the *E-Commerce Directive*. *Guidance* on the carrying on of *electronic commerce activities* is contained in the *E-Commerce Directive sourcebook* (ECO).
- 2.2 Introduction
- 2.2.1 G The nature of many *bodies corporate* means that they will, in most if not all circumstances, come within the definition of *collective investment scheme* in section 235(1) to (3) of the *Act* (Collective investment schemes). The property concerned will generally be managed as a whole under the control of the directors of the *body*

corporate or some other *person* for the purpose of running its business. The idea underlying the investment is that the investors will participate in or receive profits or income arising from the operation of the *body corporate*'s business.

- 2.2.2 G However, there are a number of exclusions that apply to prevent certain arrangements from being a *collective investment scheme*. These are in the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) (Arrangements not amounting to a collective investment scheme). The exclusion in paragraph 21 of the Schedule to that Order is of particular significance for *bodies corporate*. It excludes from being a *collective investment scheme* certain specified *bodies corporate* (such as *building societies* and *friendly societies*) as well as any other *body corporate* except a *limited liability partnership* or an *open-ended investment company*. This means that if a *body corporate* is an *open-ended investment company* it will not be excluded from the definition in section 235(1) to (3) of the *Act*. So it will be a *collective investment scheme*. Of course, it may be that other exclusions in the Schedule to the Order are available but this will depend on the circumstances of a particular *body corporate* (see *AUTH App 2.4.5G* (Collective investment scheme (section 235 of the Act))).
- 2.2.3 G Certain consequences flow according to whether or not a *body corporate* is an *open-ended investment company*. Different requirements apply to the marketing of the shares or securities issued by a *body corporate* which is an *open-ended investment company*, compared with one that is not (see *AUTH App 2.10.1G* to *AUTH App 2.10.6G* (Marketing of shares or securities issued by a *body corporate*)). In addition, the *regulated activities* that require *permission* may differ (see *AUTH App 2.10.7G* to *AUTH App 2.10.10G* (Implications for regulated activities)).
- 2.2.4 G *Guidance* on the application of the definition in particular circumstances is in *AUTH App 2.11* (Frequently asked questions)).
- 2.3 The definition
- 2.3.1 G For a *body corporate* to be an *open-ended investment company*, as defined in section 236(1) of the *Act*:
- (1) it must be a *collective investment scheme*;
 - (2) it must satisfy the property condition in section 236(2); and
 - (3) it must satisfy the investment condition in section 236(3).
- 2.3.2 G Each of these aspects of the definition is considered in greater detail in *AUTH App 2.4* (Collective investment scheme (section 235 of the Act)) to *AUTH App 2.9* (The investment condition: the

‘satisfaction test’ (section 236(3)(b) of the Act)). Although the definition has a number of elements, the *FSA* considers that it requires an overall view to be taken of the *body corporate*. This is of particular importance in relation to the investment condition (see *AUTH* App 2.6.3G and *AUTH* App 2.6.4G (The investment condition (section 236(3) of the Act: general))).

- 2.3.3 G An *open-ended investment company* may be described, in general terms, as a *body corporate*, most or all of the shares in, or securities of, which can be realised within a reasonable period. Realisation will typically involve the redemption or repurchase of shares in, or securities of, the *body corporate*. This realisation must be on the basis of the value of the property that the *body corporate* holds (that is, the net asset value).
- 2.3.4 G In the *FSA*’s view, all of the elements of the definition are clearly objective tests. In applying the definition to any particular case, a *person* would need to have regard to all the circumstances. This includes any changes in the way that the *body corporate* operates.
- 2.3.5 G The *FSA* understands that the aim of the definition in section 236 of the *Act* is to include any *body corporate* which, looked at as a whole, functions as an open-ended investment vehicle. The definition operates against a background that there is a wide range of different circumstances in which any particular *body corporate* can be established and operated. For example, the definition applies to *bodies corporate* wherever they are formed. So, in the application of the definition to different cases, the law applicable to, and the detailed corporate form of, particular *bodies corporate* may differ considerably.
- 2.3.6 G For a *body corporate* formed outside the *United Kingdom*, there is an additional issue as to how the applicable corporate law and the definition of *open-ended investment company* in the *Act* relate to one another. The *FSA* understands this to operate as follows. The term 'body corporate' is defined in section 417(1) of the *Act* (Interpretation) as including 'a body corporate constituted under the law of a country or territory outside the *United Kingdom*'. So, whether or not any particular overseas *person* is a *body corporate* will depend on the law applicable in the country or territory in which it is constituted. But if it is a *body corporate* under that law, the question whether it is an *open-ended investment company* is determined, as a matter of *United Kingdom* law, by the definition in section 236 of the *Act*. This is regardless of whether or not the *body corporate* would be considered to be open-ended under the laws of the country or territory in which it is constituted.
- 2.4 Collective investment scheme (section 235 of the Act)
- 2.4.1 G The first element of the definition is that *open-ended investment*

companies are a corporate form of *collective investment scheme*. This means that they must have the features in section 235 of the *Act*.

- 2.4.2 G Section 235(1) states that a *collective investment scheme* means any arrangements with respect to property of any description. The purpose or effect of the arrangements must be to enable the *persons* taking part in them 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. The participants must not have day-to-day control over the management of the property (section 235(2)) and the arrangements must provide:
- (1) for the contributions of the participants and the profits or income to be pooled (section 235(3)(a)); or
 - (2) for the property to be managed as a whole by or on behalf of the operator of the scheme (section 235(3)(b)); or
 - (3) for both (1) and (2).
- 2.4.3 G In the *FSA*'s view, it is the very existence of the *body corporate* that is the *collective investment scheme*. There are a number of statutory references that support this view. For example, it is clear that paragraph 21 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) (Arrangements not amounting to a collective investment scheme) is drafted on the basis that it is the *body corporate* itself that is (or would be) the *collective investment scheme*. This provision states that 'no body corporate ... other than an open-ended investment company, amounts to a collective investment scheme'. So, any particular *body corporate* is either an *open-ended investment company* or it is not. It cannot be both at the same time, although it may change from one to the other over time (see *AUTH* App 2.7.5G (The investment condition: the 'reasonable investor') for further *guidance* on this point).
- 2.4.4 G Analysing a typical corporate structure in terms of the definition of a *collective investment scheme*, money will be paid to the *body corporate* in exchange for shares or securities issued by it. The *body corporate* becomes the beneficial owner of that money in exchange for rights against the legal entity that is the *body corporate*. The *body corporate* then has its own duties and rights that are distinct from those of the holders of its shares or securities. Such arrangements will, in the *FSA*'s view, qualify as arrangements of the kind described in *AUTH* App 2.4.2G. The holders of the shares or securities in the *body corporate* do not have day-to-day control over the management of the property (as specified in section 235(2) of the *Act*) and the property is managed

as a whole by or on behalf of the *body corporate* (as specified in section 235(3) of the *Act*).

- 2.4.5 G Where a *body corporate* does come within the definition of a *collective investment scheme* in section 235(1) to (3), the only relevant issue is to determine whether or not it is excluded. As *AUTH* App 2.2.2G (Introduction) explains, the exclusions are in the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) (Arrangements not amounting to a collective investment scheme). If a *body corporate* satisfies any of the exclusions in paragraphs 1 to 20 of the Schedule to the Order it will not be a *collective investment scheme*. This means that it will not then be necessary to consider whether or not it is an *open-ended investment company*. In any other case, it will be necessary to consider whether the *body corporate* is an *open-ended investment company* to see whether the exclusion in paragraph 21 of the Schedule to the Order (Bodies corporate) *for bodies corporate* other than *open-ended investment companies* and *limited liability partnerships* applies.
- 2.4.6 G In the *FSA*'s view, the question of what constitutes a single scheme in line with section 235(4) of the *Act* does not arise in relation to a *body corporate*. This is simply because the *body corporate* is itself a *collective investment scheme* (and so is a single scheme). Section 235(4) contemplates a 'separate' pooling of parts of the property that is subject to the arrangements referred to in section 235(1). But to analyse a *body corporate* in this way requires looking through its corporate personality and ignoring the legal entity that exists separately from the holders of shares or securities and their rights. As a corporate entity, it cannot be broken up into component parts in this way. This is so even though a *body corporate* may issue shares or securities of deferred classes or of classes carrying different rights.
- 2.5 The property condition (section 236(2) of the *Act*)
- 2.5.1 G If a particular *body corporate* ('BC') comes within the definition of a *collective investment scheme*, the second element in the definition is whether the property to which the scheme relates meets the property condition. This condition is that the property must belong beneficially to, and be managed by or on behalf of, BC. In addition, BC must have as its purpose the investment of its funds to:
- (1) spread investment risk; and
 - (2) give its members the benefit of the results of the management of those funds by or on behalf of BC.

- 2.5.2 G The property belonging to BC may be property of any description, including money. For example, the arrangements may relate to real estate, works of art or a particular enterprise or rural activity. It must, of course, be possible to value the property if the requirements of the investment condition concerned with the link to net asset value are to be met (see *AUTH* App 2.9 (The investment condition: the ‘satisfaction test’ (section 236(3)(b) of the Act))).
- 2.5.3 G The property of the *collective investment scheme* must belong beneficially to BC, although the legal title to it may be held by a third party. However, the holders of shares or securities issued by BC may not have a beneficial interest in that property. In exchange for their contributions, they will only have rights against BC.
- 2.5.4 G The purpose of BC will need to be determined bearing in mind its constitutional instruments and any other relevant material: for example, material in a prospectus or offer document or other promotional material. The prevailing law may also be relevant.
- 2.5.5 G In the *FSA*'s view, the question of whether funds are invested by BC with the aim of spreading investment risk is not affected by the levels of risk involved in particular investments. What matters for these purposes is that the aim is to spread the risk, whatever it may be. For example, the value of each of BC's investments, if taken separately, might be subject to a high level of risk. However, this would not itself result in BC failing to satisfy the property condition as long as it could be said that the range of different investments demonstrated that the aim was to spread investment risk.
- 2.6 The investment condition (section 236(3) of the Act): general
- 2.6.1 G If BC comes within the definition of a *collective investment scheme*, the third element in determining whether it is an *open-ended investment company* is whether the ‘investment condition’ is satisfied. This condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme:
- (1) expect that he would be able to realise his investment in the scheme, within a period appearing to him to be reasonable; his investment would be represented, at any given time, by the value of the shares in, or securities of, BC held by him as a participant in the scheme; and
 - (2) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of the property for which the scheme makes arrangements.
- 2.6.2 G Under the investment condition, the reasonable investor is looking

to satisfy two criteria. Both of these are fundamental to his decision to invest. But the thresholds referred to in *AUTH* App 2.6.1G (1) and *AUTH* App 2.6.1G (2) are different. In the *FSA*'s view, a *person* expects something where he regards it as likely to happen or anticipates that events will turn out in a particular way. A *person* is satisfied of something where he has made up his mind or is persuaded that it is the case. The first of these criteria is referred to in this *guidance* as the 'expectation test' and the second as the 'satisfaction test'.

- 2.6.3 G Section 236(3) of the *Act* states clearly that the investment condition must be met 'in relation to BC'. In the *FSA*'s view, this means that the investment condition should not be applied rigidly in relation to specific events such as particular issues of shares or securities or in relation to particular points in time. The requirements of the investment condition must be satisfied in relation to the overall impression of the *body corporate* itself, having regard to all the circumstances.
- 2.6.4 G In the *FSA*'s view, and within limits, the investment condition allows for the possibility that a *body corporate* that is an *open-ended investment company* may issue shares or securities with different characteristics. Some shares or securities may clearly satisfy the condition whereas others may not. The *FSA* considers that a reasonable investor contemplating investment in such a *body corporate* may still take the view, looking at the *body corporate* overall, that the investment condition is satisfied. In the *FSA*'s view, a *body corporate* issuing a number of different classes of shares or securities on different terms might be expected to satisfy the investment condition where the overall balance between those that do and those that do not is strongly in favour of those that do satisfy the investment condition. The *FSA* considers that, in any case where there is a genuine and reasonable doubt as to where the balance between the different classes lies, it is very likely that the *body corporate* would not be an *open-ended investment company*. *AUTH* App 2.8.8G (Some relevant factors in applying the 'expectation test') comments further on this aspect of the investment condition in the specific context of the 'expectation test'.
- 2.6.5 G Certain matters are to be disregarded in determining whether the investment condition is satisfied. Section 236(4) of the *Act* states that, for these purposes, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under:
- (1) Chapter VII of Part V of the Companies Act 1985; or
 - (2) Chapter VII of Part VI of the Companies (Northern Ireland) Order 1986; or

- (3) corresponding provisions in force in another *EEA State*; or
 - (4) provisions in force in a country or territory other than an *EEA State* which the Treasury has, by order, designated as corresponding provisions (no orders have yet been made).
- 2.6.6 G The *FSA* considers that the reference in *AUTH* App 2.6.5G (3) to corresponding provisions in force in another *EEA State* will include provisions that derive from the maintenance of capital requirements of the Second Council directive on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies (77/91/EEC).
- 2.6.7 G The *FSA*'s views on the following three elements of the investment condition are explained separately:
- (1) the 'reasonable investor' (see *AUTH* App 2.7 (The investment condition: the 'reasonable investor'));
 - (2) the 'expectation' test (see *AUTH* App 2.8 (The investment condition: the 'expectation test' (section 236(3)(a) of the Act))); and
 - (3) the 'satisfaction' test (see *AUTH* App 2.9 (The investment condition: the 'satisfaction test' (section 236(3)(b) of the Act))).
- 2.7 The investment condition: the 'reasonable investor'
- 2.7.1 G The investor is specifically a reasonable investor and not just a reasonable *person*. This simply means that the objective standard to be applied is that of the reasonable investor. In all other respects the test is the same as any other objective test applying the standards of the reasonable *person*.
- 2.7.2 G The characteristics that a reasonable investor can be expected to have will inform the use of judgment required by the 'expectation test' and the 'satisfaction test'. These tests relate to the investor's ability to realise an investment within a reasonable period and to do so on the basis of the net value of its assets. In the *FSA*'s view, the characteristics of the reasonable investor include:
- (1) sound judgment based on good sense;
 - (2) some knowledge of, and possibly experience in, the field of investment in property of the same kind as that in which the *body corporate* is to invest; and
 - (3) some knowledge of the characteristic features of collective investment.

Where investment in a particular *body corporate* is clearly targeted at investors with certain characteristics, the reasonable investor can be assumed to have those characteristics.

- 2.7.3 G The reasonable investor is a hypothetical investor. The implications of this are that the test does not relate to actual investment by a particular *person* at a particular time or in relation to a particular issue of any class of shares or securities. In the *FSA's* view, what underlies the test is what a reasonable investor would think he was getting into if he were contemplating investment in a particular *body corporate*. In addition, because the investor is hypothetical, the investment condition is capable of operating on a rolling basis over time.
- 2.7.4 G In practice, the assessment of the nature of a particular *body corporate* will have to be made by applying the definition whenever an *authorised person* proposes to *communicate* an invitation or inducement to others for them to participate in the *body corporate* by buying shares or securities issued by it.
- 2.7.5 G After an initial assessment, however, the *FSA's* view is that subsequent applications of the investment condition could produce a different result, but only if there is a change to the constitution or practice of the *body corporate* which is significant and sustained. For example, this may happen if there is a change in the *body corporate's* published intentions or regular practices. As the Economic Secretary to the Treasury said in parliamentary debate when commenting on the definition, "It is a test that can be applied from time to time to allow for the possibility that a closed-ended company can become open-ended and vice versa, on account of significant changes to the way in which the operation of the company and its constitution are structured and which push the company over the boundary between the two types". (Hansard HC, 5 June 2000 Col 123).
- 2.7.6 G Section 236(3) uses the words "the investor would, if he were to participate in the scheme". This is consistent with the fact that the reasonable investor is hypothetical. But applying the test at this early stage makes it clear that there must be objectively justifiable grounds on which the reasonable investor could base the expectation in section 236(3)(a). And on which he could be satisfied on the matters in section 236(3)(b). In the *FSA's* view, this requires, for example, that there must be something in the nature of the *body corporate* or the law applicable to it to give rise to the required expectation or on which to satisfy the investor. The established practice of the *body corporate* may also provide the necessary grounds.
- 2.8 The investment condition : the 'expectation test' (section 236(3)(a) of the Act)
- 2.8.1 G The test in section 236(3)(a) of the *Act* is whether the reasonable

investor would expect that, were he to invest, he would be in a position to realise his investment within a period appearing to him to be reasonable. In the *FSA*'s view, this is an objective test with the appropriate objective judgment to be applied being that of the hypothetical reasonable investor with qualities such as those mentioned in *AUTH* App 2.7.2G (The investment condition: the 'reasonable investor').

'Realisation' of investment

- 2.8.2 G In the *FSA*'s view, the 'realisation' of an investment means converting an asset into cash or money. The *FSA* does not consider that 'in specie' redemptions (in the sense of exchanging shares or securities of BC with other shares or securities) will generally count as realisation. Section 236(3)(a) refers to the realisation of an investment, the investment being represented by the 'value' of shares or securities held in BC. In the *FSA*'s view, there is no realisation of value where shares or securities are simply replaced by other shares or securities. However, an 'in specie' redemption might, in limited circumstances, satisfy the expectation test. This is where shares or securities are exchanged for other shares or securities in the same *body corporate* and those replacement shares or securities can be converted into cash or money within a period which, for both transactions taken together, can be said to be 'reasonable'. This involves looking through the series of transactions and considering whether their overall effect would satisfy the expectation test.
- 2.8.3 G The most typical means of realising BC's shares or securities will be by their being redeemed or repurchased, whether by BC or otherwise. There are, of course, other ways in which a realisation may occur. However, the *FSA* considers that these will often not satisfy all the elements of the definition of an *open-ended investment company* considered together. For example, the mere fact that shares or securities may be realised on a market will not meet the requirements of the 'satisfaction test' for the reasons given in *AUTH* App 2.9.4G to *AUTH* App 2.9.6G (Effect of realisation on a market).
- 2.8.4 G An investor in a *body corporate* may be able to realise part, but not all, of his investment. The *FSA* considers that the fact that partial realisations may take place at different times does not prevent the *body corporate* coming within the definition of an *open-ended investment company*. But, in any particular case, the 'expectation test' will only be met if the overall period for realising the whole of the investment can be considered to be reasonable. Apart from this, the simple fact that an investor has the opportunity to realise part of his investment at pre-determined times would not itself make a *body corporate* open-ended.

Illustrations of ‘expectation’

- 2.8.5 G The use of an expectation test ensures that the definition of an *open-ended investment company* is not limited to a situation where a holder of shares in, or securities of, a *body corporate* has an entitlement or an option to realise his investment. It is enough if, on the facts of any particular case, the reasonable investor would expect that he would be able to realise the investment. The following are examples of circumstances in which the *FSA* considers that a reasonable investor may have such an expectation:
- (1) where a *body corporate*, in practice, regularly redeems or repurchases its shares or securities;
 - (2) where a *body corporate* has a declared policy of redeeming or repurchasing its shares or securities; even if it is possible for the *body corporate* to change its policy, the *FSA* takes the view that the *body corporate* is open-ended unless and until it does so. In such cases it would, however, be necessary for the change of policy to be documented and for there to be a public statement or other public evidence of the change;
 - (3) where a *body corporate* makes a public announcement that it will redeem or repurchase its shares or securities on a number of pre-arranged occasions that are identified at the time of the announcement. The issue here is whether there is a demonstrable intention to redeem or repurchase the whole of a *person's* investment. If there is, then a *body corporate* may be an *open-ended investment company* even before it has carried out any actual redemption or repurchase. This is provided that the redemption or repurchase can take place within a reasonable period. In contrast, a *body corporate* that simply offers the possibility that it may, at some stage, decide to offer redemption, or partial redemption, at certain specified times would not, in the *FSA's* view, give rise to the expectation required by section 236(3)(a).
- 2.8.6 G However, a reasonable investor's expectation of being able to realise his investment is not displaced simply because, in certain circumstances, no active steps need to be taken to realise the investment. This might happen where a redemption or repurchase of shares or securities may become compulsory as a result of some aspect of the applicable law.

Some relevant factors in applying the ‘expectation test’

- 2.8.7 G In the *FSA's* view, the fact that a *person* may invest in the period shortly before a redemption date would not cause a *body corporate*, that would not otherwise be regarded as such, to be open-ended. This is because the investment condition must be applied in relation to BC

as a whole (see *AUTH* App 2.6.3G (The investment condition (section 236(3) of the Act): general).

- 2.8.8 G Similarly, if BC issues shares or securities on different terms as to the period within which they are to be redeemed or repurchased (see *AUTH* App 2.6.4G (The investment condition (section 236(3) of the Act): general), BC must be considered as a whole. Whether or not the expectation test is satisfied in relation to a particular *body corporate* is bound to involve taking account of the terms on which its shares or securities, or classes of shares or securities, are issued. But this is only one of a number of factors to be taken into account. It is subject to any indications there may be in the other relevant factors (such as those in *AUTH* App 2.8.9G).
- 2.8.9 G As indicated in *AUTH* App 2.3.5(G) (The definition), the potential for variation in the form and operation of a *body corporate* is considerable. So, it is only possible in general *guidance* to give examples of the factors that the *FSA* considers may affect any particular judgment. These should be read bearing in mind any specific points considered elsewhere in the *guidance*. Such factors include:
- (1) the terms of the *body corporate's* constitution;
 - (2) the applicable law;
 - (3) any public representations that have been made by or on behalf of the *body corporate*;
 - (4) the actual behaviour of the *body corporate* or of a *person* acting on its behalf in relation to investors seeking to realise their investment in it;
 - (5) whether investors in the *body corporate* are in a position to take advantage of fluctuations in property value in the particular market in which the *body corporate* invests;
 - (6) the existence of a guarantee, which may mean that a longer period may appear reasonable than would be the case without the guarantee;
 - (7) where the underlying property in which the *body corporate* invests is relatively illiquid; in this case, the period within which realisation of an investment may be regarded as reasonable may be longer than it would be for property which has greater liquidity;
 - (8) the levels of disclosure of the terms on which investment is made;

(9) the nature of the investment objectives or policy of the *body corporate*; and

(10) the appropriateness of the name of the *body corporate*.

- 2.9 The investment condition : the ‘satisfaction test’ (section 236(3)(b) of the Act)
- 2.9.1 G The test in section 236(3)(b) of the *Act* is whether the reasonable investor would, before he makes a decision to invest, be satisfied that the value of his investment would be realised on a basis calculated wholly or mainly by reference to the value of the property belonging to BC.
- 2.9.2 G In the *FSA*'s view, this means that the reasonable investor must be satisfied that what he will get when he realises his investment is his proportionate share in the value of BC's underlying assets, less any dealing costs. In other words, that he is satisfied he will get net asset value. The investment condition focuses on the way the *body corporate* operates over time, and not by reference to particular issues of shares or securities (see *AUTH* App 2.6.3G (The investment condition (section 236(3) of the Act): general)). This means that this part of the investment condition looks to the general method used to calculate the value of the investment.
- 2.9.3 G For the ‘satisfaction test’ to be met, there must be objectively justifiable grounds on which the reasonable investor could form a view. He must be satisfied that the value of BC's property will be the basis of a calculation used for the whole, or substantially the whole, of his investment. The *FSA* considers that the circumstances, or combination of circumstances, in which a reasonable investor would be in a position to form this view include:
- (1) where the basis of net asset valuation is stated in constitutional documents of BC;
 - (2) where there is a separate agreement or arrangement made outside BC's constitution under which a *person* other than BC undertakes:
 - (a) to redeem or repurchase any shares or securities issued by BC; or
 - (b) to take steps to ensure that the market value of the shares or securities reflects the value of BC's property (see *AUTH* App 2.9.4G (Effect of realisation on a market)); and
 - (3) where an undertaking to intervene in the market to support the price of the shares or securities at net asset value has been

made publicly known by BC or by another *person* (see *AUTH* App 2.9.4G (Effect of realisation on a market)).

Effect of realisation on a market

- 2.9.4 G *AUTH* App 2.9.3G(2) and *AUTH* App 2.9.3G(3) refer to circumstances where the reasonable investor may be satisfied that he can realise his investment at net asset value because of arrangements made to ensure that the shares or securities trade at net asset value on a market. There may, for example, be cases of market dealing where the price of shares or securities will not depend on the market. An example is where BC or a third party undertakes to ensure that the market value reflects the value of BC's property. This includes taking steps such as intervening in the market. In this case, it seems to the *FSA* that such an undertaking will constitute the necessary objective grounds on which an investor can be satisfied as to the basis on which the value of his investment will be realised. Unless arrangements of this kind exist, the *FSA* considers that the satisfaction test will not be met if the primary means for realising any investment in BC is on a market.
- 2.9.5 G However, where there is a market, the *FSA* does not consider that the test in section 236(3)(b) would be met if the price the investor receives for his investment is wholly dependent on the market rather than specifically on net asset value. In the *FSA*'s view, typical market pricing mechanisms introduce too many uncertainties to be able to form a basis for calculating the value of an investment (linked to net asset value) of the kind contemplated by the satisfaction test. As a result, the *FSA* takes the view that, subject to *AUTH* App 2.9.4G, market dealings or facilities relating to the shares in, or securities of, BC will generally not be relevant in assessing whether or not BC comes within the definition of an *open-ended investment company*.
- 2.9.6 G The fact that the definition must be applied to BC as a whole (see *AUTH* App 2.6.3G (The investment condition (section 236(3) of the Act): general)) is also relevant here. So, for example, in a take-over situation the fact that a bidder may be willing to provide an exit route for an investment at net asset value will be irrelevant within the context of the definition. This is so even if an investor invests in particular shares or securities in the knowledge or expectation or in anticipation of such an offer being made. In the *FSA*'s opinion, this is not a typical situation and does not affect the nature of BC as a whole or the manner in which it functions characteristically.

'Wholly or mainly'

- 2.9.7 G The expression 'wholly or mainly' in section 236(3)(b) determines the extent of the permissible departure from the link between the price of BC's shares or securities and the value of its net assets. The word 'mainly' introduces some flexibility to the process to allow for

limited account to be taken of factors other than the value of BC's assets that may result in the sum realised failing to reflect the true net asset value. Such factors may include:

- (1) the payment by the investor of charges; or
- (2) the payment by the investor of an early redemption penalty; or
- (3) a discount on a repayment or repurchase of the shares or securities to reflect the payment by or on behalf of BC of the charges required to fund payment from a source other than BC's assets; for example, this might be a loan that is to be repaid from BC's assets once they are available.

2.10 Significance of being an open-ended investment company

Marketing of shares or securities issued by body corporate

- 2.10.1 A number of controls apply under the *Act* to the promotion of *shares* or *securities* that are issued by any *body corporate*. These controls differ according to whether the *person* making the promotion is an *unauthorised person* (see *AUTH* App 2.10.2G) or an *authorised person* (see *AUTH* App 2.10.3G to *AUTH* App 2.10.6G). In addition, where a *body corporate* is not an *open-ended investment company*:
- (1) the requirements of the Public Offers of Securities Regulations 1995 will apply if its *securities* are offered to the public in the *United Kingdom*; and
 - (2) the listing requirements under Part VI of the *Act* (Official listing) will apply if its *securities* are to be *listed*.
- 2.10.2 G The controls under the *Act* that apply to promotions of *shares* or *securities* by *unauthorised persons* are in section 21 of the *Act* (Restrictions on financial promotion). These controls apply where an *unauthorised person* makes a *financial promotion* in, or from, the *United Kingdom* that relates to the *shares* in or *securities* of any *body corporate*. The same controls apply regardless of whether the *shares* or *securities* being promoted are issued by a *body corporate* that is an *open-ended investment company* or one that is not. There are a number of exemptions from the restriction in section 21 of the *Act*. These are explained in [AUTH App 1](#) (Financial promotion and related activities).
- 2.10.3 G Promotions made by *authorised persons* in the *United Kingdom* are generally subject to the controls in *COB* 3 (Financial Promotion). However, in the case of shares in, or securities of, a *body corporate* which is an *open-ended investment company*, additional controls are imposed by Chapter II of Part XVII of the *Act* (Restrictions on promotion of collective investment schemes) (see

[AUTH App 1.20](#)). Section 238 of the *Act* (Restrictions on promotion) prevents an *authorised person communicating* any invitation or inducement to buy shares or securities issued by an *open-ended investment company*. Section 240 of the *Act* (Restriction on approval of promotion) prevents an *authorised person approving* a *financial promotion* to be *communicated* by an *unauthorised person*. This is if the *authorised person* would not be able to promote the share or security himself.

- 2.10.4 G The restrictions mentioned in *AUTH App 2.10.3G* are subject to a number of exemptions. For example, the controls in sections 238 and 240 do not apply to *financial promotions* about certain kinds of *collective investment scheme*. These are:
- (1) *open-ended investment companies* formed in Great Britain and authorised by the *FSA* under the Open-ended Investment Companies Regulations 2001;
 - (2) *authorised unit trust schemes*; and
 - (3) *collective investment schemes* that are *recognised schemes* (see CIS 17 (Recognised schemes)).

The position with respect to the promotion by *authorised persons* of *open-ended investment companies* formed in Northern Ireland will be considered as part of the implementing process for the relevant Northern Ireland legislation (see *AUTH App 2.1.4G* (Other guidance that may be relevant)).

- 2.10.5 G There are a number of other exemptions in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/1060). In general terms, these exemptions are equivalent to the exemptions from section 21 of the *Act* that apply to *units*. There is *guidance* on those exemptions in [AUTH App 1.20.3G](#) (Additional restriction on the promotion of collective investment schemes).

- 2.10.6 G The *FSA* has also made *rules* under section 238(5) which allow *authorised persons* to *communicate* or *approve* a *financial promotion* for an *open-ended investment company* that is an *unregulated collective investment scheme* (that is, one that does not fall within *AUTH App 2.10.4G*). The circumstances in which such a communication or *approval* is allowed are explained in [COB 3](#) Annex 5 (which is introduced by [COB 3.11](#)).

Implications for regulated activities

- 2.10.7 G In the *Regulated Activities Order*, shares in or securities of an *open-ended investment company* are treated differently from *shares* in other *bodies corporate*. They are treated as *units* in a *collective*

investment scheme under article 81 of the *Regulated Activities Order* (Units in a collective investment scheme) rather than *shares* under article 76 (Shares etc).

- 2.10.8 G A *person* who carries on in the *United Kingdom* the business of engaging in any *regulated activity* that relates to *units* or *shares* will need to be an *authorised person* (see [AUTH 2.7](#) and [AUTH 2.8](#)) (Authorisation and regulated activities).
- 2.10.9 G In order to be *authorised*, a *person* must have *permission* to carry on the *regulated activities* in question. What the *permission* needs to cover may differ according to whether the *regulated activity* being carried on relates to *units* or *shares*. So, for example, a *body corporate* that is an *open-ended investment company* will need *permission* if it carries on the *regulated activity* of *dealing as principal* or *agent, arranging (bringing about)* or *making arrangements with a view to transactions* in its own shares or securities in the *United Kingdom*. This applies also to a *body corporate* that is not an *open-ended investment company* except that it will not need *permission* to issue or arrange for the issue of its own *shares* or *securities*.
- 2.10.10 G A *person* carrying on the *regulated activity* of *establishing, operating or winding up a collective investment scheme* that is constituted by an *open-ended investment company* will need *permission* for those activities. In line with section 237(2) of the *Act* (Other definitions), the *operator* of a *collective investment scheme* that is an *open-ended investment company* is the *company* itself. But where the *open-ended investment company* is incorporated outside the *United Kingdom*, it will only require *permission* if its operation takes place in the *United Kingdom*.
- 2.11 Frequently Asked Questions
- 2.11.1 G There are some frequently asked questions about the application of the definition of an *open-ended investment company* in the following table. This table belongs to *AUTH* App 2.2.4G (Introduction).

Question	Answer
1 Can a <i>body corporate</i> be both open-ended and closed-ended at the same time?	In the <i>FSA's</i> view, the answer to this question is 'no'. The fact that the investment condition is applied to BC (rather than to particular shares in, or securities of, BC) means that a <i>body corporate</i> is either an <i>open-ended investment company</i> as defined in section 236 of the <i>Act</i> or it is not. Where BC is an <i>open-ended investment company</i> , all of its securities would be

Question**Answer**

- treated as *units of a collective investment scheme* for the purpose of the *Act*. A *body corporate* formed in another jurisdiction may, however, be regarded as open-ended under the laws of that jurisdiction but not come within the definition of an *open-ended investment company* in section 236 (and vice versa).
- 2 Can an *open-ended investment company* become closed-ended (or a closed-ended body become open-ended)?
- In the *FSA's* view, the answer to this question is 'yes'. A *body corporate* may change from open-ended to closed-ended (and vice versa) if, taking an overall view, circumstances change so that a hypothetical reasonable investor would consider that the investment condition is no longer met (or vice versa). This might happen where, for example, an *open-ended investment company* stops its policy of redeeming shares or securities at regular intervals (so removing the expectation that a reasonable investor would be able to realise his investment within a period appearing to him to be reasonable). See also *AUTH App 2.7.5G*.
- 3 Does the liquidation of a *body corporate* affect the assessment of whether or not the body is an *open-ended investment company*?
- The *FSA* considers that the possibility that a *body corporate* that would otherwise be regarded as closed-ended may be wound up has no effect at all on the nature of the *body corporate* before the winding up. The fact that, on a winding up, the shares or securities of any investor in the *body corporate* may be converted into cash or money on the winding up (and so 'realised') would not, in the *FSA's* view, affect the outcome of applying the expectation test to the *body corporate* when looked at as a whole. The answer to Question 4 explains that investment in a closed-ended fixed term *company* shortly before its winding up does not, in the *FSA's* view, change the closed-ended nature of the *company*. For *companies* with no fixed term, the theoretical

Question

Answer

- possibility of a winding up at some uncertain future point is not, in the *FSA's* view, a matter that would generally carry weight with a reasonable investor in assessing whether he could expect to be able to realise his investment within a reasonable period.
- 4 Does a fixed term closed-ended investment *company* become an *open-ended investment company* simply because the fixed term will expire?
- In the *FSA's* view, the answer to this is 'no'. The termination of the *body corporate* is an event that has always been contemplated (and it will appear in the *company's* constitution). Even as the date of the expiry of the fixed term approaches, there is nothing about the *body corporate* itself that changes so as to cause a fundamental reassessment of its nature as something other than closed-ended. Addressing this very point in parliamentary debate, the Economic Secretary to the Treasury stated that the "aim and effect [of the definition] is to cover companies that look, to a reasonable investor, like open-ended investment companies". The Minister added that "A reasonable investor's overall expectations of potential investment in a company when its status with respect to the definition is being judged will determine whether it meets the definition. The matter is therefore, definitional rather than one of proximity to liquidation". (Hansard HC, 5 June 2000 col 124).
- 5 In what circumstances will a *body corporate* that issues a mixture of redeemable and non-redeemable shares or securities be an *open-ended investment company*?
- In the *FSA's* view, the existence of non-redeemable shares or securities will not, of itself, rule out the possibility of a *body corporate* falling within the definition of an *open-ended investment company*. All the relevant circumstances will need to be considered (see *AUTH* App 2.6.4, *AUTH* App 2.8.8G and *AUTH* App 2.8.9G). So the following points need to be taken into account.

Question

Answer

- (1) The precise terms of the issue of all the shares or securities will be relevant to the question whether the investment condition is met, as will any arrangements that may exist to allow the investor to realise his investment by other means.
- (2) The proportions of the different share classes will be relevant to the impression the reasonable investor forms of the *body corporate*. A *body corporate* that issues only a minimal amount of redeemable shares or securities will not, in the *FSA's* view, be an *open-ended investment company*. A *body corporate* that issues a minimal amount of non-redeemable shares or securities will be likely to be an *open-ended investment company*. A *body corporate* that falls within the definition of an *open-ended investment company* is likely to have (and to be marketed as having) mainly redeemable shares or securities. However, whether or not the *body corporate* does fall within the definition in any particular case will be subject to any contrary indications there may be in its constitutional documents or otherwise.
- (3) Where shares or securities are only redeemable after the end of a stated period, this factor will make it more likely that the *body corporate* is open-ended than if the shares or securities are never redeemable.
- 6 Does "realised on a basis calculated wholly or mainly by reference to..." in section 236(3)(b) apply to an investor buying investment trust company shares traded on a *recognised investment exchange* because of usual market practice that the

In the *FSA's* view, the answer is 'no' (for the reasons set out in *AUTH* App 2.9.4G to *AUTH* App 2.9.6G).

Question	Answer
<p>shares trade at a discount to asset value?</p>	
<p>7 Does the practice of UK investment trust companies buying back shares result in them becoming <i>open-ended investment companies</i>?</p>	<p>In the <i>FSA's</i> view, it does not, because its actions will comply with company law: see section 236(4) of the Act and <i>AUTH</i> App 2.6.5G.</p>
<p>8 Would a <i>body corporate</i> holding out redemption or repurchase of its shares or securities every six months be an <i>open-ended investment company</i>?</p>	<p>In the <i>FSA's</i> view a period of six months would generally be too long to be a reasonable period for a liquid securities fund. A shorter period affording more scope for an investor to take advantage of any profits caused by fluctuations in the market would be more likely to be a reasonable period for the purpose of the realisation of the investment (in the context of the 'expectation' test, see <i>AUTH</i> App 2.8 and, in particular, <i>AUTH</i> App 2.8.9G which sets out the kind of factors that may need to be considered in applying the test).</p>
<p>9 Would an initial period during which it is not possible to realise investment in a <i>body corporate</i> mean that the <i>body corporate</i> could not satisfy the investment condition?</p>	<p>In the <i>FSA's</i> view, the answer to that question is 'no'. In applying the investment condition, the <i>body corporate</i> must be considered as a whole (see <i>AUTH</i> App 2.6.3G). At the time that the shares or securities in a <i>body corporate</i> are issued, a reasonable investor may expect that he will be able to realise his investment within a reasonable period notwithstanding that there will first be a short-term delay before he can do so. Whether or not the 'expectation test' is satisfied will depend on all the circumstances (see <i>AUTH</i> App 2.8.9G).</p>

Annex B

Amendments to the Authorisation manual

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

- 1.8.4 G As well as being included as an appendix to *AUTH*, copies of all current guidance issued by Authorisation Enquiries are available separately from the FSA website at www.fsa.gov.uk or through the FSA's Publication Enquiries department on 020 7676 3298. The Authorisation Enquiries team will be pleased to clarify or discuss any aspects of the guidance in more detail. Enquiries about the scope of the Act may be made to the Authorisation Enquiries helpline by telephone on 020 7676 0082 or by e-mail to authorisationenquiries@fsa.gov.uk.
- 2.3.2 G (4) ... This applies to the activities of *effecting* or *carrying out contracts of insurance*, certain activities relating to the Lloyd's market ~~and, in the future~~, entering as provider into a funeral plan contract and, in the future, activities relating to regulated mortgage contracts (see ~~AUTH 2.7.18G~~ and AUTH 2.7.20G respectively).
- 2.5.5 G ...Article 4(4) of the *Regulated Activities Order* (Specified activities: general) ~~identifies four~~ lists a number of exclusions that must be disregarded. These relate to the exclusions concerned with:
- (1) the absence of holding out (see *AUTH 2.8.4G(1)*);
 - (2) transactions or arrangements with or through certain persons (see *AUTH 2.8.4G (2)*, *AUTH 2.8.5G(1)* and *AUTH 2.8.6G(4)*);
 - (3) risk management (see *AUTH 2.8.4G(5)* and *AUTH 2.8.5G(2)*);
 - (4) persons acting under powers of attorney (see *AUTH 2.8.7G*);
 - (5) sale of goods (see *AUTH 2.9.7G*);
 - (6) groups and joint enterprises (see *AUTH 2.9.9G*); and
 - (7) sale of a *body corporate* (see *AUTH 2.9.11G*).

- 2.6.3 G ... The circumstances in which payments are excluded from the definition itself are exhaustively stated in article 5(3) of the *Regulated Activities Order (Accepting deposits)*. In addition, there is a separate exclusion in article 9 of the Order (Sums received in consideration for the issue of debt securities) for ~~sums that are received as consideration for the issue of specified debt securities~~ and another in article 9A (Sums received in exchange for electronic money). *AUTH App 3.2.15G to AUTH App 3.2.19G* contain *guidance* on the exclusion relating to *electronic money*.
- 2.6.4A G ... Further *guidance* is given in *AUTH 2 App 3 (Guidance on the scope of the regulated activity of issuing e-money)*.
- 2.6.27 G Regulated mortgage contracts will be *specified investments* with effect from ~~a future~~ the date ~~nine months following the date on which section 19 of the Act comes into force~~. The Treasury has indicated that it expects this date to be in 2004.
- 2.7.2A G *Guidance* on the *regulated activity of issuing e-money* is given in *AUTH 2 App 3*.
- 2.7.7A G The Treasury has announced that it intends to bring within the scope of regulated activities the arranging of deals in regulated mortgage contracts. It has also announced that it intends to regulate the activities of insurance intermediaries. (The activity of arranging deals in contracts of insurance that are contractually based investments is already a regulated activity under article 25 of the Regulated Activities Order). These changes are expected to take effect in 2004.
- 2.7.11 G The *regulated activities* relating to *sending dematerialised instructions* relate to the operation of the system for electronic transfer of title to ~~certain securities~~ securities or contractually based investments. This is the system maintained under set up by the Uncertificated Securities Regulations 1995-2001 (and currently operated by CREST). ...
- 2.7.16A G The Treasury has announced that it intends to bring within the scope of regulated activities advising a borrower on the merits of his entering into or varying the terms of a regulated mortgage contract. It has also announced that it intends to regulate the sale of insurance by insurance intermediaries. (Advising on contracts of insurance that are contractually based investments is already a regulated activity under article 53 of the Regulated Activities Order). These changes are expected to take effect in 2004.
- 2.7.18 G ... This ~~will be~~ became a *regulated activity* on ~~with effect from~~ 1 January 2002.

- 2.7.20 G Entering into as lender, and administering, a regulated mortgage contract will become *regulated activities* from ~~the date nine months following the date on which section 19 of the Act comes into force~~ a future date. The Treasury has announced that it expects this date to be in 2004. These activities have not been included in Table 1 of *AUTH 2 Ann 2G*.
- 2.7.21 G ...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*...
- 2.8.4 G (4) *A company does not deal as principal by issuing ~~certain securities in itself~~ its own shares or share warrants and a person does not deal as principal by issuing his own debentures or debenture warrants.*
- 2.8.6 G (9) *A company's ~~is not carrying on a regulated activity under arrangements for issuing specified securities in itself~~ are excluded from both article 25(1) or (2) of the Regulated Activities Order (Arranging deals in investments) by arranging for the issue of its own shares or share warrants and a person is not doing so by arranging for the issue of his own debentures or debenture warrants.*
- 2.8.9 G Exclusions for the *regulated activity* of *sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system set up by maintained under the Uncertificated Securities Regulations ~~1995~~ 2001. ...
- 2.9.1 G (1) ...They have no effect in relation to the separate *regulated activities* of *accepting deposits*, *issuing e-money*, *effecting* or *carrying out contracts of insurance*...
- 2.9.17 G (2) ...The exemptions to the *financial promotion* restrictions made by the Treasury under section 21 of the *Act* (Restrictions on financial promotion) will be relevant to the question of whether those restrictions have been contravened (see separate *guidance on financial promotion* in *AUTH App 1 AUTH App X* ~~[to be added later]~~ (Financial promotion and related activities)).

2 Ann 2 G
2

Table

Table 1 : Regulated Activities [See note 1 to Table 1]

Regulated Activity

Specified Investment

in relation to which the regulated activity

(in the corresponding section of column one) may be carried on

...
(k) sending dematerialised instructions (article 45(1))
...
security and contractually based investment
[Expanded in Table 3]

Note 1...
Permission to carry on the activity of agreeing to carry on a regulated activity will be given automatically by the FSA in relation to those other regulated activities for which an applicant is given permission (other than those activities detailed in articles 5, 9B, 10, 51 and 52 detailed above).

- App1.1.2 G (1) to outline the restriction on financial promotion in section 21 of the *Act* (~~*Restrictions on financial promotion*~~ Restrictions on financial promotion) and the main exemptions from this restriction; and
...
- App 1.7.2 G ...but find that the restriction in section 21 applies to his communications. It should also be noted that e-money is not a controlled investment. This means that the restriction in section 21 does not apply to the communication of an invitation or inducement that concerns e-money. This is unless the communication is a financial promotion for some other reason.
- App 1.8.3 G ...For example, the ~~Electronic Commerce Directive~~ E-Commerce Directive (2000/31/EC) will, with limited exceptions, prevent the *United Kingdom* from imposing restrictions on incoming *financial promotions* in information society services. The Treasury has given effect to this through changes made in the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157). This is explained more fully in AUTH App 1.12.38G. ~~The Treasury has stated in its consultative document 'Implementation of the E-Commerce Directive in Financial Services : a Second Consultation document' issued in March 2002 that it intends to amend the Financial Promotion Order to give effect to this.~~ Other potentially relevant directives include the Television Without Frontiers Directive (89/552/EEC)...
- App 1.9.5 G (2) The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (SI 2001/3650); and
(3) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No2) Order 2001 (SI 2001/3800);

- (4) The Financial Services and Markets Act 2000 (Financial Promotion and Miscellaneous Amendments) Order 2002 (SI 2002/1310); and
- (5) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157).

A consolidated version of the *Financial Promotion Order* is available on the Treasury website www.hm-treasury.gov.uk under 'consultations/ Documents/Financial Services/Regulating Financial Services/FSMA/ Secondary legislation ordered by date of laying.'

- App 1.10.3 G (2) If the interactive dialogue takes place by means of the exchange of letters or e-mails or in a publication, the communication will be deemed to be non-real time. ~~(that is, a~~ In this case, publications include newspapers, journals, magazines or other periodical publications, a websites or similar systems for the electronic display of information, a television or radio programmes and a teletext services) ~~the communication will be deemed to be non-real time.~~
- App 1.12.1 G ... These are summarised in *AUTH* App 1.12.2G to ~~AUTH App 1.12.37G~~ *AUTH* App 1.12.38G.
- App 1.12.4 G The exemption ~~presently~~ applies whether or not the *financial promotion* is made from the *United Kingdom*. However, there is the exception that, if it is an *unsolicited real time financial promotion*, it must be made from a place outside the *United Kingdom* and be for the purposes of a business carried on entirely outside the *United Kingdom*. ~~The exemption as currently drafted conflicts with the requirements of the Electronic Commerce Directive (2000/31/EEC). The Treasury has indicated in its consultative document 'Implementation of the E-Commerce Directive in Financial Services: A Second Consultative Document' issued in March 2002 that it intends to amend the *Financial Promotion Order*. The Treasury plans to ensure that section 21 does not restrict persons in other *EEA States* who wish to make *financial promotions* in the *United Kingdom* through an information society service. The Treasury document also states that amendments will be made to ensure that section 21 applies to outgoing *financial promotions* of that kind, in order to ensure that the principle of Home State regulation of information society services is sustained. To give effect to the principle of *country of origin* regulation of *information society services* as required by the *E-Commerce Directive*, article 12(7) of the *Financial Promotion Order* prevents the exemption applying to an *outgoing electronic commerce communication*.~~

App 1.12.11G This exemption applies only to a real time financial promotions which are that is made with a view to or for the purposes of introducing persons the recipient to certain kinds of person. These are an authorised persons who carry on the controlled activity to which the financial promotion relates, or exempt persons where the financial promotion relates to whose authorisation or exemption covers the a controlled activity to which the financial promotion relates that is also a regulated activity in relation to which he is an exempt person. This is subject ...

Mere conduits (articles 18 and 18A)

App 1.12.18 G ...*AUTH* App 1.6.5G explains that such persons may not be regarded as communicating a financial promotion simply because they have distributed it. Article 18 (Mere conduits) does not apply where the financial promotion is an outgoing electronic commerce communication. A person acting as a mere conduit for financial promotions of this kind will, however, be able to use article 18A (Outgoing electronic commerce communications : mere conduits, caching and hosting). Article 18A is not subject to the conditions that apply to other forms of mere conduit (as referred to in *AUTH* App 1.12.19G and *AUTH* App 1.12.20G). However, it does require compliance with the conditions in articles 12(1), 13(1) and 14(1) of the *E-Commerce Directive* that relate to the liability of intermediary service providers.

App 1.12.27 G (2) ...
(b) the Programme Guide of the Radio Authority; or

(c) the Producers' Guidelines issued by the British Broadcasting Corporation ; or

(d) the Programme Code of the Independent Television Commission.

App 1.12.32 G Promotion broadcast by company director etc (article 20A)

(Title)

Article 20A...

Incoming electronic commerce communications (article 20B)

App 1.12.38 G Article 20B gives effect to the provisions of the *E- Commerce Directive* by exempting incoming electronic commerce communications. However, article 20B does not apply to the following communications:

(1) an advertisement by the operator of a UCITS of units in that scheme;

(2) An invitation or inducement to enter into a *contract of insurance* where :

(a) it is made by an undertaking which has received official authorisation in line with article 6 of the *First Life Directive* or the *First Non-life Directive*; and

(b) the insurance falls within the scope of any of the *Insurance Directives*; or

(3) An unsolicited communication made by electronic mail.

For the purposes of (3), a communication is unsolicited unless it is made in response to an express request from its recipient.

App 1.14.22 G ...throughout the financial year before the date of the certificate. Where the *financial promotion* is an *outgoing electronic commerce communication*, the earnings or net assets may be of an equivalent amount in another currency. ~~In order to~~ To be current...

App 1.14.27 G ...the description of investment to which the *financial promotion* relates. Where the *financial promotion* is an *outgoing electronic commerce communication*, the certificate may be signed by a *person* who is entitled, under the law of an *EEA State* other than the *United Kingdom*, to carry on *regulated activities* in that *EEA State*. The FSA considers that a 'description of investment'...

App 1.14.31 G (4) ...
(b) any *person* considering investing in the *company* should regard his subscription as helping the *company* to meet its non-financial objectives and only secondarily, if at all, as an investment.

Where the *financial promotion* is an *outgoing electronic commerce communication*, the reference in (3) to an *authorised person* includes a *person* who is entitled, under the law of an *EEA State* other than the *United Kingdom*, to carry on *regulated activities* in that *EEA State*.

App 1.20.3 G The Treasury has made an order under section 238(6). This is the Financial Services and Markets Act 2000 (Promotion of Collective Investment Services) (Exemptions) Order 2001 (as amended by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001, SI 2001/2633 and by articles 7 to 10 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002, SI 2002/2157) ('the CIS Financial Promotion Order'). The overall effect of the CIS Financial Promotion Order is to ensure that *authorised persons* ...

App 1.21.13 G ... This includes *recognised investment exchanges* and *EEA regulated markets* ~~which that~~ are *exempt persons* under article 36 of the *Exemption Order*, together with various other markets (including OFEX(UK)). The *financial promotion* must...

App 1.21.16 G (1) which, if it were to be included in a prospectus issued in line with Part II of the Public Offers of Securities Regulations 1995 (or where it is an *outgoing electronic commerce communication*, provisions corresponding to that Part under the law of another *EEA State*), would be required to be *communicated* by those Regulations (or other provisions); and
...

App 1.29.3 G ... advice for the purposes of ~~section~~ article 53. This is because ...

App 1.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No	Title and AUTH App 1 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
18	Mere conduits (1.12.18G)	*	*	*
<u>18A</u>	<u>Outgoing electronic commerce communications: mere conduits, caching and hosting</u>	<u>*</u>	<u>*</u>	<u>*</u>
19	Investment professionals (1.12.21G and 1.21.5G)	*	*	*
20	Communications by journalists (1.12.23G)			*
20A	Promotion broadcast by company director etc (1.12.23G and 1.21.6G)	*	*	*

<u>20B</u>	<u>Incoming electronic commerce communications (1.12.38G)</u>	<u>*</u>	<u>*</u>	<u>*</u>
22	Deposits : non-real time communications (1.13)			*

App 3 (Title)

Guidance on the scope of the ~~regulatory~~ regulated activity of issuing e-money

Annex C

Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>electronic commerce communication</i>	(in accordance with article 6 of the <i>Financial Promotion Order</i>) a communication, the making of which constitutes the provision of an <i>information society service</i> .
<i>incoming electronic commerce communication</i>	(in accordance with article 6 of the <i>Financial Promotion Order</i>) an <i>electronic commerce communication</i> made from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>outgoing electronic commerce communication</i>	(in accordance with article 6 of the <i>Financial Promotion Order</i>) an <i>electronic commerce communication</i> made from an <i>establishment</i> in the <i>United Kingdom</i> to a <i>person</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .

SUPERVISION MANUAL (AMENDMENT NO 8) INSTRUMENT 2002

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 (the “Act”):
- (1) section 148(3) (Modification or waiver of rules);
 - (2) section 157(1) (Guidance);
 - (3) sections 250(4) and (5) (Modification or waiver of rules); and
 - (4) regulations 7(3) and (4) of the Open-ended Investment Companies Regulations 2001 (SI 2001 (1228) (Modification or waiver of rules).

Commencement

- B. This instrument comes into force on 1 October 2002.

Amendment of the Supervision manual

- C. The Supervision manual is amended in accordance with Annex A to this instrument.

Amendment of the Glossary

- D. The Glossary is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Supervision Manual (Amendment No 8) Instrument 2002.

By order of the Board

19 September 2002

Annex A

Amendments to SUP

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

SUP 6 Ann 4 G: Additional guidance for a firm winding down (running off) its business

3 Table Specific guidance for insurers

...

3. An insurer ceasing to ~~carry out~~ effect contracts of insurance is required to submit a *scheme of operations* in accordance with SUP App 2 (Insurers: scheme of operations)...

...

5 Table Specific guidance for firms accepting deposits

...

12. Entering into a trust arrangement does not "transfer" deposits or discharge the *firm's* contractual obligations to its depositors. ~~The firm will, therefore, need to continue to be an authorised person until these obligations are discharged.~~

...

14. Placing funds in a segregated account does not discharge a *firm's* contractual obligations to its depositors; ~~the FSA therefore continues to have a supervisory responsibility towards the firm.~~

SUP 8.2.7 G Table Rules which can be waived (see SUP 8.2.6G)

...

Continued rules	Article 4...	<i>IPRU(Bank)</i> 3.3.15R...
-----------------	--------------	---------------------------------

<u>Continued provisions</u>	<u>Article 9 of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002</u>	<u>CRED 7, CRED 14</u>
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SUP 8.3.3 D ...

- (6) the *firm's* reasons for considering that the conditions in section 148(4) of the ~~Act~~ Act are satisfied ...

SUP 17 Annex 5 G: Regulated markets

2 Table

<p>...</p> <p>Denmark</p> <ol style="list-style-type: none"> 1. Københavns Fondsbørs <ul style="list-style-type: none"> — Equity market; — Bond market; — Derivatives market 2. <u>XtraMarked (authorised market place for unlisted units of Investment Associations (UCITS) and Special-Purpose Associations)</u> 3. <u>Dansk Autoriseret Markedsplads A/S (Danish Authorised Market Place Ltd. (DAMP))</u> [authorised market place = regular trade in securities admitted for trading but not listed on stock exchange]

SUP Schedule 2

Notification requirements

2 G Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<i>SUP 16.7.57R to SUP 16.7.58R</i>	Reporting – financial reports – <i>Members' adviser</i>	Quarterly reporting statement	Quarterly	15 <i>business days</i> after the quarter end
<u><i>SUP 16.7.62R to SUP 16.7.63R</i></u>	Reporting – financial reports – <i>Credit union</i>	Form CQ – Key financial data	Quarterly	<u>One month after quarter end</u>
<u><i>SUP 16.7.62R to SUP 16.7.63R</i></u>	Reporting – financial reports – <i>Credit union</i>	Form CY – Extended financial data	Annually	<u>Seven months after the financial year end</u>
<u><i>SUP 16.7.64R to SUP 16.7.65R</i></u>	Reporting – financial reports – <i>ELMI</i>	Annual report and audited accounts	Annually	<u>3 months after the firm's accounting reference date</u>
<u><i>SUP 16.7.64R to SUP 16.7.65R</i></u>	Reporting – financial reports – <i>ELMI</i>	Form ELM-CA/LE – Unconsolidated reporting statement on capital adequacy	Half-yearly	<u>20 business days after period end (22 business days if submitted electronically)</u>
<u><i>SUP 16.7.64R to SUP 16.7.65R</i></u>	Reporting – financial reports – <i>ELMI</i>	Form ELM-CA/LE – Consolidated reporting statement on capital adequacy	Half-yearly	<u>20 business days after period end (22 business days if submitted electronically)</u>

<u>SUP 16.7.64R to SUP 16.7.65R</u>	<u>Reporting – financial reports – ELM I</u>	<u>Form BSD3 – Consolidated reporting statement on capital adequacy in the case of ELM 7.3.2R</u>	<u>Half-yearly</u>	<u>20 business days after period end (22 business days if submitted electronically)</u>
<u>SUP 16.7.64R to SUP 16.7.65R</u>	<u>Reporting – financial reports – ELM I</u>	<u>Form ELM-CA/LE – Unconsolidated large exposures reporting statement</u>	<u>Half-yearly</u>	<u>20 business days after period end (22 business days if submitted electronically)</u>
<u>SUP 16.7.64R to SUP 16.7.65R</u>	<u>Reporting – financial reports – ELM I</u>	<u>Form ELM-CA/LE – Consolidated large exposures reporting statement</u>	<u>Half-yearly</u>	<u>20 business days after period end (22 business days if submitted electronically)</u>
<u>SUP 16.8</u>	...	...	...	...

Annex B

Amendments to the Glossary

Amend the following definition as shown (underlining indicates new text and striking through indicates deleted text).

regulated market (a) ...

(iv) ...

(see ~~Part 1~~ Tables 1 and 2 of SUP 17 Ann 5G for an indicative list of these markets); and

(b) ...

(see ~~Part 2~~ Tables 3 and 4 of SUP 17 Ann 5G for an indicative list of these markets).

SUPERVISION MANUAL (AMENDMENT NO 9) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers 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 182 (Notification); and
 - (4) section 157(1) (Guidance).
- 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 as follows:
- (1) the amendments in Annex A come into force on 1 January 2003;
 - (2) the remainder of this instrument comes into force on 1 October 2002.

Amendment of the Supervision manual

- D. The Supervision manual is amended in accordance with Annexes A and B to this instrument.

Citation

- E. This instrument may be cited as the Supervision Manual (Amendment No 9) Instrument 2002.

By order of the Board
19 September 2002

Annex A
Amendments to SUP
coming into force on 1 January 2003

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

11.1.1 R This chapter applies to every firm except:

...
 (4) ~~a firm which is a partnership;~~ [deleted]
 ...

11 Ann 4 D Controllers Form A
 Notification of a change in control

...

Declaration and Signature

...

Capacity in which control to be held	Signatory
---	------------------

...

<u>As a partner in a partnership or as a partnership</u>	a partner <u>(and one partner only need sign, even if the form is submitted by several partners)</u> (if Controllers Form B is submitted in relation to partners-partners , one of those partners should sign)
--	--

16.1.3 R Table Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...
SUP 16.4 and 16.5	All categories of firm except: ... (e) a partnership; <u>[deleted]</u>	

16.4.1 G The effect of SUP 16.1.1R is that this section applies to every firm except:

...

(5) ~~a partnership~~; [deleted]

...

16.5.1 G

The effect of SUP 16.1.1R is that this section applies to every *firm* except:

...

(5) ~~a partnership~~; [deleted]

...

Annex B
Amendments to SUP
coming into force on 1 October 2002

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

8.3.1A G Even if the conditions in section 148(4) of the *Act* are satisfied, the *FSA* will consider other relevant factors before giving a *waiver*, such as whether the *waiver* would be compatible with European law, including relevant EC Directives.

Waiver of an evidential provision

8.3.11 G An application for a *waiver* of an *evidential provision* will normally be granted only if a breach of the underlying binding *rule* is actionable under section 150 of the *Act*. Individual *guidance* would normally be a more appropriate response (see *SUP* 9 (Individual Guidance)) if there is no right of action.

8.3.12 G An application for a *waiver* of the presumption of compliance created by an *evidential provision* would not normally be granted.

8.3.13 G For an application for a *waiver* of the presumption of contravention of a binding *rule*, which is actionable under section 150 of the *Act*, the *FSA* would normally wish to be satisfied that the *evidential rule* is itself unduly burdensome or does not achieve the purpose of the *rule*.

Waiver of a two-way evidential provision

8.3.14 G In the case of an application for a *waiver* of a two-way *evidential provision* relating to an actionable binding *rule*, the policy in *SUP* 8.3.12G would apply to the presumption of compliance and the policy in *SUP* 8.3.13G would apply to the presumption of contravention. In other words, any modification is likely to be in relation to the second presumption only.

11.1.2 R Table Applicable sections (see SUP 11.1.1R)

Category of firm		Applicable sections
(1)	A <i>UK domestic firm</i> other than a <i>building society</i> or a <i>non-directive friendly society</i>	All except <i>SUP 11.3</i> and <i>SUP 11.4.4R</i>
(1A)	A <i>building society</i>	(a) In the case of an exempt change in <i>control</i> (see Note), <i>SUP 11.1</i> , <i>SUP 11.2</i> and <i>SUP 11.9</i> (b) In any other case, all except <i>SUP 11.3</i> and <i>SUP 11.4.4R</i>
(2)	A <i>non-directive friendly society</i>	<i>SUP 11.1</i> , <i>SUP 11.2</i> , and <i>SUP 11.9</i>
(3)	An <i>overseas firm</i>	All except <i>SUP 11.3</i> , <i>SUP 11.4.2R</i> , <i>SUP 11.4.3G</i> , <i>SUP 11.4.9G</i> , <i>SUP 11.5.8G</i> to <i>SUP 11.5.10G</i> , <i>SUP 11.6.2R</i> , <i>SUP 11.6.3R</i> , <i>SUP 11.6.6.G</i> , <i>SUP 11.7</i>
Note	In row (1A), a change in <i>control</i> is exempt if the <i>controller</i> or proposed <i>controller</i> is exempt from any obligation to notify the <i>FSA</i> under Part XII of the <i>Act</i> (Control over Authorised Persons) because of The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No 2) Order 2001 (SI 2001/3338). (See <i>SUP 11.3.2AG(2)</i> .)	

11.3.2A G The Treasury have made the following exemptions:

- (1) *controllers* and potential *controllers* of *non-directive friendly societies* are exempt from the obligation to notify a change in *control* (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2001 (SI 2001/2638));
- (2) *controllers* and potential *controllers* of *building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a society's capital or the increase or reduction by a specified percentage of a holding of a society's capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No.2) Order 2001 (SI 2001/3338.). The "capital" of a society for these purposes consists of:

(a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and

(b) the general reserves of the society.

Exceptions: Building societies and friendly societies

16.4.10R

...

16.4.11R

In SUP 16.4.5R and SUP 16.4.10R, a *building society* may regard a *person* as not being a *controller* if that *person* is exempt from the obligation to notify a change in *control* under The Financial Services and Markets Act 2000 (Controllers) (Exemption) (No.2) Order 2001 (SI 2001/3338) (see SUP 11.3.2AG (2)).

Amendments to SUP 16

16.7.17R Table Financial reports from a building society. (see SUP 16.7.16R)

	Content of Report	Form (Note 1)	Frequency	Due date
... (row 8)	Adequate information on balance sheet, income and expenditure....	AFS1	Annually	2 months after society's accounting reference date <u>accounting reference date</u> .

16.7.29R Table Financial reports from a securities and futures firm which is an adviser, local or a traded options market maker (see SUP 16.7.29R)

	Report	Frequency	Due date
... (row 2)	Audited annual financial statements (partnerships <u>partnerships</u> and <i>bodies corporate</i> only)	Annually	3 months after the firm's <i>accounting reference date</i>

16.7.33R (2) An authorised signatory must be:

- (a) for a ~~body corporate~~ body corporate, a *director*;
 - (b) for a ~~partnership~~ partnership, a *partner* who is an *approved person* of the *firm*;
- ...

16.7.36R Table Financial reports from an investment management firm (see SUP 16.7.35R)

	Report	Frequency	Due date
... (row 4)	Quarterly Financial Return (only for firms <u>firms</u> subject to a Liquid Capital Requirement as set out in IPRU(INV) 5.2.3 (1)(a) or (b)	1. Quarterly	1 month after quarter end

...
Note 3: The definition of ~~ISD~~ ISD firm for this purpose is provided in the glossary located in IPRU(INV) 5.

16.7.45R Table Financial reports from a personal investment firm (except a small personal investment firm) (see SUP 16.7.44R)

Note 5

...

For any other *firm* to which SUP 16.7.465R applies, frequency will be quarterly, and the due date will be 4 months after year end.

16.7.56R Table Financial reports from the Society of Lloyd's (see SUP 16.7.55R)

2. Report	Frequency	Due date
-----------	-----------	----------

...

(row 2) Annual Lloyd's Return Annually 6 months after the ~~Society's~~ Society's accounting reference date

16.8.13R (6) ... a *life policy* purchased by the trustees of an *occupational pension scheme* which is a *defined benefits pension scheme*;

**COMPLAINTS SOURCEBOOK (ELECTRONIC REPORTING)
INSTRUMENT 2002**

Powers Exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (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 (SI 2001/2326).
- 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 October 2002.

Amendments to the Complaints sourcebook

- D. The Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument

Citation

- E. This instrument may be cited as the Complaints Sourcebook (Electronic Reporting) Instrument 2002.

By order of the Board
19 September 2002

Annex

Amendments to the Complaints Sourcebook (DISP)

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

- 1.5.10R A report under this section must be given or addressed, and delivered, in the way set out in *SUP* 16.3.6R – *SUP* 16.3.16G (General provisions on reporting), except that:
- (1) instead of the *firm*'s usual supervisory contact, the report should be given to or addressed to ~~to be added later~~ for the attention of the Notification, Reporting & Data Maintenance department of the FSA; and
 - (2) in addition to the methods of submission of reports in *SUP* 16.3.9R, a *firm* may submit a report under this section through, and in the electronic format specified in, the FSA's Complaints Reporting System.
- 1.5.10AR A *firm* that has started but intends to stop submitting reports in electronic format under *DISP* 1.5.10R (2) must first notify the Notification, Reporting & Data Maintenance department of the FSA in writing of this intention.
- Failure of electronic submission
- 1.5.10BR If a *firm* is unable to submit a report in electronic format because of a systems failure of any kind, the *firm* must:
- (1) submit its report under this section through one of the alternative methods of submission of reports in *SUP* 16.3.9R; and
 - (2) notify the FSA, in writing and without delay, of that systems failure.
- Notification of contact point for complainants
- 1.5.11R 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 ~~must~~
 - (2) notify the FSA of any subsequent change: in those details when convenient and, at the latest, in the *firm*'s next report under *DISP* 1.5.4R.
- 1.5.12G The contact point can be by name, job title or department and may include, for example, a helpline telephone number.

**COLLECTIVE INVESTMENT SCHEMES (AMENDMENT NO 2)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Acts 2000 (the "Act"):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 247 (Trust scheme rules);
 - (4) section 248 (Scheme particular rules); and
 - (5) regulation 6 of the OEIC regulations (FSA rules).
- 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 October 2002.

Amendment to the Collective Investment Schemes sourcebook

- D. The Collective Investment Schemes sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes (Amendment No 2) Instrument 2002.

By order of the Board
19 September 2002

Annex

Amendment to the Collective Investment Schemes sourcebook

In this Annex, underlining indicates new text.

CIS Sourcebook – Transitional provisions

1 Table

(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>14</u>	<u>CIS 3.5.2R19</u>	<u>R</u>	<u>The <i>prospectus</i> of an <i>authorised fund</i> in existence on 1 October 2002 need not be revised solely to take account of the amendments to <i>CIS 3.5.2R19</i> until 1 February 2003.</u>	<u>From 1 October 2002 for 4 months</u>	<u>1 October 2002</u>

**CREDIT UNIONS SOURCEBOOK (AMENDMENT NO 3 AND
CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT
2002**

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 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157 (Guidance); and
 - (5) section 210 (Statements of policy).
- 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 October 2002.

Amendments to the Credit Unions sourcebook

- D. The Credit Unions sourcebook is amended in accordance with Annex A to this instrument.

Amendments to the Enforcement manual

- E. The Enforcement manual is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Credit Unions Sourcebook (Amendment No 3 and Consequential Amendments to the Handbook) Instrument 2002.

By order of the Board
19 September 2002

Annex A

Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is inserted, the place that it goes is indicated and it is not underlined.

CRED Transitional provisions

G

1 Table 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>3</u>	<u><i>CRED</i> 15.5</u> <u><i>CRED</i> 15</u> <u>Ann 3G</u>	<u>G</u>	The <i>FSA</i> will not impose financial penalties upon <i>credit unions</i> for the late submission of: <u>(1) quarterly returns made up for quarters ending before 1 July 2003;</u> <u>(2) the complaints handling report for the period ending 31 March 2003.</u>	from <u>1 October 2002</u>	<u><i>credit unions day</i></u>

After 15.4, insert the following new section:

15.5 Financial penalties for late submission of reports

15.5.1 G This section is a modified summary of *ENF* 13.5 (Financial penalties for late submission of reports) which sets out the *FSA*'s policy and procedures in relation to financial penalties for late submission of reports. (See *ENF* 13.5 for full details).

15.5.2 G The *FSA* attaches considerable importance to the timely submission by *credit unions* of the reports referred to in *ENF* 13.5. This is because the information that they contain is essential to the *FSA*'s assessment of whether a *credit union* is complying with the requirements and standards of the *regulatory system* and to the *FSA*'s understanding of that *credit union*'s business.

15.5.3 G (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.

Where the period of delay is no more than 28 *business days*, the *FSA* considers that in the majority of cases it will be appropriate to limit the sanction imposed on the *credit union* concerned to a financial penalty fixed by reference to the indicative scale of penalties at *ENF* 13 Ann 1G (reproduced at *CRED* 15 Ann 3G).

- (2) There may, however, be exceptional circumstances in which the *FSA* considers that it is appropriate not to seek a penalty, or to impose a lower penalty than the one indicated by the scale. An administrative difficulty such as pressure of work does not, in itself, constitute an exceptional circumstance for this purpose.
- (3) Equally, the *FSA* may impose a higher penalty than the one indicated by the scale at *ENF* 13 Ann 1G (*CRED* 15 Ann 3G) having regard to the seriousness of the contravention and the extent to which the contravention was deliberate or reckless. This may include, for example, a case where a *credit union* repeatedly fails to submit its reports on time or where there is information that suggests that such a delay was deliberate.
- (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 quarterly report may have more serious implications for the supervision of the *credit union* in question than a similar delay in submitting an annual report. Such a delay may therefore be subject to a higher penalty than the one suggested by the indicative scale.

15.5.4G Reference to an indicative scale of penalties for breaches of this nature represents an exception to the *FSA*'s general policy described in *ENF* 13.3.1 G (Factors relevant to determining the appropriate level of financial penalty). The *FSA* considers that it is appropriate to treat this type of breach differently from other regulatory breaches on the basis that the nature of the facts establishing the breach is likely to be similar in each case and that the scale will ensure consistency in the treatment of the *credit unions* in question.

- 15.5.5 G
- (1) Where a report is submitted more than 28 *business days* after the due date, and there are no exceptional circumstances justifying the failure to submit on time, the financial penalty imposed is likely to exceed the amount indicated by the scale at *ENF* 13 Ann 1G (*CRED* 15 Ann 3G) for 21 to 28 *business days* delay. The *FSA* will determine the precise level of the financial penalty to be imposed in accordance with the approach discussed in *ENF* 13.3.3 G (Factors relevant to determining the appropriate level of financial penalty).
 - (2) In addition, in appropriate cases, the *FSA* may bring disciplinary action against the *approved person* or *persons* within the *credit*

union's management who are ultimately responsible for ensuring that the *credit union's* reports are completed and returned to the *FSA* (see *ENF* 11.5 (Action against *approved persons*)).

- 15.5.6 G In applying the *guidance* in *ENF* 13.5 (Financial penalties for late submission of reports), 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.
- 15.5.7 G In most late reporting cases, it will not be necessary for the *FSA* to appoint an investigator under its powers discussed in *ENF* 2 (Information gathering and investigation powers) since the fact of the breach will be clear. It follows that the *FSA* will not usually send the *credit union* concerned a preliminary findings letter (see *ENF* 2.5.12 G (The *FSA's* policy on exercising its powers: firms, approved persons and others)) for late-reporting disciplinary action.
- 15.5.8 G A failure by a *credit union* to submit a report by the due date may indicate wider problems within the *credit union*, for which more serious disciplinary sanctions or other enforcement action (see *ENF* 11.2.3G (Introduction)) or both may be appropriate.
- 15.5.9 G The *FSA* will use the decision making procedure set out in *DEC* 4.5.2G to *DEC* 4.5.6G (Delegation of RDC decisions and modified RDC procedures) to decide whether to impose a financial penalty for the late submission of a report. It will use this procedure whether the period of delay is more than or less than 28 *business days* including if no submission has been made at all.
- 15.5.10 G (1) Once a *final notice* has been issued relating to a financial penalty and any other relevant sanction for a late report, the *FSA* will consider whether it is unfair to the *credit union* or prejudicial to the interests of *consumers* to publish information relating to the decision. The *FSA* anticipates that in most cases where reports have been submitted late, no such unfairness or prejudice will exist. If so, it will enter details of the decision in the *FSA* Register.
- (2) The *FSA* may also publicise the sanctions on a wider basis where the contravention is considered to be particularly serious. Examples of situations that may result in wider publicity include where the period of delay exceeds 28 *business days* or where the *credit union* in question has previously failed to submit its reports on time to the *FSA* or to any *previous regulator*.

15 Ann 3 After *CRED* 15 Ann 2, insert the following new Annex:

CRED 15: Enforcement

Annex 3G

Annex 3: Financial penalties

1 Table Indicative scale of financial penalties for reports no more than 28 *business days* late (see *ENF* 13.5)

Number of business days late	Annual fees payable by firm								
	Note	£1 to £150	£151 to £500	£501 to £1,000	£1,001 to less than £10,000	£10,000 to less than £20,000	£20,000 to less than £50,000	£50,000 to less than £100,000	£100,000 or greater
22-28		40	100	200	400	800	2000	4000	6000
15-21		30	75	150	300	600	1500	3000	4500
8-14		20	50	100	200	400	1000	2000	3000
1-7		10	25	50	100	200	500	1000	1500

Note

1. For this purpose, the annual fee payable by the *credit union* is the annual fee for the most recent financial year for which the *FSA* has fully invoiced the *credit union* before the date on which the relevant report first became late.
2. Where the *credit union* first becomes authorised after 2 July 2002, and at the time the report first becomes late the *credit union* has not previously been fully invoiced by the *FSA* for an annual fee, the annual fee of the *credit union* will be treated as that for £1 to £150.

- 9.3.9 E (1) For the purposes of calculating the ratio of a *credit union's* liquid assets to its total relevant liabilities (in *CRED* 9.3.2R – *CRED* 9.3.5R), the *securities* referred to in *CRED* 7.2.1R – *CRED* 7.2.3R should be valued on the basis that they could be realised at ~~par~~ market value minus the following discounts (whether or not this is the case in fact):
- (a) maturity less than 1 year – zero;
 - (b) maturity 1 to 5 years – 5%.

10.5.2 R A *credit union* ~~should~~ must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:

- (1) 35% of the net liability to the *credit union* of borrowers where the amount is more than three *months* in arrears; and
- (2) 100% of the net liability to the *credit union* of borrowers where the amount is more than 12 *months* in arrears.

13.4.1 G For registration, applicants must demonstrate to the satisfaction of the *FSA* that the statutory conditions set out in section 1 of the Credit Unions Act 1979 will be fulfilled. *CRED 13 Annex 1G* contains a table listing these statutory conditions. The application pack contains the relevant forms for registration and explanatory notes on how to complete the forms. *CRED 13 Ann 2G* contains information about eligibility for membership of a *credit union*.

After *CRED 13 Ann 1G*, insert the following new Annex:

CRED 13: Registration and authorisation

Annex 2G

Annex 2: Eligibility for membership of a credit union

Admission of members

1. It is a condition of registration of a *credit union* that its membership is restricted to persons who fulfil (directly or indirectly) the qualification stated in the *credit union's* registered rules (section 1(2) of the Credit Unions Act 1979).

Categories of membership

2. Eligibility for membership of a *credit union* is determined by its registered rules. Each member of a *credit union* should fall within one of the following categories.

- (1) Category 1. Directly qualifying member

A directly qualifying member is a person who:

- (a) meets the membership criteria set out in the *credit union's* registered rules (section 1 of the Credit Unions Act 1979); and
- (b) is above the age of 16 (unless the *credit union's* registered rules stipulate a higher age) (section 20 of the Industrial & Provident Societies Act 1965).

Note: A member who is under the age of 18 may not be a member of the committee, trustee, manager or treasurer of the *credit union* (section 20 of the Industrial & Provident Societies Act 1965) or receive a loan (section 11(1) of the Credit Unions Act 1979).

(2) Category 2. Indirectly qualifying member

An indirectly qualifying member ("family member") qualifies only through a directly qualifying member (Category 1 above). This category of membership is available only if the registered rules of the *credit union* provide for it explicitly.

An indirectly qualifying member ("family member") is a person who is:

- (a) a member of the same household as; and
- (b) a relative of another person who is;

a directly qualifying member of the *credit union* (section 1(6) of the Credit Unions Act 1979).

(3) Category 3. Non-qualifying member

A person in this category would originally have joined the *credit union* as a directly qualifying member (Category 1) or indirectly qualifying member ("family member") (Category 2). This category of membership is available unless the *credit union's* registered rules provide otherwise. The number of non-qualifying members should not at any time exceed ten per cent of the total membership of the *credit union* (section 5(6) of the Credit Unions Act 1979). The registered rules of a *credit union* should make provision for terminating the membership of members in order to comply with this limit (paragraph 13 of Schedule 1 to the Credit Unions Act 1979).

A non-qualifying member is a person who has ceased to fulfil the membership qualification; that is to say a person who:

- (a) joined the *credit union* as a qualifying member (whether qualifying directly or indirectly); but
- (b) later ceased to qualify (section 5(5) of the Credit Unions Act 1979).

Note: When directly qualifying members become non-qualifying members, then all members who qualified indirectly through them will also become non-qualifying members (unless subsequently by some other route they have themselves become either directly qualifying members or indirectly qualifying members). A person who is eligible for membership under more than one category will hold membership under

the higher of those categories (so, for example, someone who is eligible under Categories 1 and 2 will be regarded as a Category 1 member, and someone who is eligible under Categories 2 and 3 will be regarded as a Category 2 member).

Category of Membership		
Category 1	Category 2	Category 3
Directly qualifying member	Indirectly qualifying member ("family member")	Non-qualifying member
DQM	IQM	NQM
Fulfils the membership qualification set out in the common bond rule of the <i>credit union</i>	Lives in the same household as, and is a relative of, a DQM	Has ceased to be a DQM or IQM

Persons too young to be members

3. A person too young to be a member ("juvenile depositor") may make deposits with a *credit union* (section 9 of the Credit Unions Act 1979). A person too young to be a member ("juvenile depositor") is a person who:
 - (1) is below the age of 16 (unless the *credit union's* registered rules stipulate a higher age for entry) (section 20 of the Industrial & Provident Societies Act 1965); and
 - (2) would qualify for membership (directly or indirectly) if he were old enough.

Note: These deposits are not shares and these depositors are not members.

Status of transactions

4. *Credit unions* may only undertake the activities authorised by their registered rules. If they purport to undertake wider activities, then any transactions arising from such activities are void. Any transactions with an ineligible person are unenforceable.
5. If a *credit union* becomes aware that it has admitted ineligible persons as "members", it should immediately take steps to:
 - (1) reclaim any loans made to such persons; and

- (2) repay to such persons any sums they have deposited with the *credit union* by way of share purchase.
6. There are legal rights - such as the doctrine of unjust enrichment - that should enable a *credit union* to recover funds lent to such persons. Similar principles should apply to enable such persons to recover any funds deposited with the *credit union*.
7. If a *credit union* discovers that it has admitted to membership a significant number of ineligible persons, it should inform the *FSA* at the earliest opportunity to discuss the implications and the way forward.

Extension of common bond

8. Transactions with an ineligible person are not validated if that person subsequently becomes eligible for membership through, say, an extension of the common bond. Although a newly registered common bond extension allows a *credit union* to admit members in the additional area, it does not have retrospective effect for those who were erroneously admitted before the extension. If funds are not to be returned in accordance with the guidance given under “Status of Transactions” (paragraphs 4 to 7), immediate steps will have to be taken to ensure that proper business relations commence - and are shown to commence - after the common bond extension has been effected. The following steps should generally be taken:
 - (1) the *credit union* should issue a new pass book;
 - (2) share deposits and loans should be started again - stating the current position - being entered as new transactions in the new passbook.

Powers available under other Acts

9. This annex draws attention to a number of offences under the Industrial & Provident Societies Act 1965 and the Credit Unions Act 1979. The existence of these offences does not preclude the *FSA* from using any other powers that are available to it under the *Act*.
10. A *credit union*, officer, member or other person who does anything forbidden by credit union legislation is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000) (section 61(b) of the Industrial & Provident Societies Act 1965 and section 28(1) of the Credit Unions Act 1979).
11. The registration of a *credit union* may be cancelled on proof that it has wilfully and after notice from the *FSA* violated any of the provisions of the Industrial & Provident Societies Act 1965 or Credit Unions Act 1979 (section 20 of the Credit Unions Act 1979).

- 13.6.1 G The nature of the information and *documents* requested by the *FSA* for a *Part IV permission*, in the application pack, or in subsequent requests, will be proportional to the risks posed by *firms*. For instance, in the case of *credit unions*, the risks posed by an applicant seeking *permission* to carry out the activities of a *version 2 credit union* will normally be greater than those of an applicant seeking to become a *version 1 credit union*. Similarly, the risks will be greater for an applicant with a widely-drawn common bond.

After 14.10.4G(4), insert the following new paragraphs:

- “14.10.4A G *SUP* 16.3.11R states that a *credit union* must submit reports to the *FSA* containing all the information required.
- 14.10.4B G *SUP* 15.6 refers to and contains requirements regarding the steps that *credit unions* must take to ensure that information provided to the *FSA* is accurate and complete. Those requirements apply to reports required to be submitted under *SUP* 16 (Reporting requirements).
- 14.10.4C G (1) *SUP* 16.3.13R states that a *credit union* must submit a report in the frequency, and so as to be received by the *FSA* no later than the due date, specified for that report.
- (2) *SUP* 16.3.13R states that if the due date for submission of a report required by *SUP* 16 falls on a day which is not a *business day* the report must be submitted so as to be received by the *FSA* no later than the first *business day* after the due date.
- (3) *SUP* 16.3.13R states that if the due date for submission of a report required by *SUP* 16 is a set period of time after the quarter end, the quarter ends will be the following dates, unless another *rule* or the reporting form states otherwise:
- (a) the *credit union's accounting reference date*;
 - (b) 3 months after the *credit union's accounting reference date*;
 - (c) 6 months after the *credit union's accounting reference date*; and
 - (d) 9 months after the *credit union's accounting reference date*.
- 14.10.4D G Failure to submit a report in accordance with the *rules* in *SUP* 16.7 may lead to the imposition of a financial penalty and other disciplinary sanctions (see *ENF* 13.5 and *CRED* 15.5).

14.10.4E G The *FSA* may from time to time send reminders to *credit unions* when reports are overdue. *Credit unions* should not, however, assume that the *FSA* has received a report merely because they have not received a reminder.

14.10.4F G The *credit union* is responsible for ensuring delivery of the required report at the *FSA*'s offices by the due date. If a report is received by the *FSA* after the due date and the *credit union* believes its delivery arrangements were adequate, it may be required to provide proof of those arrangements. Examples of such proof would be:

- (1) "proof of posting" receipts from a UK post office or overseas equivalent which demonstrate that the report was posted early enough to allow delivery by the due date in accordance with the delivery service standards prescribed by the relevant postal authority; or
- (2) recorded postal delivery receipts showing delivery on the required day; or
- (3) records of a courier service provider showing delivery on the required day.

Change of accounting reference date

14.10.4G G (1) *SUP* 16.3.17R states that a *credit union* must notify the *FSA* if it changes its *accounting reference date*.

(2) When a *credit union* extends its accounting period, it must make the notification in (1) before the previous *accounting reference date*.

(3) When a *credit union* shortens its accounting period, it must make the notification in (1) before the new *accounting reference date*.

17.6.6 G ~~The reports will form part of a credit union's quarterly return.~~ [Deleted]

CRED Appendix 2

2.1 Detailed contents of *CRED*

2.1.1 Table

...

13 **Registration and Authorisation**

...

Ann 2 Eligibility for membership of a credit union

...

15 Enforcement

...

15.5 Financial penalties for late submission of reports

...

Ann 3 Financial Penalties [table – indicative scale of financial penalties for reports no more than 28 days late]

CRED Schedule 2

Credit unions

Schedule 2

Notification requirements

...

2 Table Notification requirements

...

<u>CRED</u>	<u>Reporting</u>	<u>The fact of a</u>	<u>A change in</u>	<u>If extending its</u>
<u>14.10.4G G</u>	<u>:change of</u>	<u>change in</u>	<u>accounting</u>	<u>accounting</u>
	<u>accounting</u>	<u>accounting</u>	<u>reference date</u>	<u>reference</u>
	<u>reference date</u>	<u>reference date</u>		<u>period, before</u>
				<u>the previous</u>
				<u>accounting</u>
				<u>reference date.</u>
				<u>If shortening</u>
				<u>its accounting</u>
				<u>period, before</u>
				<u>the new</u>
				<u>accounting</u>
				<u>reference date.</u>

Annex B

Amendments to the Enforcement manual

ENF TR 1 Transitional provisions applying to the Enforcement manual

G

1 Table ENF TR 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>3</u>	<u>ENF 13.5</u> , <u>ENF 13 Ann 1G</u> .	<u>G</u>	The <i>FSA</i> will not impose financial penalties upon <i>credit unions</i> for the late submission of: (1) quarterly returns made up for quarters ending before 1 July 2003; (2) the complaints handling report for the period ending 31 March 2003.	<u>from 1 October 2002</u>	<u>commencement, but applying to credit unions from credit unions day</u>

- 13.5.1 G (6) the reporting requirements in the pensions review provisions and *FSAVC* review provisions; that is, the provisions of the deemed scheme under the Financial Services and Markets Act 2000 (Transitional Provisions) (Review of Pensions Business) Order 2001 (SI 2001/2512); ~~and~~
- (7) *IPRU(INV)* 4.4.2D to *IPRU(INV)* 4.4.5D (Financial resource requirements)-; and
- (8) *CRED* 17.6.3R to *CRED* 17.6.7R (Complaint handling procedures for credit unions).

...reports that must be submitted to the *FSA* in accordance with the *rules* and other provisions specified in (1) to ~~(7)~~(8).

13 Ann 1G

Indicative scale of financial penalties for reports no more than 28 business days late (see *ENF* 13.5 (Financial penalties for late submission or reports))

- 1 Table Indicative scale of financial penalties for reports no more than 28 business days late

Number of business days late	Annual fees payable by firm								
	Note	£1 to £150	£151 to £500	£501 to £1,000	£1,001 to less than £10,000	£10,000 to less than £20,000	£20,000 to less than £50,000	£50,000 to less than £100,000	£100,000 or greater
22-28		<u>40</u>	<u>100</u>	<u>200</u>	400	800	2000	4000	6000
15-21		<u>30</u>	<u>75</u>	<u>150</u>	300	600	1500	3000	4500
8-14		<u>20</u>	<u>50</u>	<u>100</u>	200	400	1000	2000	3000
1-7		<u>10</u>	<u>25</u>	<u>50</u>	100	200	500	1000	1500

Note

1. For this purpose, the annual fee payable by the *firm* is the annual fee for the most recent financial year for which the *FSA* has fully invoiced the *firm* before the date on which the relevant report first became late.
2. Where the *firm* first becomes authorised after 1 December 2001, and at the time the report first becomes late the *firm* has not previously been fully invoiced by the *FSA* for an annual fee, the annual fee of the *firm* will be treated as less than £10,000.

**ELECTRONIC COMMERCE DIRECTIVE (SUPPLEMENTAL
AND AMENDMENT) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under 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 provisions); and
 - (4) section 157 (Guidance);
 - (5) regulation 3 of the Electronic Commerce Directive (Financial Services and Markets Act) Regulations 2002 (S.I. 2002/1775);
 - (6) the rule-making powers listed in Schedule 4 to the General Provisions GEN).
- 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 2002.

Amendments to the Handbook

- D. PRIN, SYSC, COB, TC, SUP, CRED, ECO, ELM, the Glossary and the Reader’s Guide are amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Electronic Commerce Directive (Supplemental and Amendment) Instrument 2002.

By order of the Board
19 September 2002

Annex

Amendments to the Handbook

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

Principles for Businesses (PRIN)

PRIN 3.3.2 G *ECO 1.1.6 R has the effect that PRIN does not apply to an incoming ECA provider acting as such.*

Senior Management Arrangements, Systems and Controls (SYSC)

SYSC 1.1.11A G *ECO 1.1.6 R has the effect that SYSC does not apply to an incoming ECA provider acting as such.*

SYSC 2.1.6 G Table Frequently asked questions about allocation of functions in SYSC 2.1.3 R
This table belongs to SYSC 2.1.5 G

	Question	Answer
12	How does the requirement to allocate the functions in SYSC 2.1.3 R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	... See also Questions <u>1</u> and <u>15</u> .
<u>15</u>	<u>What about <i>incoming electronic commerce activities</i>?</u>	<u><i>ECO 1.1.6 R has the effect that SYSC does not apply to an incoming ECA provider acting as such.</i></u>

Conduct of Business sourcebook (COB)

COB 1.4.1 R (1) that its application to *electronic commerce activity providers*, and in relation to *electronic commerce communications*, is modified by *ECO*, as explained in *COB 1.9* (Application in relation to electronic commerce activities and communications); and
...

COB 1.9 (Title) **Application ~~to~~ in relation to **electronic commerce activity providers** activities and communications**

COB 1.9.1 G (1) *COB 1.9.1 G* and *COB 1.9.2 G* apply to a *firm*:

- (a) which is an *electronic commerce activity provider*; that is, any firm which carries on an *electronic commerce activity*; and
- (b) in relation to a *financial promotion* which is an *electronic commerce communication*.

...

Modification of COB for ECA providers resulting from the E-Commerce Directive

COB 1.9.2 G The modifications made to *COB* in respect of ~~electronic commerce activity providers~~ resulting from the introduction of the *E-Commerce Directive* are of three kinds:

...

(2) *ECO 2*:

- (a) modifies *COB* so that, ~~for a firm providing an electronic commerce activity from an establishment in the United Kingdom~~ to a recipient who is elsewhere in the EEA in relation to a financial promotion which is an outgoing electronic commerce communication, *COB 3* has an extended application to cover the whole of the *EEA*;

...

COB 3.3.2 G (2) The exemptions in *COB 3.2.5 R* (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 *COB 3.2.5 R* (2) and *AUTH App 1.12.2 G* (Financial promotions to overseas recipients (article 12)), ~~and~~ the exemptions for overseas communicators (see *COB 3.2.5 R* (3) and *AUTH App 1.14.14 G* (Overseas communications (articles 30 to 33))) and the exemption for incoming electronic commerce communications (see *AUTH App 1.12.38 G* (article 20B)).

- (3) ~~In the context of the provision of an electronic commerce activity to an EEA ECA recipient, the scope of *COB 3* is extended by *ECO 2.2.6 2.2.3 R*. This means that *COB 3* will apply for communications by an outgoing ECA provider to an EEA ECA recipient to cover financial promotions which are outgoing electronic commerce communications, subject to the lifting of rules in the derogations to the *E-Commerce Directive* as set out in *ECO 2*.~~

Training and Competence sourcebook (TC)

TC 1.1.2A G *ECO 1.1.6 R* has the effect that this chapter does not apply to an incoming ECA provider acting as such.

TC 2.1.2A G *ECO 1.1.6 R* has the effect that this chapter does not apply to an incoming ECA provider acting as such.

Supervision manual (SUP)

- SUP 15.1.5 G *Firms* are reminded that γ ;
- (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* 1.1.6 R has the effect that this chapter does not apply to an incoming *ECA provider* acting as such.

SUP 17.1.4 G *ECO* 1.1.6 R has the effect that this chapter does not apply to an incoming *ECA provider* acting as such.

Credit unions sourcebook (CRED)

CRED 11(Title) Conduct of business and electronic commerce activities

Conduct of business

CRED 11.1.1 G The Conduct of Business sourcebook (*COB*) sets out...

CRED 11.1.2 G The rules and guidance set out in *COB* mainly apply to *designated investment businesses* and, as stated in *COB* 1.3.2 G (2), have limited application to *deposits*. The only part of *COB* that sets out *rules and guidance on deposits*, other than a *cash deposit ISA*, is that relating to *financial promotion* in *COB* 3. These are summarised in *CRED* 11.2 (Financial promotion).

CRED 11.1.3 G [Reserved for guidance consulted on in CP 138]

CRED 11.1.4 G [Reserved for guidance consulted on in CP 138]

Electronic commerce activities

CRED 11.1.5 G The E-Commerce Directive sourcebook (*ECO*) 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.

CRED 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)*.

CRED App 1.1.1 Table

	Sourcebook or manual	Reference code
... Specialist sourcebooks	... Credit Unions <u>E-Commerce Directive</u> ...	... CRED <u>ECO</u> ...

E-Commerce Directive sourcebook (ECO)

ECO TP1 Transitional Provisions
1 Table

(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
1.0	Every <i>rule</i> (including <i>evidential provision</i>) in <i>ECO</i>	R	Until 20 November 2002, an <i>electronic commerce activity service provider</i> , and <u>any firm in relation to an outgoing electronic commerce communication</u> , will not contravene any provision in <i>ECO</i> to the extent that it has taken reasonable steps to comply with that provision.	21 August 2002 until 20 November 2002	21 August 2002

ECO 1.1.6 R Except for the provisions set out in *ECO 1.1.10 R*, the *Handbook* does not apply to an *incoming ECA provider* ~~with respect to the carrying on of incoming electronic services activities~~ acting as such.

ECO 1.2.4 R (1) *ECO 1.2.1 R* does not apply to an *incoming ECA provider* with respect to an *electronic commerce activity* relating to:

(a) a *deposit* (other than a *cash deposit ISA*); or

(b) (if *ECO 1.2.3 R* does not apply) a *general insurance contract, pure protection contract* or reinsurance contract;

but, instead, the *incoming service ECA provider* must comply with (2).

ECO 1.2.6 E (1) In order to comply with *ECO 1.2.1 R*, before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* should comply with the following UK requirements:

(a) ...

(b) when it *communicates* a *specific non-real time financial promotion which is an incoming electronic commerce communication*, *ECO 1.2.10 E* and *ECO 1.2.11 E* (Essential information: specific non-real time financial promotions which are incoming electronic commerce communications);

(c) when it *communicates* a *direct offer financial promotion which is an incoming electronic commerce communication*, provide the information identified in the *rules* listed in *ECO 1.2.12 E*; and

(d) ...

ECO 1.2.6 E (3) The requirements in (1)(b) apply subject to the exemptions in *COB 3.2.5R* (exemptions) (but disregarding any exemption which applies purely because the promotion is an incoming electronic commerce communication).

Provision of essential information to consumers: specific non-real time financial promotions which are incoming electronic commerce communications

ECO 1.2.10 E An *incoming ECA provider* should ensure, when it *communicates* a *specific non-real time financial promotion which is an incoming electronic commerce communication* to a *UK ECA recipient* who is a *consumer*, that the *financial promotion* includes:

...

ECO 1.2.11 E An *incoming ECA provider* should ensure, when it *communicates* a *specific non-real time financial promotion which is an incoming electronic commerce communication* to a *UK ECA recipient* who is a *consumer*, that any *essential information* provided to the *consumer* about the past performance of *specified investments* or of a *firm* includes, where relevant to the contract, a statement to the effect that past performance should not be seen as an indication of future performance.

ECO 1.2.13 E (1) *An incoming ECA provider should ensure, when it communicates a direct offer financial promotion which is an incoming electronic commerce communication relating to:*

...

ECO 2.1.1 R *ECO 2 applies to:*

- (1) *an outgoing ECA provider; and*
- (2) *every firm in relation to a financial promotion which is an outgoing electronic commerce communication.*

ECO 2.1.2 G (2) *The purpose of ECO 2.2 (Modification of the content and territorial scope of COB) is to ensure that:*

- (a) *an outgoing ECA provider; and*
- (b) *a firm, in relation to a financial promotion which is an outgoing electronic commerce communication;*

in complying with COB, is able to disregard any provision of COB which is included in the 'consumer contract derogation' or 'insurance derogation' (set out in the Annex to the E-Commerce Directive), when dealing with ~~an EEA ECA recipient who is a consumer~~ in another EEA State.

- (3) *ECO 2.2 also extends the territorial scope of COB 3 (Financial promotion) ~~to communications made by an outgoing ECA provider to an EEA ECA recipient~~ in relation to a financial promotion which is an outgoing electronic commerce communication, whether or not the recipient is a consumer.*

ECO 2.2.1 R *In relation to:*

- (1) *an electronic commerce activity carried on from an establishment in the United Kingdom with or for an EEA ECA recipient who is a consumer; and*
- (2) *a financial promotion which is an outgoing electronic commerce communication made to or directed at a consumer;*

~~an outgoing ECA provider a firm~~ is not required to comply with any of the provisions mentioned in ECO 1.2.6 E 1(a) and 1(c) (essential information) or, if it is an insurer carrying on insurance business falling within the scope of the Insurance Directives, ECO 1.3.3 R.

ECO 2.2.2 G *The provisions mentioned in ECO 1.2.6 E 1(a) and 1(c) and ECO 1.3.3 R are those that the United Kingdom, as a Host State, applies to incoming ECA*

providers under the 'consumer contract derogation' and 'insurance derogation' respectively. A corollary of this approach is that these provisions are disapplied to:

- (1) an outgoing ECA provider when it provides *electronic commerce activities* to an *EEA ECA recipient* who is a *consumer*; and
- (2) a firm, in relation to a financial promotion which is an outgoing electronic commerce communication made to or directed at a consumer;

The provisions at *ECO* 1.2.6 E (1)(b) and (1)(d) do not apply to ~~an outgoing ECA provider~~ in these situations in any event.

ECO 2.2.3 R (1) ~~An outgoing ECA provider~~ In relation to a financial promotion which is an outgoing electronic commerce communication, a firm must comply with *COB* 3 (Financial promotion) as if ~~every EEA ECA recipient were a UK ECA recipient~~ the person to whom the communication is made or directed was in the United Kingdom.

ECO 2.2.4 G The effect of *ECO* 2.2.3 R is to apply the whole of *COB* 3, where relevant, to ~~communications~~ outgoing electronic commerce communications made by an outgoing ECA provider to an EEA ECA recipient, except those provisions of *COB* 3 identified in *ECO* 2.2.1 R. (See *ECO* 2.2.2 G for an explanation of this approach.)

ECO 3.2.2 G *ECO* 3 Ann 1 R implements provisions contained in the *E-Commerce Directive* as follows:

ECO 3 Annex 1 R

1 Information about the ECA provider and its products or services

(1) (a) the name of the ~~provider~~ provider;

Schedule 1

Record keeping requirements

G

1 There are no record keeping requirements in *ECO*.

Schedule 2

Notification requirements

G

1 There are no requirements in *ECO* to notify or report matters to the *FSA*.

Schedule 3

Fees and other required payments

G

1 There are no requirements for fees or other payments in *ECO*.

Schedule 4

Powers exercised

G

1 The following powers and related provisions in or under the *Act* have been exercised by the FSA to make the rules in *ECO*:

(1) the rule-making powers listed in Schedule 4 to the General provisions (*GEN*).

2 The following power in the *Act* has been exercised by the FSA to give the guidance in *ECO*:

(1) section 157(1) (Guidance).

Schedule 5

Rights of action for damages

G

1 Table

<u>1</u>	<u>The table below sets out the <i>rules</i> in <i>ECO</i> contravention of which by an <i>authorised person</i> may be actionable under section 150 of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.</u>
<u>2</u>	<u>If a “Yes” appears in the column headed “For private person?”, the <i>rule</i> may be actionable by a “<i>private person</i>” under section 150 (or, in certain circumstances, his fiduciary or representative). A “Yes” in the column headed “Removed?” indicates that the <i>FSA</i> has removed the right of action under section 150(2) of the <i>Act</i>. If so, a reference to the <i>rule</i> in which it is removed is also given.</u>
<u>3</u>	<u>The column headed “For other person?” indicates whether the <i>rule</i> is actionable by a person other than a <i>private person</i> (or his fiduciary or representative). If so, an indication of the type of <i>person</i> by whom the <i>rule</i> is actionable is given.</u>

2 Table Actions for damages: E-Commerce Directive sourcebook

<u>Chapter/ Appendix</u>	<u>Section/Annex</u>	<u>Paragraph</u>	<u>Rights of action under section 150</u>		
			<u>For private person?</u>	<u>Removed?</u>	<u>For other person?</u>
<u>All <i>rules</i> in <i>ECO</i> with the status letter “E”</u>			<u>No</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>2</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>2</u>	<u>4(2)</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>3</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>3</u>	<u>3</u>	<u>Yes</u>	<u>No</u>	<u>No</u>

<u>1</u>	<u>3</u>	<u>5</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>2</u>	<u>2</u>	<u>3</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>2</u>	<u>3</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>3</u>	<u>2</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>3</u>	<u>Annex 1</u>		<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>All other rules in ECO</u>			<u>No</u>	<u>No</u>	<u>No</u>	

Schedule 6

Rules that can be waived

G

The rules in *ECO* can be waived by the *FSA* under section 148 of the *Act* (Modification or waiver of rules). Certain conditions apply before the *FSA* can give a waiver (see *SUP* 8.3 (Applying for a waiver)).

Electronic Money sourcebook (ELM)

ELM 1.5.2 G Table Application of other parts of the Handbook to ELMIs

Block	Module	Application
Block 5 (Specialist sourcebooks other than ELM)	... <u>E-Commerce Directive sourcebook (ECO)</u>	... <u>Applies to every ELM I that carries on electronic commerce activities. Also applies to every ELM I in relation to a financial promotion which is an outgoing electronic commerce communication.</u>

Glossary

<i>establishment</i>	(in relation to an <i>information society service</i>) (in accordance with section 417(4) of the Act (Definitions)) the place at which the provider of the service effectively pursues an economic activity for an indefinite period; ...
----------------------	--

Reader's Guide

Specialist sourcebooks	...	...
	Credit Unions	CRED
	<u>E-Commerce Directive</u>	<u>ECO</u>

READER'S GUIDE (AMENDMENT NO 2) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 November 2002.

Amendments to the Reader's Guide

- C. The Reader's Guide is amended in accordance with Annex A to this instrument.

Amendments to the Reader's Short Guide

- D. The Reader's Short Guide is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Reader's Guide (Amendment No 2) Instrument 2002.

By order of the Board

17 October 2002

Annex A

Amendments to the Reader's Guide

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

WHAT IS THIS GUIDE?

...

2. The guide covers:

...

- (7) schedules (paragraphs 47 to ~~59~~58);
- (8) glossary of definitions (paragraphs ~~60~~ 59 to ~~63~~ 62); and
- (9) index (paragraphs ~~64~~ 63 to ~~67~~ 66).

STRUCTURE

...

- 4. Section 153 of the Act requires the FSA to exercise its rule-making powers in writing. The Act describes the document by which the rules are made as a 'rule-making instrument' and imposes a number of requirements, including a requirement to publish it. The FSA will publish all instruments by which provisions in the Handbook are made or amended in full on its website at www.fsa.gov.uk/handbook/instruments. These fulfil the statutory and other legal requirements for publication, and will be the definitive source for determining what the text was at any particular time for legal purposes (see section 154 of the Act (Verification of rules)). There is a list of the dates on which the various parts of the Handbook came into force on the FSA's website and in the latest Handbook Notice.
- 5. The FSA's website contains Handbook Online, a consolidated version of the Handbook incorporating all the amendments that have taken effect. The consolidated version is updated monthly (usually on the first of every month) and incorporates those changes in the instruments that came into effect on or before the last update. The Handbook as published on CD-ROM and on paper ~~will provide a continuously~~ also provides an updated consolidation of the contents of the instruments by which the provisions in the Handbook are made. ~~This~~ The consolidation may contain typographical improvements, with no legal effect, which do not appear in the legal instruments.

...

SCHEDULES

...

~~Consolidated schedule of releases~~

~~59. — The purpose of Schedule 7 is to help firms keep track of amendments made to the Handbook since it was first published. It lists by serial number each release issued, its date of publication and its contents and refers to the relevant Handbook Notice. The full text of each release and of each Handbook Notice is on the FSA's website at www.fsa.gov.uk.~~

...

GLOSSARY

60. – 63.
(numbers) Renumber as 59. - 62.

INDEX

64. – 67.
(numbers) Renumber as 63. - 66.

Contents of the Handbook

	Sourcebook or manual	Reference Code
High Level Standards	Senior Management Arrangements, Systems and Controls	SYSC
	...	
	The Fit and Proper test for Approved Persons	FIT
	...	
Specialist Sourcebooks	...	
	E-Commerce Directive	ECO
	<u>Electronic Money</u>	<u>ELM</u>
	...	
	<u>(Later: Mortgages)</u>	<u>(MORT)</u>
	...	
	<u>(Later: United Kingdom Listing Authority)</u>	<u>(UKLA)</u>
<u>Electronic Money</u>	<u>ELM</u>	
Schedules: Transitional provisions Summary schedules: 1. Record keeping requirements 2. Notification requirements 3. Fees and other required payments 4. Powers exercised in making the Handbook 5. Rights of action for damages 6. Rules that can be waived 7. Releases		
Glossary of definitions		
<u>Index</u>		

Annex B

Amendments to the Reader's Short Guide

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

How is the Handbook published?

The Handbook is on the Internet, CD-ROM and paper, but its structure and contents are ~~is~~ the same in each medium. Its modules are arranged in groups by subject matter.

The rule-making instruments, published on the FSA's website, are the definitive source of Handbook text for legal purposes. The text on the CD-ROM, on paper and on the Internet is a regularly ~~continuously~~ updated consolidation of the contents of those instruments.

How is the Handbook arranged?

Each module:

- has a reference code of two or more letters (see the table of Handbook contents list);
- has with or in it:

...

How does the Handbook show defined terms?

Defined terms are shown in italic type. Their definitions are in the glossary of defined terms ~~near the end of the module, or in the consolidated~~ Glossary ~~to of~~ the Handbook.

Where a word or phrase which is shown in italics in one part of the text appears without italics in another part, it is meant to be given, where unitalicised, its ordinary natural meaning.

~~What consolidated schedules are there in the Handbook?~~

~~Where likely to be useful, there are consolidated schedules drawing together the contents of the schedules from each module.~~

~~There is also a consolidated schedule of Handbook releases (Schedule 7) to act as a check-list.~~

Contents of the Handbook

	Sourcebook or manual	Reference Code
High Level Standards	Senior Management Arrangements, Systems and Controls	SYSC
	...	
	The Fit and Proper test for Approved Persons	FIT
	...	
Specialist Sourcebooks	...	
	E-Commerce Directive	ECO
	<u>Electronic Money</u>	<u>ELM</u>
	...	
	<u>(Later: Mortgages)</u>	<u>(MORT)</u>
	...	
	<u>(Later: United Kingdom Listing Authority)</u>	<u>(UKLA)</u>
<u>Electronic Money</u>	<u>ELM</u>	
Schedules:		
Transitional provisions		
Summary schedules:		
1. Record keeping requirements		
2. Notification requirements		
3. Fees and other required payments		
4. Powers exercised in making the Handbook		
5. Rights of action for damages		
6. Rules that can be waived		
7. Releases		
Glossary of definitions		
<u>Index</u>		

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(CHANGES TO VALUATION AND REPORTING) INSTRUMENT 2002**

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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:
- (1) the amendment to paragraph B31 of Annex B of Appendix 4 comes into force on 31 December 2002; and
 - (2) the remainder of this instrument comes into force on 1 November 2002.

Amendment of the Interim Prudential sourcebook for friendly societies

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Changes to Valuation and Reporting) Instrument 2002.

By order of the Board
17 October 2002

Annex

Amendments to IPRU(FSOC)

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

Permitted asset exposure limit

Paragraph 2(1) of Appendix 4 is amended as follows:

- (1) Subject to rule 4.12(1), this ~~This~~ Appendix (the ‘asset valuation rules’) applies with respect to the determination of the value of assets of a *friendly society* for the purposes of chapters 4 and 5.

In Annex B of Appendix 4 (Assets to be taken into account only to a specified extent), paragraph B31 is amended and a new paragraph B31A is inserted as follows:

B31. All *shares* and hybrid securities issued by any one *issuer* taken together 2.5% with all such *securities* issued by a *connected company* of that *issuer*.

B31A. In the case of a *friendly society* effecting or carrying out *with-profits policies* and holding *shares* as *long-term insurance business assets*, for *shares* that are ordinary *listed shares* in the *issuer*, the *permitted asset exposure limit* in B31 may exceed 2.5% of the *long-term insurance business amount* to a maximum of 5% of the *long-term insurance business amount* or the formula result, whichever is lower, where –

- (a) the ‘formula result’ means 0.8 multiplied by M/T multiplied by P, expressed as a percentage of the *long-term insurance business amount*, where –
- (i) M = the aggregate market capitalisation of the ordinary *listed shares* in the *issuer*,
 - (ii) T = the aggregate market capitalisation of all *securities* in the Financial Times Stock Exchange All Share Index; and
 - (iii) P = the value of the assets supporting the *friendly society’s long-term insurance business fund*, determined in accordance with the *Valuation of Assets Rules*; and
- (b) ‘value of the assets’ means the value of the assets –
- (i) less the amount of the *friendly society’s mathematical reserves* for *linked long-term contracts* and *non-profit policies* net of reinsurance, and
 - (ii) if the *friendly society* does not effect or carry out *general insurance contracts*, plus the *friendly society’s net assets* outside the *friendly society’s long-term insurance business fund*.

Aggregation of internal linked funds

In Appendix 8 (Long-term insurance business: revenue account, other revenue account and additional information), the following paragraph 13 is added after paragraph 12:

13. In Forms 43 and 45, self-invested *internal linked funds* (where the *policyholder* selects the investments to which his or her policy is linked) or adviser *internal linked funds* (where a financial adviser selects the investments to which a policy is linked) may be aggregated if (in either case) they meet the following conditions:
- (a) there is a precise matching of the assets of the fund with the corresponding unit liabilities;
 - (b) there is no negative liquidity in the fund (that is, the sum of the values of approved securities, short-term deposits and cash held in the fund exceeds the total of the liabilities in columns 6 and 7 of Form 43); and
 - (c) the *policyholder* is periodically (at least annually) provided (by the *friendly society* or the financial adviser) with the information on the investments that would otherwise be provided in the return if the funds were not aggregated, whether in the format of the relevant Forms or not.

In Appendix 9 (Abstract of actuarial investigation), the following paragraph 21(4A) is inserted after paragraph 21(4):

- (4A) In Form 55, where the conditions in paragraph 13 of Appendix 8 are met, self-invested *internal linked funds* and adviser *internal linked funds* may (in either case) be aggregated.

Liability valuation rules

Paragraph 10 (rates of interest) of Appendix 5 is amended as follows:

- (5B) For the purposes of (5A), the ‘relevant amount’ in relation to equity *shares* is the issuing *company’s* profits after taxation from its ordinary activities for the ~~preceding financial year~~ most recent financial year ending on or before the *valuation date* which is reported in accounts in accordance with (5C) which are publicly available, in so far as attributable to those equity *shares*, so however, without prejudice to the generality of the foregoing, that account is taken of the effect of any alterations in capital structure.
- (5C) For the purposes of (5B), the issuing *company’s* profits after taxation from its ordinary activities for the ~~preceding financial year~~ relevant financial year must be derived from accounts drawn up in accordance with legislation implementing the *Accounts Directives* or, if accounts are not drawn up in accordance with the *Accounts Directives*, from accounts drawn up in accordance with International Accounting Standards Committee accounting standards or US generally accepted accounting practice.

(5D) Where (5A) applies, and a *company's* accounting period is longer or shorter than a year, the amount of profits or losses for that period must be annualised, and the annualised figure must be used to calculate the yield.

(5E) If the requirements in (5B) and (5C) are not, or cannot be, met, then the relevant amount is zero.

In Appendix 9 (Abstract of actuarial investigation), the following paragraphs 19(5A) and (5B) are inserted after paragraph 19(5) as follows:

(5A) In Form 48, to the extent that paragraph 10(5A) of Appendix 5 has not been, or would otherwise not be required to be, applied to calculate the yield on equity *shares* or holdings in *collective investment schemes*, that rule may be ignored (in which case paragraph 10(5) will apply) for an amount up to the higher of £5 million or 5% of the value of equity *shares* and holdings in *collective investment schemes* required to be reported in Form 48.

(5B) To the extent that a yield greater than zero on equity *shares* or holdings in *collective investment schemes* is not needed for the purpose of determining rates of interest under paragraph 10 of Appendix 5, paragraph 10(5) and (5A) may be ignored for an amount of up to 1% of the value of equity *shares* and holdings in *collective investment schemes* required to be reported in Form 48, and the relevant yield will be taken as zero.

In Appendix 9, in the 'Notes to Forms 48 and 49', paragraph 2 is amended as follows:

2. •The entries at 48.12.3, 48.13.3, 48.14.3 and 48.15.3 must be equal to 49.19.2, 49.29.2, 49.19.5 and 49.29.5 respectively. Subject to paragraphs 19(5A) and (5B) of Appendix 9, the yields to be inserted in column 3 of Form 48 for other categories of asset must be the running yields determined in accordance with ~~rules~~ paragraphs 10(3) to (6A) in Appendix 5.

...

EBRD

In rule 7.1, the definition of *approved financial institution* is amended as follows:

approved financial institution means any of the following –

- the European Central Bank;
- the central bank of an *EEA State*;
- the International Bank for Reconstruction and Development;
- the European Bank for Reconstruction and Development;
- the International Finance Corporation;
- the International Monetary Fund;
- the Inter-American Development Bank;
- the African Development Bank;
- the Asian Development Bank;
- the Caribbean Development Bank;

the European Investment Bank;
the European Community;
the European Atomic Energy Community;
and the European Coal and Steel Community.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(FINANCIAL PENALTIES AND CHANGES TO VALUATION AND REPORTING)
INSTRUMENT 2002**

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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:
- (1) the amendments to rules 2.3 and 4.1 come into force on 31 December 2002; and
 - (2) the remainder of this instrument comes into force on 1 November 2002.

Amendment of the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with Annex A to this instrument.

Amendment of the Enforcement manual

- E. The Enforcement manual is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Financial Penalties and Changes to Valuation and Reporting) Instrument 2002.

By order of the Board
17 October 2002

Annex A

Amendments to IPRU(INS)

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

Financial penalties

Rule 1.1(b) is amended as follows:

- (b) subject to rule 3.5(3) (payment of financial penalties) and rules 3.6 and 3.7 (application of rules to *linked long-term contracts*), an *EEA insurer* qualifying for authorisation under Schedules 3 or 4 to the *Act*.

The heading to rule 3.5 is amended as follows:

Arrangements to avoid unfairness between separate insurance funds, source of funds for payment of financial penalties, etc.

Rule 3.5 is amended by adding the following:

- (3) Where the *FSA* imposes a financial penalty on a *long-term insurer* (including an *insurer* qualifying for authorisation under Schedules 3 or 4 to the *Act*), which is not a *mutual*, the *insurer* must not pay that financial penalty from a *long-term insurance fund*.

Permitted asset exposure limit

Rule 4.1(1) is amended as follows:

- (1) Subject to (2) and to rule 2.3(1), the *Valuation of Assets Rules* apply to the determination of the value of assets of *insurers*.

In Part II of Appendix 4.2 (Assets to be taken into account only to a specified extent), paragraph 13 is amended and a new paragraph 13A is inserted as follows:

13. All *shares* and ~~hybrid~~ hybrid securities issued by any one *issuer* taken together with all such *securities* issued by a *connected company* of that *issuer* 2.5%

- 13A. In the case of an *insurer* effecting or carrying out *with-profits policies* and holding *shares* as *long-term insurance business assets*, for *shares* that are ordinary *listed shares* in the *issuer*, the *permitted asset exposure limit* in 13 may exceed 2.5% of the *long-term insurance business amount* to a maximum of 5% of the *long-term insurance business amount* or the ‘formula result’, whichever is lower, where -

- (a) the **formula result** means 0.8 multiplied by M/T multiplied by P, expressed as a percentage of the *long-term insurance business amount*, where -

- (i) M = the aggregate market capitalisation of the ordinary *listed* shares in the *issuer*.
 - (ii) T = the aggregate market capitalisation of all *securities* in the Financial Times Stock Exchange All Share Index, and
 - (iii) P = the ‘value of the assets’ supporting the *insurer’s long-term insurance fund*, determined in accordance with the *Valuation of Assets Rules*; and
- (b) value of the assets means the value of the assets –
- (i) less the amount of the *insurer’s mathematical reserves for linked long-term contracts and non-profit policies* net of reinsurance, and
 - (ii) if the *insurer* does not effect or carry out *general insurance contracts*, plus the *insurer’s* net assets outside the *insurer’s long-term insurance fund*.

Aggregation of internal linked funds

In Appendix 9.3 (Long-term insurance business: revenue account and additional information), the following paragraph is added as paragraph 5 of the ‘Instructions for completion of Form 43’ and as paragraph 4 of the ‘Instructions for completion of Form 45’:

Self-invested *internal linked funds* (where the *policy holder* selects the investments to which his or her *policy* is linked) or adviser *internal linked funds* (where a financial adviser selects the investments to which a *policy* is linked) may be aggregated if (in either case) they meet the following conditions:

- (a) there is a precise matching of the assets of the fund with the corresponding unit liabilities;
- (b) there is no negative liquidity in the fund (that is, the sum of the values of *approved securities*, short-term deposits and cash held in the fund exceeds the total of the liabilities in columns 6 and 7 of Form 43); and
- (c) the *policy holder* is periodically (at least annually) provided (by the *insurer* or the financial adviser) with the information on the investments that would otherwise be provided in the *return* if the funds were not aggregated, whether in the format of the relevant Forms or not.

In Appendix 9.4 (Abstract of valuation report prepared by appointed actuary), the following paragraph 9 is added to the ‘Instructions for completion of Form 55’:

- 9. Self-invested *internal linked funds* or adviser *internal linked funds* which meet the conditions in paragraph 5 of the Instructions for completion of Form 43 in Appendix 9.3 may (in either case) be aggregated.

Liability valuation rules

Rule 5.11 (rates of interest) is amended as follows:

- (5B) For the purposes of (5A), the **relevant amount** in relation to equity *shares* is the issuing *company's* profits after taxation from its ordinary activities for the ~~preceding financial year~~ most recent financial year ending on or before the *relevant date* which is reported in accounts drawn up in accordance with (5C) which are publicly available, in so far as attributable to those equity *shares*, so however, without prejudice to the generality of the foregoing, that account is taken of the effect of any alterations in capital structure.
- (5C) For the purposes of (5B), the issuing *company's* profits after taxation from its ordinary activities for the ~~preceding financial year~~ relevant financial year must be derived from accounts drawn up in accordance with legislation implementing the *Accounts Directives* or, if accounts are not drawn up in accordance with the *Accounts Directives*, from accounts drawn up in accordance with International Accounting Standards Committee accounting standards or US generally accepted accounting practice.
- (5D) Where (5A) applies, and a *company's* accounting period is longer or shorter than a year, the amount of profits or losses for that period must be annualised, and the annualised figure must be used to calculate the yield.
- (5E) If the requirements in (5B) and (5C) are not, or cannot be, met, then the relevant amount is zero.

In Appendix 9.4 (Abstract of valuation report prepared by appointed actuary), in the 'Instructions for completion of Form 48', paragraph 7 is amended as follows and the following paragraphs 10 and 11 are added after paragraph 9:

7. The entries at 48.12.3, 48.13.3, 48.14.3 and 48.15.3 must be equal to 49.19.2, 49.29.2, 49.19.5 and 49.29.5 respectively. Subject to paragraphs 10 and 11, the yields to be inserted in column 3 for other categories of asset must be the running yields determined in accordance with rules 5.11(3) to (6A). The entry at 48.29.3 must be the weighted average of the yields in column 3, where the weight given to each asset is the value of that asset applicable for entry into column 1. Assets not producing income must be included in the calculation.
10. To the extent that rule 5.11(5A) has not been, or would otherwise not be required to be, applied to calculate the yield on equity *shares* or holdings in *collective investment schemes*, that rule may be ignored (in which case rule 5.11(5) will apply) for an amount up to the higher of £5 million or 5% of the value of equity *shares* and holdings in *collective investment schemes* required to be reported in Form 48.
11. To the extent that a yield greater than zero on equity *shares* or holdings in *collective investment schemes* is not needed for the purpose of determining rates of interest under rule 5.11, rules 5.11(5) and (5A) may be ignored for an amount of up to 1% of the value of equity *shares* and holdings in *collective investment schemes* required to be reported in Form 48, and the relevant yield will be taken as zero.

Paragraph 3.5 of Guidance Note 4.4 (Linked contracts) is amended as follows:

Material excesses (such as where an *insurer* holds its otherwise non-linked equity portfolio as excess assets in its equity-linked fund) would need to be revalued in accordance with the *Valuation of Asset Rules*. Yields may require to be calculated in accordance with the more complex rule 5.11(5A), rather than rule 5.11(5) (but see paragraphs 10 and 11 of the Instructions for completion of Form 48). (The revaluation is on the proportionate holdings the excess represents and can be performed on an approximate basis if the linked fund is broadly invested.) A material excess is one which satisfies either of the following tests:

- (i)(a) the value of the assets of the fund materially exceeds the unit liability of that fund; or
- (ii)(b) the total excess is material in the context of the *long-term insurance business amount*.

EBRD

In rule 11.1, the definition of *approved financial institution* is amended as follows:

approved financial institution means any of the following –

the European Central Bank;
the central bank of an *EEA State*;
the International Bank for Reconstruction and Development;
the European Bank for Reconstruction and Development;
the International Finance Corporation;
the International Monetary Fund;
the Inter-American Development Bank;
the African Development Bank;
the Asian Development Bank;
the Caribbean Development Bank;
the European Investment Bank;
the European Community;
the European Atomic Energy Community;
and the European Coal and Steel Community.

Accountant General

In rule 11.1, the definition of *approved credit institution* is amended as follows:

an institution recognised or permitted under the law of an *EEA State* to carry on any of the activities set out in Annex 1 to the *Banking Co-ordination Directive* and, for the purposes of a deposit made before 1 December 2001, the Accountant General of the Supreme Court.

Margins of solvency, adequacy of assets and reporting

Rules 2.1 (2) and (3) are amended as follows:

(2) Subject to (3), every *insurer* whose head office is not in ~~an EEA State~~ the United Kingdom must maintain –

(a) a *margin of solvency*; and

(b) a *UK margin of solvency*,

in accordance with the *Margins of Solvency Rules*.

(3) Rule 2.1(2) does not apply to an *insurer* if –

(a) its business in the United Kingdom is restricted to *reinsurance*;

(b) it is a *Swiss general insurer*; ~~or~~

(c) ~~rule 8.1(2) applies to it~~ ~~(1)~~ it is an EEA-deposit insurer; or

(d) it is a UK-deposit insurer which has made a deposit under rule 8.1(2),

but a *UK deposit insurer* which has made a deposit under rule 8.1(2) must maintain –

~~(d)~~(e) an *EEA margin of solvency*; and

~~(e)~~(f) a *margin of solvency*,

in accordance with the *Margins of Solvency Rules*.

Rule 2.3 is amended as follows:

(1) ~~An A-UK~~ An *insurer* must secure -

(a) that its liabilities under *contracts of insurance* ~~entered into by it~~, other than liabilities in respect of ‘linked benefits’, are covered by assets of appropriate safety, yield and marketability having regard to the classes of business carried on; and

(b) without prejudice to the generality of (a), that its investments are appropriately diversified and adequately spread and that excessive reliance is not placed on investments of any particular category or description.

(2) ~~A UK~~ UK *insurer* which ~~has entered into~~ is carrying out a ‘linked long-term contract’, and an *insurer* whose head office is not in the United Kingdom (other than a *pure reinsurer* or a *non-directive insurer*) which is carrying out a ‘linked long-term contract’ in the United Kingdom, must secure that, as far as practicable, its liabilities under the contract in respect of ‘linked benefits’ are covered as follows –

(a) if those benefits are linked to the value of units in an undertaking for collective investments in transferable *securities* or to the value of assets contained in an internal fund, by those units or assets; and

- (a) if those benefits are linked to a share index or other reference value not mentioned in (a), by units which represent that reference value, or by assets of appropriate safety and marketability which correspond, as nearly as may be, to the assets on which that reference value is based.
- (3) ~~A UK~~ An insurer which has entered into a ‘linked long-term contract’ to which (2) applies must also secure that those of its liabilities under the contract in respect of ‘linked benefits’ which are not covered by contracts of *reinsurance* are covered by assets of a description contained in rule 3.7.

Paragraphs 3 to 6 of the ‘Instructions for completion of Form 13’ in Appendix 9.1 (Balance sheet and profit and loss account) are amended as follows:

- 3 (a) In the case of the United Kingdom branch ~~return~~ *return* of an *external insurer* (other than a *pure reinsurer*) Form 13 must be completed for the following categories of assets -

Category	Code - other than long-term insurance business assets	Code - long-term insurance business assets
<u>In the case of a non-EEA insurer, assets deposited</u> <u>deposited</u> under rule 8.1 <u>8.1(1)</u>	2	6
Assets maintained in the United Kingdom	3	7
Assets maintained in the United Kingdom and the other <i>EEA States</i>	4	8

- (b) In the case of an EEA branch *return* of a *UK-deposit insurer* which has made a deposit under rule 8.1(2), Form 13 must be completed for the following categories of assets -

Category	Code – other than long-term insurance business assets	Code – long-term insurance business assets
Assets deposited under rule 8.1 <u>8.1(2)</u>	2	6
Assets maintained in the United Kingdom and the other <i>EEA States</i>	4	8
Assets maintained in the United Kingdom and the <i>EEA States</i> where <i>insurance business</i> is carried on	5	9

4. In lines 11 to 86 -

- (a) for the purpose of classifying (but not valuing) assets, headings and descriptions used above, wherever they also occur in the balance sheet format in Schedule 9A to the *Companies Act*, must have the same meaning as in that Schedule,

- (b) assets must be valued in accordance with rule 9.10, and
- (c) assets of any particular description must be shown after deduction of assets of that description which (for any reason) fall to be left out of account under rule 4.14 (2) (a).

5. The aggregate value of those investments which are:

- (i) (a) *unlisted* investments falling within any of lines 41, 42, 46 or 48 which have been valued in accordance with rule 4.8;
- (ii) (b) *listed* investments falling within any of lines 41, 42, 46 or 48 which have been valued in accordance with rule 4.8 and which are not ~~ready~~ readily *realisable*;
- (iii) (c) units or other beneficial interests in *collective investment schemes* falling within rule 4.9(1)(c); or
- (iv) (d) reversionary interests or remainders in property other than land or buildings,

must be stated by way of a supplementary note to this Form, together with a description of such investments.

6. The aggregate value of those investments falling within lines 46 or 48 which are ~~hybrid~~ hybrid *securities* are to be stated by way of a supplementary note to this Form.

Paragraph 2.2(1) of Guidance Note 9.1 (Preparation of returns) is amended as follows:

- (1) The following table summarises the types of *return* which *insurers* are required to prepare.

Type of company	Location of Head Office		
	United Kingdom	An <i>EEA State</i> (other than U.K.)	Rest of the World ⁽¹⁾
<i>Pure reinsurer</i>	Global <i>return</i>	Global <i>return</i>	Global <i>return</i>
<i>UK- deposit insurer making a deposit under rule 8.1(2)</i>			Global <i>return</i> and EEA branch <i>return</i>
<i>EEA-deposit insurer</i>			UK branch <i>return</i>

All other <i>insurers</i> (1)	Global <i>return</i>	Exempt <u>Exempt (2)</u>	Global <i>return</i> and UK branch <i>return</i> .
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(1) Special rules apply to Swiss general insurers for Switzerland. ~~A Swiss general insurer reports as for an insurer with its head office in the EEA. Other Swiss companies' report as for companies with their head office in the 'rest of the world'.~~

(2) Except that insurers which do not qualify for authorisation under Schedules 3 or 4 to the Act must provide a global return and a UK branch return.

Directors' certificate

Paragraph 4(b) of Part I of Appendix 9.6 (Certificates of directors etc) is amended as follows:

- (b) that any amount payable from or receivable by the *long-term insurance business fund or funds* in respect of services rendered by or to any other business carried on by the *insurer* or by a person who, for the purposes of rule 3.4, is ~~connected~~ 'connected' with it or is a ~~subsidiary undertaking~~ 'subordinate company' of it has been determined and where appropriate apportioned on terms which are believed to be no less than fair to that fund or those funds, and any exchange of assets representing such fund or funds for other assets of the *insurer* has been made at fair *market value*.

Regulated markets

Paragraph 2 of Annex D of Guidance Note 4.1 (Guidance for insurers and auditors on the valuation of assets rules) is amended as follows:

2. The FSA maintains and publishes a list of regulated markets in the United Kingdom on its web site. There is no official list of For regulated markets outside the UK, Instead the directors (and auditors) must should be satisfied that the criteria set out in the definition have been met. Art 16 of the Investment Services Directive requires that each Member State draw up a list of the regulated markets for which it is the home Member State, and that the Commission publish the lists and updates in the Official Journal of the European Communities at least once a year. Annex 5G of SUP 17 lists the regulated markets notified to the Commission as at a specified date, but it may not be up-to-date.

Guidance Note 9.1 of IPRU(INS)

Paragraph 5.4(16) of Guidance Note 9.1 is amended as follows:

- (16) Line 73 (salvage and subrogation recoveries) should only be used for such recoveries which fall to be classified as debtors arising from insurance operations. Occasionally some salvage or subrogation recoveries may be classified under other headings in the

Companies Act accounts in which case the same heading should be used in **Form 13**, but a supplementary note [Code 1303] is required. If salvage and subrogation recoveries are shown in the *Companies Act* accounts as a deduction from liabilities rather than as an asset, the same treatment should be adopted in the *returns*. That is, line 73 should be left blank and the amount of liabilities shown on **Form 14** **Form 15** should be shown net of the salvage and subrogation recoveries.

Paragraph 8.1(3) of Guidance Note 9.1 is amended as follows:

- (3) Run off of risks should be reported on the underwriting year basis if these risks were previously reported on the underwriting year Forms (24 and 25). The run off of risks previously reported on the annual accounting Forms (21 to 23) should now be reported on the accident year basis.

Paragraph 8.2(2) of Guidance Note 9.1 is amended as follows:

- (2) In particular contracts of financial (re)insurance whether inward or outward should be classified for inclusion in the forms in accordance with Financial Reporting Standard 5 'Reporting the Substance of Transactions' ~~and the statement 'FRAG 35/94: The Application of FRS 5 to Non-Life Insurance Transactions'~~². Thus where the consideration receivable and payable for transactions which have the legal form of *contracts of insurance* or *reinsurance* would not be accounted for as premiums and *claims* in the preparation of *Companies Act* accounts, they should not be included as premiums and *claims* in **Forms 20** to **39**. Instead they should be accounted for in the *return* using the same principles as are applied in the preparation of *Companies Act* accounts. (But see 5.3(7) and 5.3(11) for the different treatment in **Forms 11** and **12**).

Minor drafting errors

Rule 2.10(2)(a) is amended as follows:

- (a) an *insurer* has issued ~~shares~~ *shares* some or all of which are not 'fully paid' and the total paid up value of all the *shares* is equal to or greater than one quarter of their nominal value or, in the case of *shares* issued at a premium, of the aggregate of their nominal value and the premium.

The definition of *collector* in rule 11.1 is amended as follows:

includes every person, howsoever remunerated, who, by himself or by any deputy or substitute, makes house to house visits for the purpose of receiving premiums payable on ~~policies~~ *policies* of insurance on human life, or holds any interest in a *collecting book*, and includes such a deputy or substitute.

Annex B

Amendments to the Enforcement manual

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

13.6.3G ~~*IPRU(INS) rule 3.5(3) 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.*~~

**PENSION PROJECTIONS
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of 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).
- 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 2002.

Amendment to COB and the Glossary

- D. The Conduct of Business sourcebook and the Glossary are amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Pension Projections Instrument 2002.

By order of the Board
17 October 2002

Annex

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

Amendments to the Conduct of Business sourcebook

COB Transitional Rules

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

1 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies: The COB provisions in Table COB TR2 with the labels indicated		Transitional Provision	Transitional provision: dates in force	Handbook provision: coming into force
1.0	Extra time provisions				
1.1	<i>ETP1</i>	R	<p>Transitional Relief</p> <p>(1) A pre-N2 <i>firm</i> will not contravene any of the provisions labelled <i>ETP1</i> in Table <i>COB TR 2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement, subject to any modification wherever appropriate, to take account of the passing of the <i>Act</i>.</p> <p>(2) Paragraph (1) does not apply to the following:</p> <p>...</p>	<p>(1) <i>commencement</i> to 30 June 2002, except as specified in (2) and (3) below;</p> <p>(2) for <i>COB 9.3.105R</i>, from <i>commencement</i> to 31 December 2002;</p>	<i>commencement</i>

1.1 A	ETP 1 (for COB 6.1 – 6.8)	<p>(f) <u>(from 6 April 2003) COB 6.6.51 R (b) (Rate of return assumptions) , COB 6.6.83 R (Assumptions for pension annuities) , COB 6.6.84 R (Assumptions for pension annuities) , COB 6.6.90 R (3) and COB 6.6.91 R (Required assumptions) .</u></p> <p>[Further exceptions to be added, later, as described in row 1.1A]</p> <p>(1) ...</p> <p>(2) Firms should be aware, however, that the FSA proposes to make rules, before the disclosure review is complete, to deal with the following matters:</p> <p>(b) Projections for pension schemes or stakeholder pension schemes (see CP 134).</p> <p>(2) <u>Interim changes to these rules may not benefit from this transitional relief.</u></p> <p>(3) <u>The FSA envisages that when the relevant rules are made, they will not benefit from the transitional arrangements set out in the COB Transitional Rules. For further information on the FSA's approach, firms should refer to the consultation papers mentioned above. If other interim changes to these rules are proposed, a similar approach is likely to be adopted.</u></p>	(3) for COB 3.9.10R, COB 4.2.15E (7), COB 5.3, COB 5.7, COB 6.1 to 6.8 until a date yet to be specified.	
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COB Miscellaneous Transitional Rules

1 Table

(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>2</u>	<u>COB 6.5.18R and COB 6.6</u>	R	<u>Pension projections</u> <u>A firm will not contravene a rule in COB 6.5.18R or COB 6.6 provided it complies with the version of that rule in force on 31 October 2002.</u>	<u>From 1 November 2002 to 5 April 2003</u>	<u>1 November 2002</u>

6.5.18 R (1) All *projections* included in *key features*, except a specimen *projection* in a decision tree for a *stakeholder pension scheme*, must be calculated in accordance with COB 6.6 (Projections), using the lower, intermediate and higher rates of return in COB 6.6.50 R, and followed by the appropriate statements from COB 6.6.15 R.

(2) In addition, if the *projection* in (1) is for a *pension scheme* or a *stakeholder pension scheme*, a firm may also include a *type P projection* in the *key features* (see COB 6.6.34 R (5)). The pension must assume increases linked to the retail prices index using the appropriate intermediate rate in COB 6.6.51 R.

6.6.5 R ~~The rules in COB 6.6 do~~ COB 6.6.4R does not apply to a firm when it provides a *projection*:

(6) of the benefits payable under a ~~*money purchase occupational scheme or arrangement*~~ *pension scheme* or a *stakeholder pension scheme* if they were:

(a) calculated and issued in accordance with regulations made under section 113 of the Pensions Schemes Act 1993; or

(b) calculated and issued as in (a) and, in addition, includes one or more of the following benefits:

(i) the projected fund at the *projection date*; or

(ii) the cash sum and the residual pension in real terms; or

- (iii) the pension in real terms calculated assuming a rate of return 1% per annum less than that prescribed in the regulations; or
 - (c) calculated as in (a) or (b) but where the illustration of benefits is not required to be issued under the regulations by reference to proximity to the *projection date* or the small size of the fund.
- 6.6.5A G (1) A revised *projection* to take account of a different marital status or *projection date* will fall within the exception in COB 6.6.5 R (6) as long as it meets the conditions of that rule.
- (2) Where the exception in COB 6.6.5 R (6) does not apply and a firm provides a real value *projection* for a *pension scheme* or a *stakeholder pension scheme*, then normally it would be a *type P projection* if in terms of prices or a *type Q projection* if in terms of earnings. The calculation method is set out in COB 6.6.34 R (5).
- 6.6.8 R (3A) If the *projection* is a *type P projection* or a *type Q projection*, the basis used for increases in *premiums* or contributions must be disclosed.
- (4) Other than a *type P projection* or a *type Q projection*, ~~W~~where a *projection* is given which makes allowance for increases in *premiums* or contributions, the *premium* or contribution in the final year must be shown (or, where the rate of possible future increments is based upon rates of growth in a salary or index, details of that salary or index).
- 6.6.9 R (1) A firm may provide a generic *projection* for illustrative purposes based on a single rate of investment return only in the following circumstances:
- (a) in a *financial promotion* (other than a *direct offer financial promotion*) which comprises a table (or extracts from a table) published by a newspaper, magazine or other periodical publication, or by the *firm* itself, which compares illustrative *projections* from at least five *product providers*; or
 - (b) where the purpose is to indicate the likely cost of a proposed *transaction*; or
 - (c) to provide an estimate of the additional *premium* or contribution required to achieve a specified target; or
 - (d) when providing a *type P projection* or a *type Q projection*.
- 6.6.11 R A *projection* in respect of the protected rights for an *appropriate*

personal pension must, for the purpose of comparison, include a *projection* which:

- (1) is calculated to the *customer's* State retirement age, using the lower and higher real rates of return of x% and y% ('x' and 'y' are the real rates of return referred to specified in COB 6.6.52 R), together with a statement of the benefits which the minimum contributions would secure if the *customer* did not take out an *appropriate personal pension*;
- (2) ~~includes, immediately after the comparison, the statement: 'These figures are only meant to give you a rough idea how the value of the pension you might get compares with the benefit you would be giving up under the State Earnings Related Pension scheme. The statements made after the main illustration also apply to this comparison;[deleted]~~

...

6.6.12 G ~~COB 6.6.11 R (1) to (3) require that, where the contract is in respect of contracting-out of the State Earnings Related Second Pension Scheme, there should be a comparison using real rates of return of the benefits being given up and the relevant contract. COB 6.6.11 R (4) permits additional projections provided that the differences are described.~~

6.6.13 R A *projection* for income withdrawals from a personal pension or stakeholder pension scheme ~~with income withdrawals:~~
(1) must include:

...

6.6.15 R (1) The statements in COB 6.6.16 R must accompany each *projection* for a *life policy* or *scheme* as indicated, except a generic *projection* given in accordance with COB 6.6.9 R (see COB 6.6.17 R), or a protected rights *annuity projection* calculated in accordance with COB 6.6.11 R (see COB 6.6.18 R).

(2) For a pension scheme or stakeholder pension scheme, the appropriate statement from item 4 of COB 6.6.16 R must appear immediately after the projection.

(3) Where a pension scheme or stakeholder pension scheme projection, using monetary rates of return in COB 6.6.51 R, is provided at the same time as a type P projection or a type Q projection, the appropriate statement from COB 6.6.16.4 R must appear immediately after the projection. The remainder of the appropriate statements in COB 6.6.16 R need only be included once, as long as the firm makes it clear that these statements apply to both types of projection.

6.6.16 R Table Statements to accompany projections of life policies, schemes or stakeholder pension schemes (excluding generic

projections and protected rights annuity projections)
 This table belongs to COB 6.6.15 R

Statements to accompany projections of life policies, schemes or stakeholder pension schemes (excluding generic projections and protected rights annuity projections)

1. These figures are only examples and are not guaranteed – they are not minimum or maximum amounts. What you will get back depends on how your investment grows and on the tax treatment of the investment.
2. [You could get back] [your retirement fund could be] more or less than this.
3. All <i>firms</i> use the same rates of growth for <i>projections</i> but their charges vary. [They also use the same rates to show how funds may be converted into pension income].
4. Do not forget that inflation would reduce what you could buy in the future with the amounts shown. <u>4. (a) Do not forget that inflation would reduce what you could buy in the future with the amounts shown.</u> <u>(b) This illustration shows, in today's prices, the pension that might be payable when you retire. This means we have allowed for future inflation to give you an indication of how much you would be able to buy with your pension if it were payable today.</u>
5. [Your pension income will depend on how your investment grows and on interest rates at the time you retire].
6. These rates of return are not necessarily appropriate [for contracts written in] [for units traded in] [for shares traded in] currencies other than sterling.
7. Benefits may also be affected by fluctuations in exchange rates.
Note: <u>In respect of statement 4, the <i>firm</i> must include the appropriate statement (a) or (b).</u> <u>Statement 5 applies to <i>pension contracts</i> only and statements 6 and 7 apply to non-sterling <i>investments</i> only.</u>

6.6.18 R Table Statements to accompany projections for protected rights contracts
 This table belongs to COB 6.6.15 R

Statements to accompany projections for protected rights *contracts*

1. These figures are only meant to give you a rough idea of the amount of pension you might get compared with the benefit that you would be giving up under the State ~~Earnings Related~~ Second Pension.

6.6.34 R (5) A type P projection or a type Q projection must be calculated as follows:

(a) the relevant *premium* for the *pension scheme* or *stakeholder pension scheme* must be used;

(b) the relevant *premium*, with allowance for *premium* increases as specified in COB 6.6.48A R, must be accumulated to the *projection date* at the intermediate

monetary rate of return detailed in COB 6.6.51 R subject to charges and expenses (as described in COB 6.6.23 R) and the cost of risk benefits;

(c) the retirement fund from (b) must then be converted to a real retirement fund by discounting from the projection date using the rate of increase in the retail prices index (for type P projection) or the rate of increase in earnings (for type Q projection) in COB 6.6.48A R;

(d) the pension must be calculated from the real retirement fund using the appropriate intermediate rate in COB 6.6.51 R, using the mortality tables in COB 6.6.84 R, the format in COB 6.6.82 R (7) and expenses in COB 6.6.83 R.

6.6.36 R (5) A type P projection or, a type Q projection must be calculated in accordance with COB 6.6.34 R (5) but substituting "contribution" for "premium" throughout.

6.6.37 R (1) A projection must be rounded down to not more than three significant figures.

(2) Where the projection, other than a projection in real terms of a pension contract or stakeholder pension scheme, is less than the amount guaranteed under the life policy or scheme, the projection must be increased to that guaranteed amount.

(3) Where a customer is entitled, and has expressed the intention, to increase the premium or contribution by an amount linked to future salary or other index increases, the relevant premium or contribution may be calculated:

(a) for a type P projection or a type Q projection, making allowance for increases at the relevant rate set out in COB 6.6.48A R; and

(b) for all other cases, by making allowance for such increases on the same basis as that used for administration charges in COB 6.6.47 R.

6.6.39 R (1) Any projection of an annuity with one or more years to maturity must show an annuity value based on the higher and lower rates of return as set out in COB 6.6.50 – COB 6.6.52, and make allowance for:

(a) mortality (as set out in COB 6.6.84 R) and also in the case of life policies, morbidity appropriate to the class of customers; and

...

6.6.41 R (1) The retirement fund for a protected rights annuity under as appropriate personal pension scheme or stakeholder pension

scheme must be calculated by accumulating the relevant contribution less charges and expenses (as described in COB 6.6.23 R) at the ~~two~~ relevant rates of return for the period.

- (a) The relevant period is either:
 - (i) where the relevant contribution is a minimum contribution from the 1st September following the end of the tax year to which the minimum contribution relates up to the maturity date; or
 - (ii) where the relevant contribution is a transfer value, from the commencement of the contract up to the maturity date.
 - (b) The ~~two~~ relevant rates of return are:
 - (i) in the case of a *protected rights annuity projection* issued in accordance with COB 6.6.11 R (1), the real rates of return in COB 6.6.52 R; or
 - (ii) in the case of any other *protected rights annuity projection*, ~~either the real or monetary lower and higher~~ rates of return COB 6.6.52 R.
- (2) The annuity must be calculated by reference to the *retirement fund* using the ~~lower and higher~~ relevant rates of return set out in COB 6.6.51 R or 6.6.52 R, with allowance for mortality (as set out in COB 6.6.84R) ~~appropriate to the class of customers~~, charges and expenses and the relevant increase in payment.

Pension ~~contracts~~ schemes or stakeholder pension schemes

- 6.6.42 R (1) An additional *projection* may be given for a *pension scheme* ~~contract~~ or *stakeholder pension scheme* where the period to maturity is five years or less. This:
- (a) may be calculated using the intermediate rates of return specified in COB 6.6.51 or 6.6.52 R;
 - (b) may use a current annuity rate calculated using a rate of return no higher than the higher rate specified in COB 6.6.51R or 6.6.52 R.
- (2) If the *firm* providing the *projection* offers annuities, it must use its own annuity rates.
- 6.6.46 R In respect of *policies* with reviewable administration charges:
- (1) a *firm* must make allowance for increases in administration charges which are reviewable at the *firm's* discretion, on a basis which:
 - (a) is fair and reasonable; and

- (b) takes into account the *firm's pricing policy* as regards future levels of administration charges;
- (2) increases must be assumed at the appropriate rates of increase in COB 6.6.48A R for type P projections and type Q projections and the rates in COB 6.6.47 R for other projections. for any contracts where:
 - (a) an administration charge is reviewable by the *firm* (whether or not any increases are contractually linked to an external index); or
 - (b) expenses in respect of future renewal or claims costs are expressed as monetary amounts.

Rate of inflation assumptions

6.6.48A R For *pension schemes and stakeholder pension schemes*, the following rates of inflation must be used when calculating *type P projections or type Q projections*:

- (1) rate of increase in the Retail Prices Index (for type P projections): 2.5%;
- (2) rate of increase in earnings (for type Q projections): not less than 1.5% in excess of the rate of increase in the Retail Prices Index in (1) .

6.6.51 R Table Rate of return assumptions for pension contracts and stakeholder pension schemes excluding contracts for immediate annuities and protected rights annuities issued in accordance with COB 6.6.11 R (1).
This table belongs to COB 6.6.49 R

Rate of return assumptions for pension contracts and stakeholder pension schemes excluding contracts for immediate annuities and protected rights annuities issued in accordance with COB 6.6.11R(1)			
	Lower Rate	Intermediate rate	Higher rate
(a) in deferment —either monetary or real rates of return may be provided			
Monetary rates of return	5%	7%	9%
Real rates of return	1%	N/A	3%
(b) after vesting – (monetary or real rates as used for period of deferment under a) above)			
Monetary rates of return	4% <u>Y</u> +1%	6% <u>Y</u> +3%	8% <u>Y</u> +5%
For annuities linked to the retail price index	2% <u>Y</u> -1%	3% <u>Y</u> %	4% <u>Y</u> +1%

Rate of return assumptions for pension contracts and stakeholder pension schemes excluding contracts for immediate annuities and protected rights annuities issued in accordance with COB 6.6.11R(1)			
	Lower Rate	Intermediate rate	Higher rate
For annuities linked to LPI (limited price indexation)	$2\%Y-1\%$	$3.5\%Y\%$	$5\%Y+1\%$
<p>Note: For the after vesting rates of return: $Y = 0.5 * (ILG5 + ILG0)$ and rounded to the nearest 0.2%, with an exact 0.1% rounded down where: <u>ILG5 is the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years assuming 5% inflation,</u> and <u>ILG0 is the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years assuming 0% inflation.</u> <u>The ILG0 and ILG5 yields to be used in the calculation of Y are the yields on the 15 February, or, where necessary, the previous working day. The rate of return Y must be updated on the following 6 April each year and used up to and including 5 April of the next year.</u></p>			

- 6.6.80 (4) ~~for a pre April 1997 protected rights annuity: use Factor (4); [deleted]~~
(5) For a ~~post April 1997~~ protected rights annuity: use Factor (5).
- 6.6.82 R (6) Where ~~there are customers have~~ post April 1997 protected rights funds and ~~are the person is~~ not expected to be married at retirement, an illustration of single life pensions may be provided. The factor must be calculated using the same assumptions as formula (5) in COB 6.6.81 R but ignoring the reversionary annuity part of the formula.
- (7) For type P projections, the annuity should assume 50% spouse's reversionary pension unless the firm has evidence that a different assumption would be more appropriate.
- 6.6.83 R In the formulae in COB 6.6.81 R, the allowance for expenses (E) is 4% for all annuities.
- (1) ~~for index-linked annuities: 3.5%~~
(2) ~~for all other annuities: 4%~~
- 6.6.84 R In the formulae in COB 6.6.81 R, mortality rates must be calculated as follows:
- (1) the mortality tables to be used ~~are is P80 PMA92~~ are PMA92 (for males) and PFA92 (for females) appropriate to the individual's year of birth; these tables are published by the Faculty of Actuaries and Institute of Actuaries, amounts, with the mortality

improvements projected forward to 2010, and with one year deducted from age;

....

- 6.6.90 R (3) If an annuity interest rate different from the ~~FSA annuity rate~~Annuity Interest Rate (as ~~described~~specified in COB 6.6.91 R) is used, it must be the interest rate for annuities in payment provided that it is a multiple of 0.5% per annum and must not exceed the ~~FSA annuity rate for zero years to retirement~~the Annuity Interest Rate.

- 6.6.91 R Table Assumptions to be made
This table belongs to COB 6.6.90 R

<u>Annuity Interest Rate ("AIR")</u>	<u>As published by the FSA from time to time [the FSA annuity rate] Formula</u>
	<u>The intermediate after vesting monetary rate of return in COB 6.6.51R(b)</u>
Retail prices index	AIR — 3% <u>2.5%</u>
Average earnings index ("AEI") and section 21 orders	AIR — 1.5% <u>4.0%</u>
Pre-retirement limited price indexation revaluation	AIR — 3% (maximum 5%) <u>2.5%</u>
Post-retirement limited price indexation increases	AIR — 3% (maximum 5%) <u>2.5%</u>
Index-linked pensions	AIR — 3% <u>The rate of intermediate return in COB 6.6.51 R for annuities linked to the retail price index</u>
Note: The interest rate in deferment must not be assumed but calculated as required by COB 6.6.92R.	

Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

Type P projection (in relation to a *pension scheme* or a *stakeholder pension scheme*) a *projection* in real value terms based on prices where the period to the *projection date* is one year or more.

Type Q projection (in relation to *pension scheme* or a *stakeholder pension scheme*) a *projection* in real value terms based on earnings

where the period to the *projection date* is one year or more.

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

projection date the date to which the *projection* is made.

**MONEY LAUNDERING SOURCEBOOK
(AMENDMENT) INSTRUMENT 2002**

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 146 (Money laundering rules);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary provisions); and
 - (5) section 157(1) (Guidance).
- 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 December 2002.

Amendments to the Money Laundering sourcebook

- D. The Money Laundering sourcebook is amended in accordance with Annex A to this instrument.

Amendments to the Glossary

- E. The Glossary is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Money Laundering Sourcebook (Amendment) Instrument 2002.

By order of the Board
17 October 2002

Annex A

Amendments to the Money Laundering sourcebook

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

- 1.1.3 G The scope of this sourcebook is very wide. It includes all *firms* except those within the limited exception for *firms* concerned only with certain insurance activities and *UCITS qualifiers* (see *ML* 1.1.2R). In this respect, the chapter follows article 1 of the *Money Laundering Directive* (No. 91/308/EEC). The scope extends to *incoming firms* (such as branches of institutions established elsewhere in the *EEA*), except those providing only *cross border services* in the *United Kingdom*. This is because the Directive is designed to apply on a "*Host State*" basis. *ML* does not apply with respect to the *unregulated activities* of a *firm*, for example *money service business*.
- 3.1.3 R (2A) If the *client*, or the *person* on whose behalf he is acting, engages in *money service business* and is registered with the Commissioners of the Customs and Excise, sufficient evidence of identity must include the registered number, within the meaning given by regulation 4(3) of the *Money Laundering Regulations 2001*, of the *client* or the *person* on whose behalf he is acting.
- 3.2.1 R (1) This section sets out circumstances in which:
- (a) the duty in *ML* 3.1.3R(1) (Identification of the client: the duty) need not be complied with; or
 - (b) the *relevant firm* is entitled to regard the evidence it has as sufficient evidence;
- (1A) ~~but~~ None of the *rules* in this section applies if the *relevant firm*:
- (a) knows or suspects; ~~or~~
 - (b) has reasonable grounds to know or suspect;
- in accordance with (2) that the *client* or the *person* on whose behalf he is or appears to be acting is engaged in *money laundering*.
- (2) The *relevant firm* ~~is~~ will be taken to know or suspect ~~have the knowledge or suspicion referred to~~ or to have reasonable grounds to know or suspect as set out in (1) (1A) if any member of the staff handling the *transaction* or potential *transaction* or managerially responsible for it knows or suspects or has reasonable grounds to know or suspect ~~has the knowledge or suspicion.~~

- 3.2.2 R The duty in *ML* 3.1.3R(1) (Identification of the client: the duty) does not apply if:
 ...
 (3) with a view to carrying out a one-off *transaction*, the *client* (other than a *money service operator*) is introduced to the *relevant firm* by a *person* who has given the *relevant firm* a written assurance that in all such cases he obtains and records identification evidence, and:
 ...
- 3.2.5R A *relevant firm* may regard evidence as sufficient for the purposes of *ML* 3.1.3R (Identification of the client: the duty) if it establishes that the *client* (other than a *money service operator*):
 ...
- 4.1.2 R (1) A *relevant firm* must take reasonable steps to ensure that any member of staff who handles, or is managerially responsible for handling, *transactions* which may involve *money laundering* makes a report promptly to the *MLRO* if he:
 (a) knows or suspects; or
 (b) has reasonable grounds to know or suspect;
 that a *client*, or the *person* on whose behalf the *client* is acting, is engaged in *money laundering*.
- 4.3.2 R A *relevant firm* must take reasonable steps to ensure that any report required by *ML* 4.1.2R(1) (Internal reporting) is considered by the *MLRO*, or his duly authorised delegate, and that if, having considered the report and any relevant *know your business information* to which he has sought access, the *MLRO* or his duly authorised delegate:
 (1) knows or suspects; or
 (2) has reasonable grounds to know or suspect;
 that a *person* has been engaged in *money laundering*, he reports promptly to *NCIS*.
- 4.3.3 E (1) To take reasonable steps as required by *ML* 4.3.2R, the *relevant firm* should:
 ...
 (c) ensure that where the *MLRO*, or his duly authorised delegate knows or suspects, or has reasonable grounds to know or suspect, that a *person* has been engaged in *money laundering*, he makes a report which is not subject to the consent or approval of any other *person*.

4.3.4 R A *sole trader* with no *employees* who knows or suspects, or has reasonable grounds to know or suspect, that a *client* of his, or the *person* on whose behalf the *client* is acting, is or has been engaged in *money laundering* must make a report promptly to *NCIS*.

Annex B

Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>money service business</i>	Carrying on by way of business the activity of: <ul style="list-style-type: none">(a) operating a bureau de change; or(b) transmitting money, or any representation of monetary value, by any means; or(c) cashing cheques which are made payable to customers.
<i>Money Laundering Regulations 2001</i>	the Money Laundering Regulations 2001 (SI 2001/3641).
<i>money service operator</i>	a person who carries on <i>money service business</i> other than a <i>firm</i> , a <i>BCD credit institution</i> or a <i>financial institution</i> .

Replace the existing definition of *money laundering* with the following new definition:

<i>money laundering</i>	an offence which involves the concealment, acquisition or use of criminal property or facilitating its concealment, acquisition or use, as defined for the time being in: <ul style="list-style-type: none">(a) section 327 (Concealing etc), 328 (Arrangements) or 329 (Acquisition, use and possession) of the Proceeds of Crime Act 2002;(b) section 18 (Money laundering) of the Terrorism Act 2000.
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COLLECTIVE INVESTMENT SCHEMES (UCITS AMENDING DIRECTIVE AND LIMITED ISSUE AND GUARANTEED FUNDS) INSTRUMENT 2002

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 Acts 2000 (the "Act"):
 - (a) section 138 (General rule-making powers);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 247 (Trust scheme rules);
 - (e) section 248 (Scheme particulars rules); and
 - (f) section 274 (2),(4) and (5) (Applications for recognition of individual schemes); and
 - (2) regulation 6 of the Open-Ended Investment Companies Regulations 2001.
- 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 2002.

Amendments to the Handbook

- D. (1) The Collective Investment Schemes sourcebook is amended in accordance with Annex A, Parts 1 and 2 to this instrument;
- (2) The Conduct of Business sourcebook is amended in accordance with Annex B to this instrument; and
- (3) The Glossary is amended in accordance with Annex C to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes (UCITS Amending Directive and Limited Issue and Guaranteed Funds) Instrument 2002.

By order of the Board
17 October 2002

Annex A

Amendments to the Collective Investment Schemes sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

Part 1

Amendments resulting from the UCITS Amending Directive 2001/108/EC

CIS Sourcebook – Transitional Provisions

1. Table

Transitional provision 14 Renumber as transitional provision 13A
(number)

After transitional provision 13A, insert the following:

(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
14	<p><i>CIS</i> 3.2.2R(3)</p> <p>and</p> <p><i>CIS</i> 3.5.2R(10-14)</p> <p>and</p> <p><i>CIS</i> 5</p> <p>and</p> <p><i>CIS</i> 10.4.2R (16)</p>	R	<p>(1) A <i>UCITS</i> scheme for which there was an <i>authorisation order</i> in force on or prior to 13 February 2002 may continue to operate under the <i>rules</i> in <i>CIS</i> generally (excepting those to which this provision applies) until 12 February 2007. After that date it must have revised its structure and relevant <i>prospectus</i> and report and accounts in accordance with the <i>rules</i> to which this provision applies and disregard the <i>rules</i> in <i>CIS</i> 5A. All the other <i>rules</i> in <i>CIS</i> will then</p>	from 1/11/02 until 12/02/07	1/11/02

			apply.		
			(2) A <i>UCITS</i> scheme authorised between 14 February 2002 and 12 February 2004 may continue to operate under the <i>rules</i> in <i>CIS</i> generally (excepting those to which this provision applies) until 12 February 2004. After that date it must have revised its structure and relevant <i>prospectus</i> and report and accounts in accordance with the <i>rules</i> to which this provision applies and disregard the <i>rules</i> in <i>CIS</i> 5A. All the other <i>rules</i> in <i>CIS</i> will then apply.	from 1/11/02 until 12/02/04	1/11/02
15		G	A <i>UCITS</i> scheme may convert at any time within the limits in Transitional provision 14 (1) and 14 (2) as appropriate to operate under the investment <i>rules</i> in <i>CIS</i> 5, but having done so it may not revert to operating under the <i>rules</i> in <i>CIS</i> 5A. On conversion all the <i>rules</i> in <i>CIS</i> save <i>CIS</i> 5A will then apply to a converted <i>scheme</i> .	from 1/11/02 until 12/02/07	1/11/02

(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
16	<i>CIS</i>	R	In relation to an <i>authorised</i>	from 1/11/02 until	1/11/02

	<p>2.2.6R(2)(a) (i), (ii), (iii), (iv)</p> <p>and</p> <p><i>CIS</i> 3.5.2R(2)(3)</p>	<p><i>fund</i> (which is a <i>securities scheme, warrant scheme, money market scheme, futures and options scheme, fund of funds scheme</i> or an <i>umbrella scheme</i>) in existence the day before 1 November 2002 where this <i>scheme</i> will fall within the new <i>UCITS scheme</i> type within <i>CIS 5</i> the category of the <i>scheme</i> as stated in the <i>instrument constituting the scheme</i> will be deemed amended to the new <i>scheme</i> type until any subsequent revision of such documentation.</p>	<p>date of revision</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
17	<p><i>CIS 2.2.2R</i> <i>CIS 2.2.6R</i> <i>CIS 2.2.7G</i></p>	R	<p>A <i>scheme</i> which has an <i>authorisation order</i> in force before 12 February 2004, which is to switch from operating under <i>CIS 5A</i> to <i>CIS 5</i> and whose <i>instrument constituting the scheme</i> refers to the efficient portfolio management <i>rules</i> in <i>CIS 5A.13</i> (either generally or specifically), may deem the <i>rules</i> in <i>CIS 5A.13</i> to continue to apply until the <i>instrument constituting the scheme</i> is amended for any other reason.</p>	<p>from 1/11/02 until date of revision</p>	<p>1/11/02</p>
18	<p><i>CIS 5A.13</i></p>	R	<p>An <i>authorised fund manager</i> may use efficient portfolio management</p>	<p>from 1/11/02 until revoked by the</p>	

			techniques in relation to a <i>scheme</i> provided that this use of <i>derivatives</i> is disclosed in the most recently published <i>prospectus</i> .	<i>FSA</i> .	
--	--	--	--	--------------	--

(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
19	<i>CIS</i> 3.4.2R(2)(d) and <i>CIS</i> 3.5.2R(13)(2), (3)	R	The requirement to state maximum <i>remuneration</i> in the <i>prospectus</i> does not apply until the <i>prospectus</i> is first amended following 1 November 2002. The insertion of this maximum level of <i>remuneration</i> in the <i>prospectus</i> for the first time will not require a resolution of <i>holders</i> .	1/11/02	1/11/02

1.2.2 G *CIS* 2 (Constitution) sets out provisions on the contents of the documents required to form *authorised funds*, and other matters relating to their constitutional features, such as *classes* of *shares* (in *ICVCs*) and *units* (in *AUTs*) and the ~~categories~~ types of *authorised fund* (for example, ~~securities~~ UCITS schemes) that may be established.

1.2.5 G *CIS* 5 and *CIS* 5A (Investment and borrowing powers) requires *authorised funds* to comply with ~~a number of general~~ the rules on investments to ensure funds operate under the principles of risk spreading. The chapter is split in two because of the implementation of the UCITS Amending Directive relating to investment powers and the transitional provisions that Directive allows. Transitional provision 14 provides precise details on the operation but generally

~~speaking: and specific rules depending on the category of authorised fund. It also includes rules for efficient portfolio management and borrowing.~~

(1) UCITS qualifying schemes existing on or before 13 February 2002 and which now qualify as UCITS schemes may operate under the rules in CIS 5A and may switch to operate under CIS 5 at any time before 13 February 2007, at which time they must operate under CIS 5; and

(2) UCITS qualifying schemes authorised after 13 February 2002 but before 13 February 2004 may operate under the rules in CIS 5A or CIS 5 but must operate under the rules in CIS 5 by 13 February 2004.

1.2.23 G Establishing, operating or winding up a collective investment scheme is a regulated activity. No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is an authorised person (or an exempt person). This prohibition is also known as the general prohibition. Guidance for persons considering carrying on regulated activities in the United Kingdom can be found in AUTH. AUTH 3 (Applications for Part IV permission) gives guidance on how to apply to the FSA for a Part IV permission. This authorisation is different to the authorisation of a scheme under Part XVII of the Act, guidance on which is provided in this sourcebook.

2.1.3 G This chapter assists in achieving the regulatory objective of protecting consumers (as envisaged by section 2 and 5 of the Act). In particular, this chapter:

...

(2) lays down the ~~categories~~ types to only one of which each authorised fund must belong (see CIS 2.1.4R);

...

~~Categories~~ Types of authorised fund

2.1.4 R An *authorised fund* must belong to only one of the following ~~categories~~ types:

(1) a *UCITS scheme* which complies with *CIS 5*;

2.1.4R Renumber as sub-paragraphs (2) – (10)

(1) – (9)

(numbers)

2.1.4A G Types of authorised fund - explanation.

(1) *Schemes* within *CIS 2.1.4R(1)* are *UCITS schemes* complying with *CIS 5* which sets out the extended investment powers available under UCITS Amending Directive 2001/108/EC.

(2) *Schemes* within *CIS 2.1.4R(2)*, (7), and *umbrella schemes* consisting of *sub-funds* equivalent to *CIS 2.1.4R(2)*, (7) type *schemes* are also *UCITS schemes* but they must comply with the investment rules in *CIS 5A*. Such *schemes* may convert to the *CIS 2.1.4R(1)* type at any time, however, they must so convert within the timescales set out in transitional provision 14.

(3) *Schemes* within *CIS 2.1.4R(3)* - (6), (8), (9) and type (10) where it is a non-*UCITS* compliant scheme are non-*UCITS schemes*. The investment rules in *CIS 5A* apply and transitional provision 14 has no application to them.

2.2.2 R (1) The *instrument of incorporation* must not include any provision which is unfairly prejudicial to the interests of *shareholders* generally or to the *holders* of any *class* of *shares*, except to the extent that (2) ~~and (3)~~ applies.

...

(6) The *instrument of incorporation* must contain a statement that,

subject to any restrictions in the *rules* in this sourcebook or in the *instrument of incorporation*, the *ICVC* has the power to invest in any *securities* market or *deal* on any *derivatives* market:

- (a) which is an *eligible securities* or *derivatives* market for that *ICVC* under *CIS 5* or *CIS 5A* (Investment and borrowing powers); or
- (b) to the extent that power to do so is conferred by *CIS 5* or *CIS 5A* (Investment and borrowing powers), irrespective of any issue of eligibility.

2.2.6 R (2) Authorised status

- (a) a statement:
 - (i) in all cases, of the ~~category type~~ to which the *AUT* belongs under *CIS 2.1.4R* (~~Categories Types~~ of authorised fund);
 - ...
 - (iii) for a *fund of funds scheme*, identifying the ~~categories types~~ of *scheme* in which the *fund of funds scheme* may invest; and
 - (iv) for an *AUT* that is an *umbrella scheme*, identifying the ~~category type~~ to which each *sub-fund* would belong if the *sub-fund* were itself the subject of a separate *authorisation order*;

...

- (6) *Investment* powers in *eligible* markets except in the case of a *feeder fund*, a statement that, subject to any restriction in the *rules* in this sourcebook or the *trust deed*, the *AUT* has the power to invest in any *securities* market or

deal on any *derivatives* market:

- (a) which is an *eligible securities* or *derivatives* market for that *AUT* under *CIS 5* or *CIS 5A* (Investment and borrowing powers); or
- (b) to the extent that power to do so is conferred by *CIS 5* or *CIS 5A* (Investment and borrowing powers), irrespective of any issue of eligibility;

...

- 2.2.7 G (1) (g) Constituents of property, permitted transactions and borrowing powers

a statement of any of:

...

- (iv) the borrowing powers exercisable in relation to the *AUT*;

Where they are narrower than those permitted for the ~~category~~ type of *authorised fund* to which the *AUT* belongs under *CIS 5* or *CIS 5A* (Investment and borrowing powers);

- 2.2.8 R (3) *CIS 5* or *CIS 5A* (Investment and borrowing powers) has effect in relation to any *AUT* which is subject to any restriction imposed by the *trust deed*.

- 2.3.2 G ~~An authorised fund that is a securities scheme, a warrant scheme, or an umbrella scheme consisting of sub-funds which would, if separately authorised, be securities schemes or warrant schemes, is a UCITS scheme, unless, in the case of an AUT, the categories of holder of units in it are limited by a provision in the trust deed of a type permitted by CIS 2.2.7G(1)(j).~~

(1) A UCITS scheme may exercise the investment powers in CIS 5, which reflect those available under the UCITS Amending

Directive 2001/108/EC.

(2) Transitional provision 14 permits a UCITS scheme to exercise the narrower range of investments and investment powers in CIS 5A for a specified duration.

(3) A securities scheme or a warrant scheme or an umbrella scheme consisting of sub-funds which if separately authorised would be a securities scheme or a warrant scheme will be a UCITS scheme. Transitional provision 14 specifies the period after which such schemes must comply with certain rules including those in CIS 5.

3.2.2 R (3) An authorised fund manager must, upon the request of a holder in a UCITS scheme, provide information supplementary to the prospectus of that scheme relating to:

(a) the quantitative limits applying in the risk management of that scheme;

(b) the methods used in relation to (a); and

(c) any recent development of the risk and yields of the main categories of investment.

3.4.2 R (1) Any change to, or introduction of, any of the provisions of the prospectus listed in (2) (other than a reduction in (c) to (e)) requires the prior approval of a resolution of the holders or, (for an ICVC) in the case of a change that affects only the holders of the units of a particular class or (classes), a resolution (or resolutions) of a class meetings (or meetings) of those holders.

- 3.4.2 R (2) The provisions referred to in (1) are those requiring to be included in the *prospectus* as a consequence of:
- ...
- (d) *CIS 3.5.2R(13)* (Other payments out of the *scheme property*) but excluding:
- (i) any current remuneration under *CIS 3.5.2R(13)(2),(3)* increased under the provisions of *CIS 8.2.6R* or *CIS 8.5.4R*; and
- (ii) charges and expenses under *CIS 3.5.2R(13)(1)* and *CIS 3.5.2R(13)(4)*.

3.5.2 R Table Contents of the prospectus
This table belongs to *CIS 3.5.2R*

...

- 3 (3) A description of any restrictions in the assets in which *investment* may be made, including restrictions in the extent to which the *authorised fund* may invest in any category of asset, indicating (where appropriate) where the restrictions are tighter than those imposed by *CIS 5* or *CIS 5A* (Investment and borrowing powers), whichever is relevant to the *scheme*.
- (4) A list of any individual *eligible securities* and *derivatives* markets through which the *authorised fund* may invest or *deal* in accordance with *CIS 5.2.12R* or *CIS 5A.3.3R(2)* (Eligible markets: requirements), whichever is relevant to that *scheme*. ~~(a~~ Any *securities* or *derivatives* market in a *EEA State* which is *eligible* in accordance with *CIS 5.2.12R(1)* or *CIS 5A.3.3R(1)* (Eligible markets ~~whichever is relevant to that *scheme*)~~ may be included in

the list or referred to in general terms).

...

- (10) Where the net asset value of a UCITS scheme is likely to have high volatility owing to its portfolio composition or the portfolio management techniques used, a prominent statement to that effect.
- (11) Where a UCITS scheme invests principally in collective investment scheme units, deposits, or derivatives or replicates an index in accordance with CIS 5.2.32R (Schemes replicating an index) a prominent statement regarding this investment policy.
- (12) Where derivatives transactions may be used in a UCITS scheme, a prominent statement as to whether these transactions are for the purposes of hedging or meeting the investment objectives or both and the possible outcome of the use of derivatives on the risk profile of the scheme.
- (13) In the case of a UCITS scheme which invests a substantial proportion of its assets in other collective investment schemes, a statement of the maximum level of management fees that may be charged to that UCITS scheme and to the collective investment schemes in which it invests.
- (14) In the case of a UCITS scheme, a statement that the investor may obtain on request the types of information (which must be listed) referred to in CIS 3.2.2R(3).

...

any remuneration (including a statement of the maximum

- 3.5.2 R 13 (2) level currently permitted) payable out of the *scheme property* to the *depository* or any third party;
- (3) any remuneration (including a statement of the maximum level currently permitted) to which (2) does not apply, payable out of the *scheme property* ~~to any third party~~ for services provided by an affected person;
- ~~(4) any remuneration to which (2) or (3) does not apply, payable out of the *scheme property* for services provided by an affected person;~~
- ~~(5) The types of any other charges and expenses that may~~
 4) be taken out of the *scheme property*; and
- ~~(6) if, in accordance with CIS 8.3.5R(4) (Allocation of payments to capital or income (for ICVCs)) or CIS 8.5.7R(4) (Allocation of payments to capital or income (for AUTs)), the *authorised fund manager* and the *depository* have agreed that all or part of any payments permitted (excluding any stated under CIS 3.5.2R(12)(4) (Payments to the authorised fund manager)) and any other charges or expenses of the *authorised fund* may be treated as a capital expense:~~
- ~~(a) that fact; and~~
- ~~(b) the policy for the amount of the payments which may be so treated~~
- ...
- 16 (7) The amounts of the following minima (if they apply) for each ~~type~~ class of *unit* in the *authorised fund*:

4.1.1 R (2) ~~(a)~~ This section (*CIS* 4.1) applies to *ICVCs*, their *directors* (including the *ACD*) and *depositories*, and to the *managers* and *trustees* of *single-priced AUTs*.

~~(3)~~ ~~(a)~~ If, and to the extent that, the *authorised fund manager* and the *depository* so agree, *income units* and *accumulation units* are to be treated, for the purposes in ~~(b)~~ as belonging to the same *class of units*.

~~(2-3)~~ ~~(b)~~ The purposes to which ~~(a)~~ can apply are:

(i) ascertaining the number of *units* to be issued or cancelled for the *authorised fund manager* to comply with *CIS* 4.3.9R(2) (Issue of units to meet authorised fund manager's obligation to sell) and *CIS* 4.3.10R(2) (Cancellation and payment for cancelled units); or

(ii) compliance with requirements of this chapter relating to information to be given by the *authorised fund manager* to the *depository*.

~~(c)~~ Paragraphs ~~(a)~~ and ~~(b)~~ do not apply to the *income units* and *accumulation units* of an *ICVC* unless the rights attached to those *classes* provide for their *prices* to be calculated by reference to undivided *shares* (whatever called) in a manner similar to that resulting from *CIS* 2.6.1R (Units and classes of units in *AUTs*).

~~(3)~~ ~~If, and to the extent that, the *authorised fund manager* and the *depository* so agree, *income units* and *accumulation units* are to be treated, for the purposes in ~~(b)~~ as belonging to the same *class of units*.~~

- 4.3.10 R (8) If the *authorised fund manager* has not ensured that the *scheme property* includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any applicable restriction in *CIS 5A.15.3R* (General power to borrow) or *CIS 5A.15.4R* (Borrowing limits) or *CIS 5.5* within the period in (7)), that period is extended, for any relevant currency, until the shortage is rectified.
- 4.8.3 R (4) The value of the *scheme property* of an *authorised fund* must be determined in accordance with the relevant provisions of the *instrument constituting the scheme*, except to the extent that this *rule* (*CIS 4.8.3R*) or *CIS 5.2.5R* (Valuation) or *CIS 5A.2.5R* or *CIS 12.3* (Property schemes) applies.

After Chapter 4, insert the following new chapter:

Chapter 5

Investment and borrowing powers

5.1 Introduction

Application

- 5.1.1 R (1) This chapter applies in relation to *ICVCs* and *AUTs* which are not within transitional provision 14 and which:
- (a) were *UCITS schemes* when their *authorisation order* was made; or
 - (b) were *UCITS schemes* immediately after any alteration to the *scheme* approved under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* became effective.
- (2) This section (*CIS 5.1*) applies to *authorised fund managers* and *depositories* of *schemes* within (1).

5.1.2 Application guidance

- G (1) A *scheme* may convert to, or be authorised to operate as, a *UCITS scheme* under the *rules* in *CIS 5* at any time but may not convert back to operate under the *rules* in *CIS 5A*.
Transitional provision 14 allows certain *schemes* to continue to operate under the *rules* in *CIS 5A* for a specific duration after which they must have converted to operate under *CIS 5*.
- (2) A *UCITS scheme* authorised on or before 13 February 2002 may operate within the *rules* in *CIS 5A* under transitional provision 14(1). It may at any time switch to operate under *CIS 5*. However, by 13 February 2007 it must have switched to operate under the *rules* in *CIS 5*.
- (3) A *UCITS scheme* authorised after 13 February 2002 may operate within the *rules* in *CIS 5A* under transitional provision 14(2). However, by 13 February 2004 it must have switched to operate under the *rules* in *CIS 5*.

Purpose

- 5.1.3 G This chapter helps in achieving the *regulatory objective* of protecting *consumers* by laying down minimum standards for the *investments* that may be held by an *authorised fund*. In particular:
- (1) the proportion of *transferable securities* and *derivatives* that may be held by an *authorised fund* is restricted if those *securities* and *derivatives* are not listed on an *eligible* market; the intention of this is to restrict *investment* in *transferable securities* or *derivatives* that cannot be accurately valued and readily disposed of; and
- (2) *authorised funds* are required to comply with a number of

investment *rules* that require the spreading of risk.

Explanation of this chapter

- 5.1.4 G (1) The *rules* in this chapter set out the investment powers for *UCITS schemes* operating under the provision of the widened investment powers in UCITS Amending Directive 2001/108/EC. Therefore, this chapter does not apply to *UCITS schemes* operating under the narrower range of investment powers in the unamended UCITS Directive (85/611/EEC) and which are within transitional provision 14 and authorised under the investment powers contained in *CIS 5A* (see *CIS 5A.1.4G* explanation). This chapter also does not apply to non-UCITS types of *schemes* (*geared futures and option schemes, futures and options schemes, fund of fund schemes, feeder funds* and non-UCITS *umbrella schemes*), which are authorised under the investment powers contained in *CIS 5A*.

Distinct meaning of certain terms

- 5.1.5 G Terms used in this sourcebook should be interpreted and applied as they are defined. However, because of the distinct nature of investments in which an *authorised fund* is permitted to invest, some of these terms are not always used in a way that corresponds with their usage in certain markets. For example, the term *warrants*. In this sourcebook *warrants* has a slightly wider meaning than is usually attributed to it in warrant markets. The definition of *warrants* reflects this distinction.

- 5.1.6 G Indicative overview of investment and borrowing powers
This table belongs to *CIS 5.1.4G* (3).

(note 1 and 2) UCITS Scheme Investments and investment techniques	Limits
<i>Approved securities</i>	Yes
Transferable but not <i>approved securities</i>	10%

<i>Government and public securities</i>	Yes
<i>Units</i>	Yes
<i>Warrants</i>	Yes
<i>Investment trusts</i>	Yes
<i>Deposits</i>	Yes
<i>Derivatives</i>	Yes
Immovables	No
Gold	No
Hedging	Yes
Stocklending	Yes
Underwriting	Yes
Borrowing	10%
Cash and <i>near cash</i>	Yes
Note	<u>Meaning of terms used</u>
"Yes"	Can be invested in without specific upper limit (though there may be limits of other kinds)
"No"	not available for investment.
A percentage	an upper limit (though there may be limits of other kinds).

5.2 General investment powers and limits for UCITS schemes

Application

5.2.1 R This section (*CIS 5.2*) applies to *authorised fund managers*, in respect of *UCITS schemes*, except :

- (1) *CIS 5.2.12R(2)(c)* (Eligible markets: requirements) which applies to *depositories* of *UCITS schemes* only;
- (2) *CIS 5.2.24R* (Requirement to cover sales) which applies to *ICVCs* which are *UCITS schemes* and the *managers* and *trustees* of *AUTs* which are *UCITS schemes* only;
- (3) *CIS 5.2.25R(3)* (OTC transactions in derivatives) which also

applies to *depositories* of *UCITS schemes*;

- (4) *CIS 5.2.29R* (Significant influence for ICVCs), which applies to *ICVCs* which are *UCITS schemes* only;
- (5) *CIS 5.2.30R* (Significant influence for managers of AUTs), which applies to *managers* of *AUTs* which are *UCITS schemes* only; and
- (6) *CIS 5.2.31R* (Concentration), which also applies to *ICVCs*, only which are *UCITS schemes*.

Explanation of CIS 5.2

- 5.2.2 G This section outlines general investment *rules*, with which *authorised funds* must comply, in order to ensure that they qualify as *UCITS schemes*. The *scheme property* of an *authorised fund* may, subject to the *rules* in this chapter, comprise any assets or *investments* to which it is *dedicated*. For *ICVCs*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC's* business of investing in those assets or investments.

Prudent spread of risk

- 5.2.3 R An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *authorised fund* as stated in the most recently published *prospectus* of the *authorised fund*, the *scheme property* of the *authorised fund* aims to provide a prudent spread of risk.

Investment powers: general

- 5.2.4 G The *scheme property* of each *authorised fund* must be invested only in accordance with the relevant provisions in this chapter that are applicable to that *authorised fund* and within any upper

limit in this chapter. However, the *instrument constituting the scheme* may further restrict:

- (1) the kind of property in which the *scheme property* may be invested;
- (2) the proportion of the *capital property* of the *authorised fund* to be invested in assets of any description;
- (3) the descriptions of transactions permitted; and
- (4) the borrowing powers of the *authorised fund*.

Valuation

5.2.5

- R (1) In this chapter, the value of the *scheme property* of an *authorised fund* means the net value of the *scheme property* determined in accordance with *CIS 4.8 (Valuation)* (for *ICVCs* and *single-priced AUTs*) or *CIS 15.8 (Valuation)* (for *dual-priced AUTs*), after deducting any outstanding borrowings, whether immediately due to be repaid or not.
- (2) When valuing the *scheme property* for this chapter:
- (a) the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a *valuation point*, but the valuation and the relevant time do not count as a valuation or a *valuation point* for the purposes of *CIS 4* (for *ICVCs* and *single-priced AUTs*) and *CIS 15* (for *dual-priced AUTs*);
 - (b) *initial outlay* is regarded as remaining part of the *scheme property*;

- (c) if the *authorised fund manager*, having taken reasonable care, determines that the *authorised fund* will become entitled to any unrealised profit which has been made on account of a transaction in *derivatives*, that prospective entitlement is regarded as part of the *scheme property*; and
- (d) for a *dual-priced AUT*, when applying *CIS 15.8.4R* (Valuation):
 - (i) the *cancellation* basis only is required; and
 - (ii) paragraphs 1 to 8, 11 and 23 are not applicable.

Valuation

- 5.2.6 G It should be noted that for the purpose of *CIS 5.2.5R*, *CIS 4.8* or *CIS 15.8* may be affected by specific provisions in this chapter such as, for example, *CIS 5.4.6R* (Stock lending: treatment of collateral) or *CIS 12* (Special provisions for certain types of scheme).

Chapter to be construed as a whole

- 5.2.7 R (1) Where a *rule* in this chapter allows a transaction to be entered into or an *investment* to be retained only if possible obligations arising out of the *investment* transactions or out of the retention would not cause any breach of any limits in this chapter, it must be assumed that the maximum possible liability of the *authorised fund* under any other of those *rules* has also to be provided for.
- (2) Where a *rule* in this chapter permits an *investment* transaction to be entered into or an investment to be retained only if that *investment* transaction, or the retention, or other similar transactions, are covered:

- (a) it must be assumed that in applying any of those *rules*, the *authorised fund* must also simultaneously satisfy any other obligation relating to cover; and
- (b) no element of cover must be used more than once.

Examples

- 5.2.8 G Examples of the "provisions" referred to in *CIS 5.2.7R* are: *CIS 5.2.19R* (Investment in warrants and nil and partly paid securities) and *CIS 5.5.7R* (General power to accept or underwrite placings).

Transferable securities

- 5.2.9 R (1) Subject to this *rule* (*CIS 5.2.9R*), a *transferable security* is an *investment* falling within article 76 (Shares etc), article 77 (Instruments creating or acknowledging indebtedness), article 78 (Government and public securities), article 79 (Instruments giving entitlement to *investments*) and article 80 (Certificates representing certain securities) of the *Regulated Activities Order*.
- (2) An *investment* is not a *transferable security* if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- (3) In applying (2) to an *investment* which is issued by a *body corporate*, and which is an *investment* falling within articles 76 (Shares, etc) or 77 (Instruments creating or acknowledging indebtedness) of the *Regulated Activities Order*, the need for any consent on the part of the *body corporate* or any members or *debenture* holders of it may be ignored.
- (4) An *investment* is not a *transferable security* unless the liability of the *holder* of it to contribute to the debts of the issuer is

limited to any amount for the time being unpaid by the holder of it in respect of the *investment*.

UCITS schemes: general

- 5.2.10 R (1) The *scheme property* of a *UCITS scheme* must, except where otherwise provided in the *rules* in this chapter, only consist of any or all of:
- (a) *transferable securities*;
 - (b) money market instruments permitted under *CIS 5.2.20R* (Investment in money market instruments);
 - (c) *derivatives* and forward transactions permitted under *CIS 5.2.22R* (Permitted transactions (derivatives and forwards));
 - (d) *deposits* permitted under *CIS 5.2.28R* (Investment in deposits); and
 - (e) *units in collective investment schemes* permitted under *CIS 5.2.15R* (Investment in collective investment schemes).
- (2) *Transferable securities* and money market instruments held within a *scheme* must (subject to (3) and (4)) be;
- (a) admitted to or *dealt* on an *eligible* market within *CIS 5.2.12R(1)(a)* (Eligible markets: requirements); or
 - (b) *dealt* on an *eligible* market within *CIS 5.2.12(1)(b)*.
- (3) Not more than 10% in value of the *scheme property* of a

UCITS scheme is to consist of *transferable securities*, which are not *approved securities*.

- (4) Not more than 10% in value of the *scheme property* is to consist of money market instruments, which do not fall within *CIS 5.2.20R* (Investment in money market instruments).
- (5) *CIS 5.2.13R* (Spread: general) and *CIS 5.2.14R* (Spread: government and public securities) do not apply until the expiry of a period of six months after the date of effect of the *authorisation order* in respect of the *authorised fund* (or on which the *initial offer* commenced if later) provided that *CIS 5.2.3R* (Prudent spread of risk) is complied with.
- (6) The following sections also apply to *UCITS schemes*:
 - (a) *CIS 5.3* (Derivatives exposure)
 - (b) *CIS 5.4* (Stock lending); and
 - (c) *CIS 5.5* (Cash, borrowing, lending and other provisions).

Eligible markets regime: purpose

- 5.2.11 G (1) To protect investors, this sourcebook provides that markets on which *investments* of *authorised funds* are *dealt* in or traded on should be of an adequate quality ("*eligible*") at the time of acquisition of the *investment* and until it is *sold*. This section specifies criteria based on those in the *UCITS Directive*, as to the nature of the markets in which the property of an *authorised fund* may be invested.
- (2) Where a market ceases to be *eligible*, *investments* on that market cease to be *approved securities*. The 10% restriction in *CIS 5.2.10R*(3), (4) (*UCITS schemes: general*) applies and

exceeding this limit because a market ceases to be *eligible* will generally be regarded as an inadvertent breach.

- 5.2.12 R (1) A market is *eligible* for the purposes of the *rules* in this sourcebook if it is:
- (a) a *regulated market*; or
 - (b) a market in an *EEA State* which is regulated, operates regularly and is open to the public.
- (2) A market not falling within (1) is *eligible* for the purposes of the *rules* in this sourcebook if:
- (a) the *authorised fund manager*, after consultation and notification with the *depository* (and in the case of an *ICVC*, any other *directors*), decides that market is appropriate for investment of, or *dealing* in, the *scheme property*;
 - (b) the market is included in a list in the *prospectus*; and
 - (c) the *depository* has taken reasonable care to determine that:
 - (i) adequate custody arrangements can be provided for the *investment* dealt in on that market; and
 - (ii) all reasonable steps have been taken by the *authorised fund manager* in deciding whether that market is *eligible*.
- (3) In (2), a market must not be considered appropriate unless it:

- (a) is regulated;
- (b) operates regularly;
- (c) is recognised;
- (d) is open to the public;
- (e) is adequately liquid; and
- (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

Spread: general

- 5.2.13 R (1) This *rule* (CIS 5.2.13R) does not apply to *government and public securities*.
- (2) For the purposes of this *rule* (CIS 5.2.13R) companies included in the same group for the purposes of consolidated accounts as defined in accordance with Directive 83/349/EEC or in the same group in accordance with international accounting standards are regarded as a single body.
- (3) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (4) Not more than 5% in value of the *scheme property* is to consist of *transferable securities* or money market instruments issued by any single body.
- (5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the *scheme property*.

- (6) In applying (4) and (5) *certificates representing certain securities* are treated as equivalent to the underlying *security*.
- (7) The exposure to any one *counterparty* in an *OTC derivative* transaction must not exceed 5% in value of the *scheme property*. This limit is raised to 10% where the *counterparty* is an *approved bank*.
- (8) Not more than 20% in value of the *scheme* is to consist of *transferable securities* or money market instruments issued by the same group (as referred to in (2)).
- (9) Not more than 20% in value of the *scheme* is to consist of the *units* of any one *collective investment scheme*.
- (10) In applying the limits in (3),(4),(5), (6) and (7), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
- (a) *transferable securities* or money market instruments issued by; or
 - (b) *deposits* made with; or
 - (c) exposures from *OTC derivatives* transactions made with;

a single body.
- (11) In applying the limits in (3),(4),(5),(6), (7) and (10), not more than 35% in value of the *scheme property* is to consist of any combination of two or more of the following:
- (a) *transferable securities* or money market instruments issued

by; or

(b) *deposits* made with; or

(c) exposures from *derivatives* transactions made with;

a single body.

Spread: government and public securities

5.2.14

- R (1) This *rule* (CIS 5.2.14R) applies to *government and public securities* (“such securities”).
- (2) Where no more than 35% in value of the *scheme property* is invested in such securities issued by any one body, there is no limit on the amount which may be invested in such securities or in any one issue.
- (3) An *authorised fund* may invest more than 35% in value of the *scheme property* in such securities issued by any one body provided that:
- (a) the *authorised fund manager* has before any such investment is made consulted with the *depository* and as a result considers that the issuer of such securities is one which is appropriate in accordance with the investment objectives of the *authorised fund*;
 - (b) no more than 30% in value of the *scheme property* consists of such securities of any one issue;
 - (c) the *scheme property* includes such securities issued by that or another issuer, of at least six different issues; and

- (d) the disclosures in (4) have been made.
- (4) Where it is intended that (3) may apply, the *instrument constituting the scheme*, and the most recently published *prospectus*, must clearly state:
 - (a) the fact that more than 35% of the *scheme property* is or may be invested in such *securities* issued by one issuer;
 - (b) the names of the States, the local authorities or public international bodies issuing such securities in which the *authorised fund* may invest over 35% of its assets.
- (5) In this *rule* (CIS 5.2.14R) in relation to such securities:
 - (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
 - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.

Investment in collective investment schemes

5.2.15 R A *scheme* may invest in *units* in a *collective investment scheme* provided that no more than 30% of the value of that investing scheme is in *collective investment schemes* which are not *UCITS schemes* and only if the second *scheme* is permitted under (1) - (4):

- (1) it is a *scheme* which:
 - (a) Complies with the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or

- (b) is recognised under the provisions of section 270 of the *Act* (Schemes authorised in designated countries or territories);
- (2) it is a *scheme* which complies where relevant with *CIS* 5.2.18R (Investment in other group schemes);
- (3) it is a *scheme* which has terms which prohibit more than 10% in value of the *scheme property* consisting of *units* in *collective investment schemes*; and
- (4) for the purposes of this *rule* *CIS* 5.2.15R and *CIS* 5.2.13R (Spread: general) each *sub-fund* of an *umbrella scheme* is to be treated as if it were a separate *scheme* but no *sub-fund* of an *umbrella scheme* may invest in another *sub-fund* of that *umbrella scheme*.

Qualifying non-UCITS collective investment schemes

- 5.2.16 G *CIS* 17.3 gives further detail as to the recognition of a *scheme* under section 270 of the *Act*.

Investment in associated collective investment schemes

- 5.2.17 R *Units* in a *collective investment scheme* do not fall within *CIS* 5.2.15R (Investment in collective investment schemes) if that *collective investment scheme* is managed or operated by (or, if it is an *ICVC*, has as its *ACD*) the *authorised fund manager* of the investing *authorised fund* or an *associate* of that *authorised fund manager*, unless:

- (1) the *prospectus* of the investing *authorised fund* clearly states that the property of that investing fund may include such *units*; and

- (2) CIS 5.2.18R (Investment in other group schemes) is complied with.

Investment in other group schemes

5.2.18 R An *authorised fund* must not invest in or dispose of *units* in another *collective investment scheme* (the second *scheme*), which is managed or operated by (or in the case of an *ICVC*, whose *ACD* is), the *authorised fund manager* of such *authorised fund*, or an *associate* of that *authorised fund manager*, unless;

- (1) the *authorised fund manager* of the *authorised fund* is under a duty to pay to the *authorised fund* by the close of business on the fourth *business day* next after the agreement to *buy* or to *sell* the amount referred to in (3) and (4);
- (2) there is no charge in respect of the investment in or the disposal of *units* in the second *scheme*;
- (3) on investment, either:
 - (a) any amount by which the consideration paid by the *authorised fund* for the *units* in the second *scheme* exceeds the price that would have been paid for the benefit of the second *scheme* had the *units* been newly issued or sold by it; or
 - (b) if such price cannot be ascertained by the *authorised fund manager* of the *authorised fund*, the maximum amount of any charge permitted to be made by the seller of *units* in the second *scheme*;

- (4) on disposal, the amount of any charge made for the account of the *authorised fund manager* or *operator* of the second *scheme* or an *associate* of any of them in respect of the disposal; and
- (5) In (1), (2), (3) and (4):
 - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second *scheme*, which is applied for the benefit of the second *scheme* and is, or is like, a *dilution levy* made in accordance with *CIS* 4.6.3R (for *ICVCs* and *single-priced AUTs*) or *SDRT provision* made in accordance with *CIS* 4.6.3R (for *ICVCs* and *single-priced AUTs*) or *CIS* 15.6.3R (for *dual-priced AUTs*) is to be treated as part of the *price* of the *units* and not as part of any charge; and
 - (b) any charge made in respect of an exchange of *units* in one *sub-fund* or separate part of the second *scheme* for *units* in another *sub-fund* or separate part of that *scheme* is to be included as part of the consideration paid for the *units*.

Investment in warrants and nil and partly paid securities

- 5.2.19 R (1) A *warrant* (“the proposed *warrant*”) falls within any power of investment only if, on the assumptions that:
- (a) there is no change to the *scheme property* between the acquisition of the proposed *warrant* and its exercise; and
 - (b) the rights conferred by the proposed *warrant* and all other

warrants forming part of the *scheme property* at the time of the acquisition of the proposed *warrant* will be exercised (whether or not it is intended that they will be);

it is reasonably foreseeable that the right conferred by the proposed *warrant* could be exercised by the *authorised fund* without contravening the *rules* in this chapter.

- (2) A *transferable security* on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the *authorised fund*, at the time when payment is required, without contravening the *rules* in this chapter.
- (3) A *warrant* which is an *investment* falling within article 80 of the *Regulated Activities Order* (Certificates representing certain securities) and which is akin to an *investment* falling within article 79 (Instruments giving entitlement to investments) of the *Regulated Activities Order* may not be included in the *scheme property* unless it is *listed* on an *eligible securities* market.

Investment in money market instruments

5.2.20 R A *UCITS scheme* may invest in money market instruments which are normally dealt in on the money market, are liquid and whose value can be accurately determined at any time, provided:

- (1) the money market instrument is listed on or normally *dealt* on an *eligible* market; or
- (2) the money market instrument is:

- (a) issued or guaranteed by a central, regional or local authority, a central bank of an *EEA State*, the European Central Bank, the European Union or the European Investment Bank, a non-*EEA State* or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more *EEA States* belong; or
- (b) issued by a body, any *securities* of which are *dealt* in on an *eligible* market; or
- (c) issued or guaranteed by an establishment subject to prudential supervision in accordance with criteria defined by Community law or by an establishment which is subject to and complies with prudential *rules* considered by the *FSA* to be at least as stringent as those laid down by Community law.

Derivatives: general

- 5.2.21 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *scheme* unless:
- (a) the transaction is of a kind specified in *CIS* 5.2.22R (Permitted transactions (derivatives and forwards)); and
 - (b) the transaction is covered, as required by *CIS* 5.3.3R (Cover for transactions in derivatives and forward transactions).
- (2) Where a *scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in *CIS* 5.2.13R (Spread: general) and *CIS* 5.2.14R (Spread: government and public securities) save as provided in (4).

- (3) Where a *transferable security* or money market instrument embeds a *derivative*, this must be taken into account for the purposes of complying with this section (*CIS 5.2*).
- (4) Where a *scheme* invests in an index based *derivative*, provided the relevant index falls within *CIS 5.2.33R* (Relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of *CIS 5.2.13R* (Spread: general) and *CIS 5.2.14R* (Spread: government and public securities).
- (5) The relaxation in (4) is subject to the *authorised fund manager* taking account of *CIS 5.2.3R* (Prudent spread of risk).

Permitted transactions (derivatives and forwards)

5.2.22

- R (1) A transaction in a *derivative* must:
- (a) be in an *approved derivative*; or
 - (b) be one which complies with *CIS 5.2.25R* (OTC transactions in derivatives).
- (2) A transaction in a *derivative* must have the underlying consisting of any or all of the following to which the *scheme* is *dedicated*:
- (a) *transferable securities*;
 - (b) money market instruments permitted under *CIS 5.2.20R* (Investment in money market instruments);
 - (c) *deposits* permitted under *CIS 5.2.28R* (Investment in deposits);

- (d) *derivatives* permitted under this *rule* (CIS 5.2.22R);
 - (e) *collective investment scheme units* permitted under CIS 5.2.15R (Investment in collective investment schemes);
 - (f) financial indices;
 - (g) interest rates;
 - (h) foreign exchange rates; and
 - (i) currencies.
- (3) A transaction in an *approved derivative* must be effected on or under the *rules* of an *eligible derivatives* market.
 - (4) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the scheme* and the most recently published *prospectus*.
 - (5) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more, *transferable securities, money market instruments, units in collective investment schemes, or derivatives*.
 - (6) Any forward transaction must be with an *approved counterparty* under CIS 5.2.25R(2) (OTC transactions in derivatives).

Transactions for the purchase of property

- 5.2.23 R A *derivative* or forward transaction (which is a permitted transaction

under *CIS* 5.2.22R (Permitted transactions (derivatives and forwards)) which will or could lead to the delivery of property for the account of the *ICVC* or to the *trustee* for the account of the *AUT* may be entered into only if:

- (1) that property can be held for the account of the *ICVC* or can be held by the *AUT*; and
- (2) the *authorised fund manager* having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the *rules* in this sourcebook.

Requirements to cover sales

- 5.2.24 R (1) No agreement by or on behalf of an *ICVC* or on behalf of an *AUT* to dispose of property or rights may be made:
- (a) unless the obligation to make the disposal and any other similar obligation could immediately be honoured by the *authorised fund* by delivery of property or the assignment (or, in Scotland, assignation) of rights; and
 - (b) the property and rights at (a) are owned by the *authorised fund* at the time of the agreement.
- (2) Paragraph (1) does not apply to a *deposit*.

OTC transactions in derivatives

- 5.2.25 R Any transaction in an *OTC derivative* under *CIS* 5.2.22R(1)(b) must be:
- (1) in a *future* or an *option* or a *contract for differences*;

- (2) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:
- (a) an *eligible institution* or an *approved bank*; or
 - (b) a *person* whose *permission* (including any *requirements* or *limitations*), as published in the *FSA Register* or whose *Home State authorisation*, permits it to enter into the transaction as *principal off-exchange*;
- (3) on approved terms; the terms of the transaction in *derivatives* are approved only if, before the transaction is entered into, the *depository* is satisfied that the counterparty has agreed with the *ICVC* or the *manager*:
- (a) to provide a reliable and verifiable valuation in respect of that transaction (which, for *dual-priced AUTs* should be on a *buying* and *selling* basis) at least daily and at any other time at the request of the *ICVC* or *manager*; and
 - (b) that it will, at the request of the *ICVC* or *manager*, enter into a further transaction to *close out* that transaction at any time, at a fair value arrived at under the pricing model or other reliable basis agreed under (4); and
- (4) capable of valuation; a transaction in *derivatives* is capable of valuation only if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:
- (a) on the basis of the pricing model which has been agreed between the *authorised fund manager* and the *depository*;

or

- (b) on some other reliable basis reflecting an up-to-date market value which has been so agreed.

Risk management: derivatives

5.2.26

- R (1) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's derivatives* positions and their contribution to the overall risk profile of the *scheme*.
- (2) The following details of the risk management process must be notified by the *authorised fund manager* to the *FSA* in advance of the use of the process as required by (1) along with advance notification of any material alteration to such details:
- (a) the methods for estimating risks in *derivative* transactions; and
 - (b) the types of derivatives to be used within the *scheme* together with their underlying risks and any relevant quantitative limits.

5.2.27

Risk management process

- G (1) The risk management process should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*.
- (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *CIS 7.5.3R* (Duties of the ACD and depository: investment and borrowing powers) or *CIS 7.10.5R* (Duties of the manager and trustee: investment and borrowing powers), as

appropriate.

- (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 3.1 (Systems and controls).
- (5) The risk management process should enable the analysis required by CIS 5.2.26R to be undertaken at least daily or at each *valuation point* whichever is the more frequent.

Investment in deposits

- 5.2.28 R A *UCITS scheme* may invest in *deposits* only with an *approved bank* and which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 *months*.

Significant influence for ICVCs

- 5.2.29 R (1) An *ICVC* must not acquire *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that *body corporate* if:
- (a) immediately before the acquisition, the aggregate of any such *securities* held by the *ICVC* gives the *ICVC* power significantly to influence the conduct of business of that *body corporate*; or

(b) the acquisition gives the *ICVC* that power.

- (2) For the purpose of (1), an *ICVC* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held by it, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

Significant influence for managers of AUTs

5.2.30

R (1) A *manager* must not acquire, or cause to be acquired for an *AUT* of which it is the *manager*, *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the *body corporate* if:

- (a) immediately before the acquisition, the aggregate of any such *securities* held for that *AUT*, taken together with any such *securities* already held for other *AUTs* of which it is also the *manager*, gives the *manager* power significantly to influence the conduct of business of that *body corporate*; or

(b) the acquisition gives the *manager* that power.

- (2) In (1), a *manager* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held for all the *AUTs* of which it is the *manager*, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of

voting rights in respect of the *transferable securities* of that *body corporate*).

Concentration

5.2.31

R A *UCITS scheme*:

- (1) must not acquire *transferable securities* (other than *debt securities*) which:
 - (a) do not carry a right to vote on any matter at a general meeting of the *body corporate* that issued them; and
 - (b) represent more than 10% of those *securities* issued by that *body corporate*;
- (2) must not acquire more than 10% of the *debt securities* issued by any single body;
- (3) must not acquire more than 25% of the *units* in a *collective investment scheme*;
- (4) must not acquire more than 10% of the money market instruments issued by any single body; and
- (5) need not comply with the limits in (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant *investment* cannot be calculated.

Schemes replicating an index

5.2.32

R (1) A *UCITS scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the investment policy of that *scheme* as stated in the most recently published *prospectus* is to replicate the

composition of a relevant index as defined in *CIS 5.2.34R*
(Relevant indices).

- (2) The limit in (1) can be raised for a particular *UCITS scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

Index replication

- 5.2.33 G In the case of a *scheme* replicating an index under *CIS 5.2.32R* (Schemes replicating an index) the *scheme property* need not consist of the exact composition and weighting of the underlying in the relevant index where deviation from this is expedient for reasons of poor liquidity or excessive cost to the *scheme* in trading in an underlying *investment*.

Relevant indices

- 5.2.34 R The indices referred to in *CIS 5.2.32R* (Schemes replicating an index) are those which satisfy the following criteria:

- (1) the composition is sufficiently diversified;
- (2) the index is a representative benchmark for the market to which it refers; and
- (3) the index is published in an appropriate manner.

Derivative exposure

Application

- 5.3 R This section (*CIS 5.3*) applies to *authorised fund managers* of *UCITS schemes* except *CIS 5.3.4*, which applies to:

- (1) *ICVCs* which are *UCITS schemes*; and

(2) to trustees of AUTs in respect of UCITS schemes.

Introduction

- 5.3.1 G (1) A *scheme* may invest in *derivatives* and forward transactions as long as the exposure to which the *scheme* is committed by that transaction itself is suitably covered from within its *scheme property*. Exposure will include any *initial outlay* in respect of that transaction.
- 5.3.2 (2) Cover ensures that a *scheme* is not exposed to the risk of loss of property, including *money*, to an extent greater than the net value of the *scheme property*. Therefore, a *scheme* must hold *scheme property* sufficient in value or amount to match the exposure arising from a *derivative* obligation to which the *scheme* is committed. CIS 5.3.3R (Cover for transactions in derivatives and forward transactions) sets out detailed requirements for cover of a *scheme*.
- (3) In applying this section (CIS 5.3), it may help to regard a *future* as an obligation to which the *scheme* is committed (in that, unless closed out, the *future* will require something to be delivered, or accepted and paid for); a written *option* as an obligation to which the *scheme* is committed (in that it gives the right of potential exercise to another thereby creating exposure); and a bought *option* as a right (in that the purchaser can, but need not, exercise the right to require the writer to deliver and accept and pay for something).
- (4) In accordance with CIS 5.2.7R(2)(b) (Chapter to be construed as a whole), cover used in respect of one transaction in *derivatives* or forward transaction must not be used for cover in respect of another transaction in *derivatives* or a forward transaction.

- (5) *CIS 5.3.3R - CIS 5.3.5R* sets out requirements for "cover" of a *UCITS scheme* in respect of *derivative* transactions.

Cover for transactions in derivatives and forward transactions

- 5.3.3 R (1) A transaction in *derivatives* or forward transaction is to be entered into only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person* is covered globally under (2).
- (2) Exposure is covered globally if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk, and the time available to liquidate any positions.
- (3) Cash not yet received into the *scheme property* but due to be received within one *month* is available as cover for the purposes of (2).
- (4) Property the subject of a transaction under *CIS 5.4* (Stock lending) is only available for cover if the *authorised fund manager* has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.
- (5) The global exposure relating to *derivatives* held in a *UCITS scheme* may not exceed the net value of the *scheme property*.

Borrowing

- 5.3.4 R (1) Cash obtained from borrowing, and borrowing which the

authorised fund manager reasonably regards an *eligible institution* or an *approved bank* to be committed to provide, is available for cover under *CIS 5.3.3R* (Cover for transactions in derivatives and forward transactions) as long as the normal limits on borrowing (as to which see *CIS 5.5.3R* (General power to borrow) and *CIS 5.5.4R* (Borrowing limits)) are observed.

- (2) Where, for the purposes of this section (*CIS 5.3*), the *ICVC* or the *trustee* for the account of the *AUT* on the instructions of the *manager*:
- (a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and
 - (b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on *deposit* with the lender (or his agent or nominee);

then this section (*CIS 5.3*) applies as if the borrowed currency, and not the deposited currency, were part of the *scheme property*, and the normal limits on borrowing under *CIS 5.5.3R* and *CIS 5.5.4R* do not apply to that borrowing.

Continuing nature of limits and requirements

- 5.3.5 R An *authorised fund manager* must, (as frequently as necessary), recalculate the amount of cover required in respect of *derivatives* and forward positions already in existence under this section (*CIS 5.3*). *Derivatives* and rights under forward transactions under this section may be retained in the *scheme property* only so long as they remain covered globally under *CIS 5.3.3R* (Cover for transactions in derivatives and forward transactions).

5.4 Stock lending

Application

- 5.4.1 R This section (*CIS 5.4*) applies to *depositaries of authorised funds* which are *UCITS schemes*, except:
- (1) *CIS 5.4.3R* (Stock lending: general), which applies to *ICVCs* which are *UCITS schemes*, or to *managers of AUTs* which are *UCITS schemes*; and
 - (2) in the case of *ICVCs*, *CIS 5.4.4R* (Permitted stock lending) which applies to *ICVCs* which are *UCITS schemes* if the *ICVC* enters into the *stock lending* agreement.

Stock lending permitted under this section (*CIS 5.4*)

- 5.4.2 G (1) This section (*CIS 5.4*) permits the generation of additional income for the benefit of the *authorised fund*, and hence for its investors, by entry into *stock lending* transactions for the account of the *authorised fund*.
- (2) The specific method of *stock lending* permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather it is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower otherwise than by way of *sale* and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

Stock lending: general

- 5.4.3 R The *stock lending* permitted by this section (*CIS* 5.4) may be exercised by an *authorised fund* when 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.

Permitted stock lending

- 5.4.4 R (1) An *ICVC*, or the *depository* at the request of the *ICVC*, or a the *trustee* at the request of the *manager*, may enter into 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:
- (a) all the terms of the agreement under which *securities* are to be reacquired by the *depository* for the account of the *ICVC* or by the *trustee*, are in a form which is acceptable to the *depository* or to the *trustee* and are in accordance with good market practice;
 - (b) the *counterparty* is an *authorised person* or a *person* authorised by a *Home State regulator*; 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 *CIS* 5.4.6R(1); and
 - (iii) sufficiently immediate within *CIS* 5.4.6R(2).

- (2) The *counterparty* for the purpose of (1) is the *person* who is obliged under the agreement referred to in (1)(a) to transfer to the *depository* the *securities* transferred by the *depository* under the *stock lending* arrangement or *securities* of the same kind.

Stock lending: treatment of collateral

- 5.4.5 G Where a *stock lending* arrangement is entered into, the *scheme property* remains unchanged in terms of value: the *securities* transferred cease to be part of the *scheme property*, but there is obtained in return an obligation on the part of the *counterparty* to transfer back equivalent *securities*. The *depository* will also receive *collateral* to set against the risk of default in transfer, and that *collateral* is equally irrelevant to the valuation of the *scheme property* (because it is transferred against an obligation of equivalent value by way of re-transfer). CIS 5.4.6R accordingly makes provision for the treatment of the *collateral* in that context.

Treatment of collateral

- 5.4.6 R (1) *Collateral* is adequate for the purposes of this section (CIS 5.4) only if it:
- (a) is transferred to the *depository* or its agent;
 - (b) is at least equal in value, at the time of the transfer to the *depository*, to the value of the *securities* transferred by the *depository*; and
 - (c) is in the form of one or more of:
 - (i) cash; or
 - (ii) *government and public securities*; or
 - (iii) a certificate of *deposit*; or

- (iv) a letter of *credit*; or
 - (v) *securities* transferred in *CREST*.
- (2) *Collateral* is sufficiently immediate for the purposes of this section (*CIS 5.4*) if:
- (a) it is transferred before or at the time of the transfer of the *securities* by the *depository*; or
 - (b) the *depository* takes reasonable care to determine at that time that it will be transferred at the latest by the close of business on the *day* of the transfer.
- (3) The *depository* must ensure that the value of the *collateral* at all times is at least equal to the value of the *securities* transferred by the *depository*.
- (4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire or has expired where the *depository* takes reasonable care to determine that sufficient *collateral* will again be transferred at the latest by the close of business on the *day* of expiry.
- (5) Any agreement for transfer at a future date of *securities* or of *collateral* (or of the equivalent of either) under this section (*CIS 5.4*) may be regarded, for the purposes of valuation under *CIS 4* (Single-pricing and dealing), *CIS 15* (Dual-pricing and dealing) or this chapter, as an unconditional agreement for the *sale* or transfer of property, whether or not the property is part of the property of the *authorised fund*.

- (6) *Collateral* transferred to the *depository* is part of the *scheme property* for the purposes of the *rules* in this sourcebook, except in the following respects:
 - (a) it does not fall to be included in any valuation for the purposes of *CIS 4* (Single-pricing and dealing), or *CIS 15* (Dual-pricing and dealing) or this chapter, because it is offset under (5) by an obligation to transfer; and
 - (b) it does not count as *scheme property* for any purpose of this chapter other than this section (*CIS 5.4*).
- (7) Paragraph (5) and (6)(a) do not apply to any valuation of *collateral* itself for the purposes of this section (*CIS 5.4*).

Limitation by value

- 5.4.7 R There is no limit on the value of the *scheme property* which may be the subject of *stock lending* transactions within this section (*CIS 5.4*).

Cash, borrowing, lending and other provisions

5.5

Application

- 5.5.1 R (1) *CIS 5.5.2R*(1) and (2) (Cash and near cash) apply to *authorised fund managers*.
- (2) *CIS 5.5.3R* (General power to borrow) applies to *ICVCs* and *trustees* of *AUTs*, except *CIS 5.5.3R*(3) and (4), which apply to *authorised fund managers*.
- (3) *CIS 5.5.4R* (Borrowing limits) applies to *authorised fund managers*.
- (4) *CIS 5.5.5R* (Restrictions on lending of money) applies to

ICVCs or to *managers* and *trustees*, except for *CIS*

5.5.5R(3), which applies to *ICVCs*.

- (5) *CIS* 5.5.6R (Restrictions on lending of property other than money) applies to *ICVCs* or *managers* and *trustees*, except for *CIS* 5.5.6R(4) which applies to *ICVCs* or to *depositories* of *ICVCs*.
- (6) *CIS* 5.5.7R (General power to accept or underwrite placings) applies to *ICVCs* or to *managers*.
- (7) *CIS* 5.5.8R (Guarantees and indemnities) applies to *ICVCs* or *depositories*.

Cash and near cash

5.5.2

- R (1) Cash and *near cash* must not be retained in the *scheme property* except to the extent that, where this may reasonably be regarded as necessary in order to enable:
- (a) the pursuit of the *scheme's* investment objectives; or
 - (b) *redemption* of *units*; or
 - (c) efficient management of the *authorised fund* in accordance with its investment objectives; or
 - (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the *authorised fund*.
- (2) During the period of the *initial offer* the *scheme property* may consist of cash and *near cash* without limitation.

General power to borrow

- 5.5.3 R (1) The *ICVC* or *trustee* (on the instructions of the *manager*) may, in accordance with this *rule* (*CIS 5.5.3R*) and *CIS 5.5.4R*, borrow *money* for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*. This power to borrow is subject to the obligation of the *authorised fund* to comply with any restriction in the *instrument constituting the scheme*.
- (2) The *ICVC* or *trustee* may borrow under (1) only from an *eligible institution* or an *approved bank*.
- (3) The *authorised fund manager* must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the *authorised fund manager* must have regard in particular to:
- (a) the duration of any period of borrowing; and
 - (b) the number of occasions on which resort is had to borrowing in any period.
- (4) In addition to complying with (3), the *authorised fund manager* must ensure that no period of borrowing exceeds three *months*, whether in respect of any specific sum or at all, without the prior consent of the *depository*; the *depository's* consent may be given only on such conditions as appear to the *depository* appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
- (5) This *rule* (*CIS 5.5.3R*) does not apply to "back to back" borrowing under *CIS 5.3.4R(2)* (Borrowing).

- (6) An *ICVC* must not issue any *debenture* unless it acknowledges or creates a borrowing that complies with (1) to (4).

Borrowing limits

- 5.5.4 R (1) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *business day*, exceed 10% of the value of the *scheme property*.
- (2) This *rule* (*CIS* 5.5.4R) does not apply to "back to back" borrowing under *CIS* 5.3.4R(2).
- (3) In this *rule* (*CIS* 5.5.4R), "borrowing" includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of *money* into the *scheme property* in the expectation that the sum will be repaid.
- (4) For an *ICVC*, borrowing does not include any arrangement for the *ICVC* to pay to a third party (including the *ACD*) any costs which the *ICVC* is entitled to amortise under *CIS* 8.3.4R (Set up costs) and which were paid on behalf of the *ICVC* by the third party.

Restrictions on lending of money

- 5.5.5 R (1) None of the *money* in the *scheme property* of an *authorised fund* may be lent and, for the purposes of this prohibition, *money* is lent by an *authorised fund* if it is paid to a *person* ("the payee") on the basis that it should be repaid, whether or not by the payee.
- (2) Acquiring a *debenture* is not lending for the purposes of (1); nor is the placing of *money* on deposit or in a current account.

- (3) Paragraph (1) does not prevent an *ICVC* from providing an *officer* of the *ICVC* with funds to meet expenditure to be incurred by him for the purposes of the *ICVC* (or for the purposes of enabling him properly to perform his duties as an *officer* of the *ICVC*) or from doing anything to enable an *officer* to avoid incurring such expenditure.

Restrictions on lending of property other than money

- 5.5.6 R (1) The *scheme property* of an *authorised fund* other than *money* must not be lent by way of deposit or otherwise.
- (2) Transactions permitted by *CIS* 5.4 (Stock lending) are not lending for the purposes of (1).
- (3) The *scheme property* of a *UCITS scheme* must not be mortgaged.
- (4) Nothing in this *rule* (*CIS* 5.5.6R) prevents the *ICVC* or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, from lending, depositing, pledging or charging *scheme property* for *margin* requirements where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any other of the *rules* in this chapter.

General power to accept or underwrite placings

- 5.5.7 R (1) Any power in this chapter to invest in *transferable securities* may be used for the purpose of entering into transactions to which this *rule* (*CIS* 5.5.7R) applies, subject to compliance with any restriction in the *instrument constituting the scheme*.
- (2) This *rule* (*CIS* 5.5.7R) applies, subject to (3), to any agreement or understanding:

- (a) which is an underwriting or sub-underwriting agreement;
or
 - (b) which contemplates that *securities* will or may be issued or subscribed for or acquired for the account of the *authorised fund*.
- (3) Paragraph (2) does not apply to:
- (a) an *option*; or
 - (b) a *purchase* of a *transferable security* which confers a right:
 - (i) to subscribe for or acquire a *transferable security*; or
 - (ii) to convert one *transferable security* into another.
- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *business day*:
- (a) be covered under *CIS 5.3.3R* (Cover for transactions in derivatives and forward transactions); and
 - (b) be such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

Guarantees and indemnities

- 5.5.8 R (1) An *ICVC* or a *depository* for the account of an *authorised fund* must not provide any guarantee or indemnity in respect of the obligation of any *person*.

- (2) None of the *scheme property* of an *authorised fund* may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any *person*.
- (3) Paragraphs (1) and (2) do not apply to:
- (a) any indemnity or guarantee given for *margin* requirements where the *derivatives* or forward transactions are being used in accordance with the *rules* in this chapter;
- (b) for an *ICVC*:
- (i) an indemnity falling within the provisions of regulation 62(3) (Exemptions from liability to be void) of the *OEIC Regulations* :
- (ii) an indemnity (other than any provision in it which is void under regulation 62 of the *OEIC regulations*) given to the *depository* against any liability incurred by it as a consequence of the safekeeping of any of the *scheme property* by it or by anyone retained by it to assist it to perform its function of the safekeeping of the *scheme property*; and
- (iii) an indemnity given to a *person* winding up a *scheme* if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that *scheme* becomes the first property of the *ICVC* and the *holders* of *units* in that *scheme* become the first *shareholders* in the *ICVC*; and
- (c) for an *AUT*, an indemnity given to a *person* winding up a

body corporate or other *scheme* in circumstances to which *CIS* 15.2.7R (Creation of units) applies.

Guidance on restricting payments

- 5.5.9 G *CIS* 8.4.1R (Payment of liabilities on transfer of assets) and *CIS* 8.5.5R (Other payments out of scheme property) contain provisions restricting payments out of *scheme property*.

The old *CIS* Chapter 5 is renumbered 5A, and A is added to all numbers of sections, rules, headings and references to *CIS* 5 rules in the chapter. Chapter 5A is amended as follows:

5A Investment and borrowing powers

5A.1 Introduction

Application

5A.1.1 R (1) This chapter applies in relation to *ICVCs* and *AUTs* which:

(a) are not *UCITS* schemes; or

(b) were *UCITS* schemes when their *authorisation order* was made and operate under Transitional provision 14.

(2) This section (*CIS* 5A.1) applies to *authorised fund managers* and *depositories* of schemes within (1).

Application guidance

5A.1.2 G ~~The *persons* to whom each respective *rule* and *guidance* in this chapter applies are stated either at the beginning of the *rule* or *guidance* or at the beginning of the section that contains the *rule* or *guidance*.~~

This chapter applies to non-UCITS schemes which are geared futures and options schemes, property schemes, money market schemes, futures and options schemes, fund of funds schemes, umbrella schemes which do not comply with the requirements of the UCITS Directive and feeder fund schemes. This chapter also applies to UCITS schemes within transitional provision 14 (securities schemes, warrant schemes, or an umbrella scheme consisting of sub-funds which would, if separately authorised be a securities scheme or a warrant scheme). Therefore, only the sections relevant to these fund types and the cross references contained within are of application. Cross references to other rules in the relevant section for each fund type should be applied in respect only of that relevant fund type.

Explanation to this chapter

5A.1.4 G (1) ~~Product distinctiveness~~

~~CIS 2.1.4R (Categories of authorised fund) lists the categories of authorised fund. Each authorised fund has distinct characteristics and can therefore only hold certain types of investments. The rules in this chapter outline the permitted investments for each category, and ensure that the distinct character of each authorised fund is maintained.~~

Product Distinctiveness – CIS 2.1.4R (Types of authorised fund) sets out the types of scheme. Each of these authorised fund types has distinct characteristics and can therefore only hold certain types of investments. The rules in this chapter outline the permitted investments for non-UCITS schemes which are of the geared futures and options, property, money market, futures and options, fund of funds, non-UCITS compliant umbrella and feeder fund scheme type and for UCITS schemes within transitional provision 14. This ensures that the distinct character of each authorised fund is maintained.

(2) UCITS directive

~~For securities schemes, warrant schemes and umbrella schemes (consisting of sub funds which would, if separately authorised, be securities schemes or warrant schemes), this chapter sets out the investment and borrowing rules which these authorised funds have to comply with, in order to benefit from a certificate of compliance with the UCITS directive, with a view to enjoying the rights available under that directive.~~

Investment and borrowing powers. This chapter sets out investment and borrowing rules with which the following types of authorised fund must comply:

- (a) geared futures and options schemes;
- (b) property schemes;
- (c) money market schemes;
- (d) futures and options schemes;
- (e) fund of funds schemes;
- (f) feeder funds;
- (g) umbrella schemes which do not comply with the UCITS Directive; and
- (h) UCITS schemes under transitional provision 14.

(3) Permitted investments

The general pattern of this chapter is summarised in CIS 5.1.6G. This table sets out, for each type of authorised fund, or for each sub-fund of an umbrella scheme, the type of investments that each type of authorised fund or sub-fund is permitted to hold (as well as the permitted percentage), and the investment techniques that each type of authorised fund (or sub-fund) is permitted to use.

Transitional provision 14 specifies the periods allowed under UCITS Amending Directive 2001/108/EC for UCITS schemes to continue under the narrower range of UCITS investment powers and more restricted disclosures and thus applies to:

- (a) UCITS schemes authorised on or before the entry into force (13 February 2002) of UCITS Amending Directive 2001/108/EC for a period of 5 years from that entry into force; or
- (b) UCITS schemes authorised after the entry into force of UCITS Amending Directive 2001/108/EC but before the entry into force of the rules in CIS 5A, for a period of two years from entry into force of the UCITS Amending Directive 2001/108/EC; or
- (c) UCITS schemes authorised under the rules in CIS 5A until 2 years from the entry into force of UCITS Amending Directive 2001/108/EC.

Distinct meaning of certain terms

- 5A.1.5 G Terms used in this sourcebook, should be interpreted and used as they are defined. However, because of the distinct nature of investments in which an authorised fund is permitted to invest, some of these terms

are not always used in a way that corresponds with their usage in certain markets, for example, the term “warrants”. In the CIS sourcebook “warrants” has a slightly wider meaning than usually attributed to it in *warrant markets*. The definition of *warrants* reflects this distinction.

5.1.6 G Indicative overview of investment and borrowing powers

This table belongs to CIS 5.1.4G(3).

Category of authorised fund (note 1 and 2)	Securities schemes (CIS-5.4)	Money market schemes (CIS-5.5)	Futures and options schemes (CIS-5.6)	G geared futures and options schemes (CIS-5.7)	Property schemes (CIS-5.8)	Warrant schemes (CIS-5.9)	Fund of funds schemes (CIS-5.11)	Feeder funds (excluding in an feeder funds investing in an eligible investment trust) (CIS-5.10)	Feeder funds investing in an eligible investment trust (CIS-5.10)
Investments and investment techniques									
Transferable securities	Yes	80%	Yes	Yes	80%	Yes	NA	NA	Yes
Transferable but not approved securities	10%	NA	10%	10%	10%	10%	NA	NA	No
Government and public securities	Yes	80%	Yes	Yes	35%	Yes	No	No	No
Units	5%	5%	5%	5%	5%	5%	Yes	Yes	No
Warrants	5%	NA	5%	5%	5%	100%	No	No	No
Investment trusts	Yes	No	Yes	Yes	80%	Yes	No	No	Yes
Cash (and near cash)	RRD	Yes	Yes	Yes	RRD	RRD	RRD	RRD	RRD
Derivatives	EPM	EPM	Yes	Yes	EPM	EPM	EPM	No	No
Immovables	No	No	No	No	80%	No	No	No	No
Gold	No	No	10%	10%	No	No	No	No	No
Efficient portfolio management	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Stocklending	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Underwriting	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Borrowing	10%	10%	10%	No	10%	10%	10%	10%	10%
Note 1	<u>Meaning of terms used</u>								
“Yes”	can be invested in without specific upper limit (though there may be limits of other kinds)								

"No"	not available for investment.
A percentage	an upper limit (though there may be limits of other kinds).
"NA"	not generally applicable having regard to the <i>authorised fund's</i> dedication.
"RRD"	permitted if reasonably required for <i>redemption</i> or in the context of the <i>authorised fund's</i> investment objective (see CIS 5.15.2R (Cash and near cash)).
"EPM"	permitted in the context of efficient portfolio management (see CIS 5.13).
Note 2	<i>Umbrella schemes</i>
The <i>umbrella scheme</i> is not covered, but each <i>sub-fund</i> must fall within one column of the table.	

5A.2.12 R Where a reference to an *authorised fund* of a particular category type is made in CIS 5A.5.3R(2)(e) (Money market schemes: general), CIS 5A.6.7R (Investment in collective investment schemes) (for *futures and options schemes*), CIS 5A.7.8R (for *geared futures and options schemes*) or CIS 5A.8.7R (for *property schemes*), that reference is to be treated as a reference also to:

- (1) a *sub-fund* which would, if it were the subject of a separate *authorisation order* be an *authorised fund* of that particular category type; and

...

5A.5.3 R (2) For this purpose, "*money market scheme assets*" means any of:

...

- (b) bills of exchange accepted by an *eligible institution* or an *approved bank*, if repayable within 12 months;

- (c) instruments creating or acknowledging indebtedness which are:

...

- (iii) either *approved securities* or *investments* which are issued by an *eligible institution* or an *approved bank* otherwise than in return for a *deposit* in (a);

- 5A.6.3 R (6) Whenever the total value held on *deposit* of the *scheme property* of a *futures and options scheme* is more than £1 million:
- ...
- (c) the figure of 10% in (a) may be increased to 20% if:
- (i) the *person* is an *eligible institution* or an *approved bank* and is not one of the *persons* referred to in (b); and
- (ii) the amount of the *deposit* does not exceed 10% in value of that *eligible institution's* or an *approved bank's* issued capital and reserves as shown in its most recently published annual accounts.
- 5A.6.6 R (2) With an *approved counterparty*; a *counterparty* to a transaction in *derivatives* is approved only if the *counterparty* is:
- (a) an *eligible institution* or an *approved bank*; or
- ...
- 5A.6.12 R (3) Where, under (b), an *authorised fund manager* decides that a written *option* and a bought *option* should provide mutual cover, the *authorised fund manager* must arrange for the *depository* to deposit and set aside with an *eligible institution* or an *approved bank* the whole amount of the difference between the exercise value of the two *options* (that is the amount which would be payable by or to the *futures and options scheme* on exercise of the *options*) inclusive of any *margin* requirements of the exchange. That amount must not be used for the purposes of providing cover, other than under this paragraph (f), under the *rules* of this chapter.

5A.6.13 R (1) Where the purchase of an uncovered *option* is proposed in reliance on *CIS 5A.6.3R(4)* (Futures and options schemes: general), the *authorised fund manager* must arrange for the *depository* to *deposit* and set aside with an *eligible institution* or an *approved bank* any amount by which 5% of the exercise value of the *option* (that is the amount which would be payable by the *futures and options scheme* on exercise of the *option*) exceeds the amount paid by way of *premium*. That excess (if any) must not be used for the purposes of providing cover under the *rules* in this chapter.

5A.6.14 R (1) Cash obtained by borrowing, and borrowings which the *authorised fund manager* reasonably regards an *eligible institution* or an *approved bank* to be committed to provide, are available for cover under *CIS 5A.6.9R* (Cover for transactions in derivatives and forward transactions) as long as the normal limits on borrowing (as to which see *CIS 5A.15.3R* (General power to borrow) and *CIS 5A.15.4R* (Borrowing limits)) are observed.

(2) Where, for the purposes of this section (*CIS 5A.6*), the *ICVC* or the *trustee* for the account of the *AUT* on the instructions of the *manager*:

(a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and

...

5A.7.4 R (4) The *authorised fund manager* must arrange for the *depository* to *deposit* and set aside with an *eligible institution* or an *approved bank* the amounts for the time being required by (6), (7), (8) and (9), and these amounts must not be used for the

purpose of providing cover under the *rules* in this chapter.

5A.7.7 R (3) Wherever the total value held on *deposit* of the *scheme property* of a *geared futures and options scheme* is more than £1 million:

...

(c) the figure of 10% in (5) may be increased to 20% if:

(i) the *person* is an *eligible institution* or an approved bank and is not one of the *persons* referred to in (b);
and

(ii) the amount of the *deposit* does not exceed 10% of that *eligible institution's* or an approved bank's issued capital and reserves as shown in its most recently published annual accounts.

5A.13.12 R (1) Cash obtained by borrowing, and borrowings which the *authorised fund manager* reasonably regards an *eligible institution* or an approved bank to be committed to provide, are available for cover under *CIS 5A.13.8R* as long as the normal limits on borrowing (as to which see *CIS 5A.15.3R* (General power to borrow) and *CIS 5A.15.4R* (Borrowing limits)) are observed.

(2) Where, for the purposes of this section (*CIS 5.13*), the *ICVC* or the *trustee* for the account of the *AUT* with the instructions of the *manager*:

(a) borrows an amount of currency from an *eligible institution* or an approved bank; and

...

- 5A.15.3 R (2) The *ICVC* or *trustee* may borrow under (1) only from an *eligible institution or an approved bank*.
- 7.4.1 R (1) The *depository* must take reasonable care to ensure that:
 ...
 (c) decisions about the constituents of the *scheme property* do not cause an infringement of *CIS 5 or CIS 5A* (Investment and borrowing powers).
- 7.5.1 R (2) Where the *depository* is of the opinion that a particular acquisition or disposal of property for the account of the *ICVC* exceeds the powers conferred on the *ICVC* by the *rules* in this sourcebook (and in particular *CIS 5 or CIS 5A* (Investment and borrowing powers)), the *depository* may require the *ACD* to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.
- 7.5.3 R (1) The *ACD* must take all reasonable steps and exercise due diligence to avoid the *scheme property* being used or invested contrary to any provision in *CIS 5 or CIS 5A* (Investment and borrowing powers), except to the extent permitted by (6)(c).
 ...
 (3) The *ACD* must, immediately upon becoming aware of any breach of any provision in *CIS 5 or CIS 5A*, take action, at its own expense, to rectify that breach, unless the breach occurred as the result of a circumstance of one of the types described in (5) and (6).
 (4) When this paragraph (4) applies as a result of (5) or (6), the *ACD* must take the steps necessary to ensure a restoration of compliance with *CIS 5 or CIS 5A* as soon as is reasonably practicable having regard to the interests of the *shareholders* and, in any event, within the period specified in (8) or, when

applicable, (9).

(5) Paragraph (4) applies:

(a) where the *scheme property* is used or invested at any time contrary to any provision of *CIS 5* or *CIS 5A* (other than a provision excusing a failure to comply on a temporary basis); and

...

(6) (a) Paragraph (4) applies to a transaction ("subsequent transaction") deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an *investment* ('original investment') of the *ICVC* if:

(i) the subsequent transaction, but for this *rule* (*CIS 7.5.3R*) would constitute a breach of *CIS 5* or *CIS 5A*; and

...

(c) Nothing in *CIS 5* or *CIS 5A* prevents the *ICVC* from entering into a transaction of the type described in (a) provided that the *ACD* obtains the prior written consent of the *depository*.

...

(8) (b) where the transaction in question was a transaction in *derivatives* or a forward transaction under ~~*CIS 5.6*~~ (~~*Futures and options schemes*~~) *CIS 5.2.22R* (*Permitted transactions (derivatives and forwards)*) or *CIS 5A.6* (~~*Futures and options schemes*~~) or ~~*CIS 5.7*~~ *CIS 5.7A* (*Geared futures and options schemes*), until the close of business five *business days* later;

- (c) where the transaction in question was entered into ~~under CIS 5.13R (Efficient portfolio management)~~ for hedging purposes under CIS 5.2.22R (Permitted transactions (derivatives and forwards)) or under CIS 5A.13R (Efficient portfolio management), until the close of business five *business days* later; and

...

7.6.3 R (1) The *ACD*, any other *director* and the *depository*, must respectively take all reasonable steps to ensure that a transaction within any of (a) to (f) is not entered into:

- (a) The placing of cash forming part of the *scheme property* in any current, *deposit* or loan account with an *affected person* unless the *affected person* is an *eligible institution* or an *approved bank* and the arm's length requirement in (2) is satisfied;
- (b) The lending of *money* by an *affected person* to, or for the account of, the *ICVC*, unless the *affected person* is an *eligible institution* or an *approved bank*, and the arm's length requirement in (2) is satisfied;
- (c) the *sale* of, or dealing in, property by an *affected person*, to, or with, the *ICVC* (or the *depository* for the account of the *ICVC*), unless ~~(4)~~ (3) applies; and for the purpose of this paragraph (c), a *sale* includes any lease or other transaction under which movable or immovable property is made available by the *ICVC*;

7.6.3 R (1) (f) transactions within CIS 5.14 (Stock lending) or CIS 5A.14 (Stock lending) by an *affected person* with, or in relation to, the *ICVC* unless the arm's length requirement in (2) is

satisfied.

- 7.9.1 R (1) The *trustee* must take reasonable care to ensure:
- (a) except in relation to *CIS 5* or *CIS 5A* (Investment and borrowing powers), and subject to (4) and (5), that the *AUT* is managed by the *manager* in accordance with *CIS 7.8.1R* (Management duties); and
 - (b) in relation to *CIS 5* or *CIS 5A* (Investment and borrowing powers), that decisions about the constituents of the *scheme property* do not cause an infringement of *CIS 5* or *CIS 5A* as appropriate.
- 7.9.3 R (1) The *trustee* must inform the *FSA* immediately upon becoming aware of any circumstance as a result of which there is no longer certainty that:
- (a) except in relation to *CIS 5* or *CIS 5A* (Investment and borrowing powers), the *AUT* is managed by the *manager* in accordance with *CIS 7.8.1R(1)* (Management duties); and
 - (b) decisions about the constituents of the *scheme property* do not cause an infringement of *CIS 5* or *CIS 5A*;
- 7.10.2 R (2) Where the *trustee* is of the opinion that a particular acquisition or disposal of property for the account of the *AUT* by the *manager* exceeds the powers conferred on the *manager* by the *rules* in this sourcebook (and in particular *CIS 5* or *CIS 5A*), the *trustee* may require the *manager* to cancel the transaction or make a corresponding acquisition or disposal to secure restoration of the previous situation and to meet any resulting

loss or expense.

- 7.10.3 R (1) The *manager* must take all reasonable steps and exercise all due diligence to avoid the *scheme property* being used or invested contrary to any provision in *CIS 5* or *CIS 5A* (Investment and borrowing powers), except to the extent permitted by (6)(c).
- ...
- (3) The *manager* must, immediately upon becoming aware of any breach of any provision in *CIS 5* or *CIS 5A*, take action, at its own expense, to rectify that breach, unless the breach occurred as a result of a circumstance of one of the types described in (5) and (6).
- (4) When this paragraph (4) applies, as a result of (5) or (6), the *manager* must take the steps necessary to ensure a restoration of compliance with *CIS 5* or *CIS 5A* as soon as is reasonably practicable having regard to the interests of the *unit holders* and, in any event, within the period specified in (8) or, when applicable, (9).
- (5) Paragraph (4) applies:
- (a) where the *scheme property* is used or invested at any time contrary to any provision of *CIS 5* or *CIS 5A* (other than a provision excusing a failure to comply on a temporary basis); and
- ...

- (6) (a) Paragraph (4) applies to a transaction...
- (i) the subsequent transaction, but for this *rule* *CIS 7.10.3R*, would constitute a breach of *CIS 5* or *CIS 5A*; and
- ...
- (c) Nothing in *CIS 5* or *CIS 5A* prevents the *manager* from entering into a transaction of the type described in (a) provided that it has obtained the prior written consent of the *trustee*.

- ...
- (8) (b) where the transaction in question was a transaction in derivatives or a forward transaction under ~~*CIS 5.6R*~~ *CIS 5A.6* (Futures and options schemes) or *CIS 5A.7* (Geared futures and options schemes) or *CIS 5*, until the close of business five business days later;
- (c) where the transaction in question was entered into under ~~*CIS 5.13R*~~ *CIS 5A.13R* (Efficient portfolio management), until the close of business five *business days* later; and

...

7.10.6 R (1) The *manager* and *trustee* must respectively...

- (a) the placing of cash forming part of the *scheme property* or standing to the credit of the *distribution account* in any current, *deposit* or loan account with an *affected person* unless the affected person is an *eligible institution* or an *approved bank* and the arms length requirement in (2) is satisfied;
- (b) the lending of *money* by an *affected person* to, or for the account of, the *AUT* unless the *affected person* is an *eligible institution* or an *approved bank*, and the arm's

length requirement in (2) is satisfied;

...

- (f) transactions within ~~CIS 5.14~~ CIS 5A.14 (Stock lending) or CIS 5.4 in relation to the AUT unless the arm's length requirement in (2) is satisfied.

Annex 1 G

Valuation and Pricing of authorised funds

1 Table This table belongs to {CIS 7G}

...

Investment and borrowing powers/compliance

- (9) Procedures should be in place to monitor the applicable *rules* in *CIS 5* or *CIS 5A* and, if breaches occur, to ensure they are rectified in accordance with *CIS 7.5.3R* or *CIS 7.10.3R*.

8.1.3 R Table Table of application

This table belongs to *CIS 8.1.1R*

Paragraph or section number	<i>ICVC</i>	<i>ACD</i>	<i>DEPOSITARY OF AN ICVC</i>	<i>MANAGER</i>	<i>TRUSTEE</i>
8.1	X	X	X	X	X
8.2.1R		X		X(S)	
8.2.2R		X		X(S)	
8.2.3R		X			
8.2.4R		X			
8.2.5R		X		X(s)	
8.2.6R		X		X(s)	
8.2.7R		X			
8.2.8R(1) and (2)		X			
8.2.8R(3)				X(s)	
8.3.1R – 8.3.2R		X			
8.3.3R	X	X			
8.3.4R	X	X			

8.3.5R(1)–(3)	X	X			
8.3.5R(4)	X	X	X		
8.4.1R	X	X	X	X	X
8.4.2R	X	X	X	X	X
8.5.1R				X	
8.5.2R(1) to (6)				X(s)	
8.5.2R(7)				X(s)	X(s)
8.5.2R(8)				X(s)	
8.5.3R				X(s)	
8.5.4R				X	X
8.5.5R to 8.5.7R				X	X
Note: "X" means "applies". "X(s)" means "applies to the <i>manager or trustee</i> of a <i>single-priced AUT only</i> ".					

8.2.6 R In the case of an *ICVC* or a *single-priced AUT*, not less than 90 days before the introduction or increase of any payment under *CIS 8.2.4R* or *CIS 8.2.5R*, or of any *remuneration* under *CIS 3.5.2R(13)(2), (3)* (within the maximum level stated in the *prospectus*), the *authorised fund manager* must:

(1) Give written notice of that introduction or increase and of the date of its commencement:

...

(b) (in the case of *remuneration* of the *ACD* or the *depository* or any third party or any affected person payable out of the *scheme property*) to all *shareholders*; and

...

Remuneration of the trustee and reimbursement of the trustees expenses

8.5.4 R (1) No payment may be made to the *trustee* out of the *scheme property*, whether by way of reimbursement of expenses or otherwise, except:

(a) *Remuneration* for the *trustee* in respect of its services and

in respect of which the following have been stated in the *prospectus*:

- (i) the actual amount or rate of the *remuneration* together with the current maximum (or how ~~this is~~ these are determined);

...

...

- (3) In the case of a dual-priced AUT the actual amount or rate of the trustee's or any third party's or any affected person's remuneration may be raised up to any maximum stated in the prospectus by the authorised fund manager using the procedure in CIS 8.2.6R(1).

9.2.11 R (1) Where the *scheme property* of an *AUT* is used in *stock lending* transactions under *CIS 5.14* or *CIS 5A.14*, any income derived from the transaction must form part of the *scheme property*, after deduction of:

10.3.2 G This section sets out the contents of each annual and half-yearly report. It sets the scene for *CIS 10.4* (Information to be included in annual and half-yearly reports). That section outlines some more detailed information, which must be included in reports on *authorised funds*. In particular, it distinguishes between requirements to be included in reports on *umbrella schemes* and reports on other ~~categories~~ types of *authorised funds*.

10.4.2 R The matters set out in (1) – (156) must be included in each report of the *directors* (for a report on an *ICVC*) and in each report of the *manager* (for a report on an *AUT*), except where otherwise indicated:

10.4.2 R (5) a statement as to which of the ~~categories~~ types of *authorised fund* in *CIS 2.1.4R* (Constitution) the *authorised fund* belongs;

10.4.2 R (16) In the case of a *UCITS scheme* which invests a substantial proportion of its assets in other *collective investment schemes*, a statement as to the maximum proportion of management fees charged to the *scheme* itself and to other *collective investment schemes* in which that *scheme* invests.

10.4.3 R (2) *CIS 10.4.2R(5)* applies as if it required a statement in respect of each *sub-fund* that it has investment powers equivalent to those of an *authorised fund* of a stated category type under *CIS 2.1.4R (Constitution)*.

12 Special Provisions for Certain ~~Categories~~ Types of Scheme

12.4.2 R (1) A *fund of funds scheme* must be valued no less frequently than if it were the relevant category type of *scheme* by type of investment under *CIS 5A.11.4R (Eligible combinations of scheme)* and the *authorised fund manager* of a *fund of funds scheme* must *deal* on the basis of *forward prices* if that is required for the relevant category type of *scheme* under *CIS 5A.11.4R*.

(2) Where a *fund of funds scheme* invests in *money market schemes* (within *CIS 5A.5 (Money market schemes)*), (1) applies only if the *scheme* does not invest in any other category type of *scheme*.

12.5.7 R ~~In relation to an *authorised fund* which is an *umbrella scheme* the provisions in *CIS 5* apply to each *sub-fund* as they would for an *authorised fund*, except *CIS 5.2.13R (Significant influence for ICVCs)*, *CIS 5.2.14R (Significant influence for managers of AUTs)* and *CIS 5.2.15R (Concentration)* which will apply only at the level of the *umbrella scheme*.~~

(1) In relation to an *authorised fund* which is an *umbrella scheme* under the rules in *CIS 5A*, the provisions in *CIS 5A* apply to

each sub-fund as they would for an authorised fund except the following rules which will apply only at the level of the umbrella scheme:

- (a) CIS 5A.2.13R (Significant influence for ICVCs);
- (b) CIS 5A.2.14R (Significant influence for managers of AUTs); and
- (c) CIS 5A.2.15R (Concentration), but sub-funds in an umbrella scheme which are equivalent to a fund of funds scheme or a feeder fund are to be disregarded in this calculation.

(2) In relation to an authorised fund which is an umbrella scheme under the rules in CIS 5, the provisions in CIS 5 apply to each sub-fund as they would for an authorised fund, except the following rules which will apply at the level of the umbrella scheme:

- (a) CIS 5.2.29R (Significant influence for ICVCs);
- (b) CIS 5.2.30R (Significant influence for managers of AUTs); and
- (c) CIS 5.2.31R (Concentration).

12.5.8 G Main provisions relating specifically to *umbrella schemes*
This table belongs to CIS 12.5.6G.

Rule/Guidance (CIS)	Subject matter
----------------------------	-----------------------

2.4.6(2)R	Rights of <i>share classes</i>
3.5.2(24)R	Information to be contained in the <i>prospectus (umbrella schemes)</i>
4.4.3(1)	<i>Authorised fund manager's obligation to sell</i>
4.7.4(2)R	Forward and historic pricing (single-pricing)
5.1.4(3)G	Explanation of <i>CIS 5</i>
Table 5.1.6G Note 2	Investment powers
5A.2.12R	Investment in other <i>€IS collective investment schemes</i>
5A.2.16G	Significant influence and concentration
5A.12R	General investment powers and restrictions
8.2.8R	Fee payable on switching
10.3.3(2) and (3)R; 10.3.4(2) & (3)R;	Annual and half-yearly reports
10.4.2(15) and (16)R and 10.4.3R	Report of the <i>directors/manager</i>
10.4.8R	Report of the auditor
10.5.2R(3)	Publication of reports
11.5.2R	<i>Schemes of arrangement</i>
13.1.3R(9)	Suspension and resumption of <i>dealings</i>
14.3R	Termination of a <i>sub-fund</i>
15.4.3R	<i>Manager's obligation to sell</i>
15.7.4R	Forward and historic pricing (dual-pricing)

14.4.2 R (1) (a) *CIS 4* (Single pricing and dealing) or *CIS 15* (Dual pricing and dealing) whichever is applicable and *CIS 5* or *CIS 5A* (Investment and borrowing powers) cease to apply to the *AUT*.

15.3.4 R (3) If at any *valuation point*, the *manager* has any outstanding obligation to *sell units* of any *class*, then it must instruct the *trustee*, before the earlier of:

(a) the expiry of two hours since the *valuation point*; or

(b) the next *valuation point*;

to *issue units* of the *class* in such number as will at least enable the *manager* to fulfil that obligation immediately, (whether from the *units* so issued or from other *units* of that *class* which it owned immediately before the *valuation point* (or *notified point* if there is one)).

15.8.2 G (2) *CIS 15.8.4R* contains the detailed *rules* for valuation of the *scheme property* by the *manager*. The Table is subject to other *rules* (see *CIS 5.2.5R* (Valuation) or *CIS 5A.2.5R* (Valuation) and *CIS 12.3* (Property schemes)).

15.8.4 R Table Table 15.8R Valuation

This table belongs to *CIS 15.8.3R*

Section 5: Issue Basis		
...		
23.	The valuation of property for that part of the valuation which is on a creation basis is as follows:	
	Property	To be valued at
	(a) Cash	nominal value

	(b)	Amounts held in current and deposit accounts	nominal value
	(c)	Property which is not within (a), (b) or (d):	
	(i)	if <i>units</i> in an <i>AUT</i> to which <i>CIS 15</i> (Dual-pricing and dealing) applies	except where Note 1 applies, the most recent maximum <i>sale</i> price less any expected discount (plus <i>dealing</i> costs) [Note 2]
	(ii)	if <i>shares</i> in an <i>ICVC</i> or <i>units</i> of an <i>AUT</i> to which <i>CIS 4</i> (Single-pricing and dealing) applies	the most recent price (plus <i>dealing</i> costs) [Notes 2 and 3]
	(iii)	if any other <i>investment</i>	best available market <i>dealing</i> offer price on the most appropriate market in a standard size (plus <i>dealing</i> costs) [Note 2]
	(iv)	if other property, or no price exists under (i), (ii) or <u>(iii)</u> .	<i>manager's</i> reasonable estimate of a buyer's price (plus <i>dealing</i> costs) [Notes 2 and 4]

	Notes
	8. If the property is an <i>OTC</i> transaction in <i>derivatives</i> , use the relevant valuation referred to in <u><i>CIS 5.2.25</i> (OTC transactions in derivatives)</u> or <u><i>CIS 5A.6.6R</i> (OTC transactions in derivatives)</u> .

Schedule 2

CIS sourcebook - Notification requirements

In table G (2) - Notification requirements

After *CIS 3.2.2R*, insert the following:

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<p><i>CIS</i> 5.2.26R(2)</p>	<p>Risk management process and any material alteration to it</p>	<p>Methods of estimating risk, types of <i>derivative</i> their underlying risk and any quantitative limits</p>	<p>Application for authorisation as a <i>scheme</i> complying with <i>CIS 5</i> or any subsequent proposed material alteration to the risk management process</p>	<p>Up until authorisation to comply with <i>CIS 5</i> or introduction of the alteration to the process, as appropriate</p>

Part 2

Amendments concerning limited issue funds and guaranteed funds

- 2.1.3 G This chapter assists in achieving the *regulatory objective* of protecting *consumers*...
- ...
- (3) provides *rules* which deal with the *classes of shares* (in *ICVCs*) and *units* (in *AUTs*) which may be issued and sold to investors; those *rules* will ensure that investors in each *class* are treated equally and fairly;
- (4) provides *rules and guidance* on the inclusion of the word "guaranteed" or anything implying a degree of capital security in the name of an *authorised fund*.

2.1.5 G Table of application

This table belongs to *CIS 2.1.2G*

Handbook provision:	Relevance for:	
	<i>ICVCs</i>	<i>AUTs</i>
2.1.1R - 2.1.4 <u>AR</u> , 2.2.1R	X	X
2.2.2R – 2.2.4R	X	
2.2.5R – 2.2.8R		X
2.3.1R – 2.3.4G	X	X
2.4.1R – 2.4.6R	X	
2.5.1R – 2.5.4R	X	
2.6.1R – <u>2.6.4R</u>		X
<u>2.7.1R – 2.8.2R</u>	<u>X</u>	<u>X</u>
Note: " X " means "applies".		

2.2.7 G (1) (i) ~~Accumulation units~~ Classes of units

~~a statement whether units in the AUT may be accumulation units only or accumulation units as well as income units.~~ a statement specifying which of the following classes of unit may be issued:

- (i) *income units*;
- (ii) *accumulation units*;
- (iii) *limited issue units* that are also *income units*;
- (iv) *limited issue units* that are also *accumulation units*.

2.4.2 G (2) Classes of shares may include:

...

- (e) currency class net accumulation shares, which are *currency class shares* in respect of which income (net of any tax deducted or accounted for by the *ICVC*) is credited periodically to capital under *CIS* 9.2.4R (Annual distribution to accumulation shares or accumulation units); ~~and~~
- (f) currency class gross accumulation shares, which are *currency class shares* in respect of which income is credited periodically to capital under *CIS* 9.2.4R, but, in accordance with relevant tax law, without deduction by the *ICVC* of any income tax; and
- (g) limited issue shares which will also be shares of another class.

What are limited issue shares?

2.4.5A G (1) Limited issue shares are a class of share that may only be issued if permitted by the instrument of incorporation. Sales by the ACD will also need to be restricted by the instrument of incorporation, although there need be no restriction on the ACD's sale of shares held in its "box" (see CIS 4.1.4G(3)) as a result of a previous redemption or an issue to the ACD when shares were available for issue. The issue and sale of limited issue shares may be confined to the occasion or occasions or up to the amount or value provided for by the prospectus.

2.4.5A G (2) ICVCs that are umbrella schemes are reminded of the requirements under section 235(4) of the Act when setting up sub-funds with limited issue shares. Accordingly, when an umbrella scheme is considering setting up one or more sub-funds to issue limited issue shares then it will also need to have in addition two or more sub-funds issuing shares which are not limited issue shares to enable holders to exchange rights between the latter sub-funds. It is, therefore, not possible for an umbrella scheme to consist of only two sub-funds in circumstances where, one or more of those sub-funds issues limited issue shares. However, it is possible for an umbrella scheme, but only for the limited period specified in CIS12.5.5 (An ICVC with only one sub-fund), to consist of one sub-fund and for this sole sub-fund to issue limited issue shares. These requirements should be provided for in the instrument of incorporation of the ICVC.

Limited issue shares: requirements

2.4.5B R (1) The ACD must ensure that limited issue shares are not in issue at the same time as any shares in the same ICVC or (in the case of an ICVC that is an umbrella scheme) sub-fund that are not limited issue shares.

- (2) After any *initial offer* of a *class* of *limited issue shares* or, if there is no *initial offer*, the time at which *shares* of that *class* are first *issued*, a subsequent *issue* of *shares* of that *class* must not be made unless:
- (a) the *ACD* is satisfied on reasonable grounds that the proceeds of that subsequent *issue* can be invested without compromising the *ICVC's* or *sub-fund's* investment objective or adversely affecting its future investment performance; and
- (b) that subsequent *issue* will not materially prejudice the existing holders of that *class* of *shares*.
- (3) The restrictions relating to any *class* of *limited issue shares* in a *sub-fund* must not prevent the *holder* of *shares* in that, or *holders* of *shares* in any other, *sub-fund* from exchanging those *shares* for *shares* in at least one other *sub-fund* of the *umbrella scheme*.

2.6.1 R This section (*CIS* 2.6) applies to the ~~types~~ classes of *units*, which may exist within an *AUT*.

2.6.2 R (3) ~~Each *unit* must be either an *income unit* or an *accumulation unit*.~~

Every *unit* must be either:

(a) an *income unit*; or

(b) an *accumulation unit*; or

(c) a *limited issue unit* that is also an *income unit*; or

(d) a limited issue unit that is also an accumulation unit.

- (4) The *AUT* will consist of *income units* only unless the *trust deed* provides, or the *manager* decides, under a power contained in the *trust deed*, that the *AUT* will consist of ~~the other class or of both~~ another class, or other classes, of unit.

What are limited issue units?

- 2.6.3 G (1) Limited issue units are a class of unit that is permitted in an *AUT*. Limited issue units may only be issued if permitted by the trust deed. Sales by the manager will also need to be restricted by the trust deed, although there need be no restriction on the manager's sale of units held in its "box" (see CIS 4.1.4G(3)) as a result of a previous redemption or an issue to the manager when units were available for issue. The issue and sale of limited issue units may be confined to the occasion or occasions or up to the amount or value provided for by the prospectus.
- (2) *AUTs* that are umbrella schemes are reminded of the requirements under section 235(4) of the Act when setting up sub-funds with limited issue units. Accordingly, when an umbrella scheme is considering setting up one or more sub-funds to issue limited issue units then it will also need to have in addition two or more sub-funds issuing units which are not limited issue units to enable holders to exchange rights between the latter sub-funds. It is, therefore, not possible for an umbrella scheme to consist of only two sub-funds in circumstances where, one or more of those sub-funds issues limited issue units. These requirements should be provided for in the trust deed of the *AUT*.

Limited issue units: requirements

- 2.6.4 R (1) The *manager* must ensure that *limited issue units* are not in *issue* at the same time as any *units* in the same *AUT* or (if the *AUT* is an *umbrella scheme*) *sub-fund* that are not *limited issue units*.
- (2) After any *initial offer* of a *class* of *limited issue units* or, if there is no *initial offer*, the time at which *units* of that *class* are first *issued*, a subsequent *issue* of *units* of that *class* must not be made unless:
- (a) the *manager* is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the *AUT's* or *sub-fund's* investment objective or adversely affecting its future investment performance; and
- (b) that subsequent *issue* will not materially prejudice the existing holders of that *class* of *units*.
- (3) The restrictions relating to any *class* of *limited issue units* in a *sub-fund* must not prevent the holder of *units* in that or holders of *units* in any other *sub-fund* from exchanging those *units* for *units* in at least one other *sub-fund* of the *umbrella scheme*.

2.7 Undesirable and misleading names

2.7.1 R This section (CIS 2.7) applies to *authorised fund managers*.

2.7.2 G (1) Under section 243 of the *Act* and regulation 15 of the *OEIC Regulations*:

- (a) the name of an *authorised fund* must not be undesirable or misleading; and
- (b) in the case of an *ICVC*, its aims must be reasonably

capable of being achieved and, in the case of an *AUT*, its purpose must be reasonably capable of being successfully carried into effect.

- (2) In order to be satisfied that section 243 of the *Act* and regulation 15 of the *OEIC Regulations* are complied with, the *FSA* will, when considering an application for authorisation of an *ICVC* or *AUT*, or considering an alteration to an *authorised fund* under section 251 of the *Act* or Regulation 21 of the *OEIC Regulations*, take into account the principles in (3) and (4).
- (3) The name of an *authorised fund* should not include the word "guaranteed" unless:
- (a) the guarantee is given by an *authorised person* or a *person* authorised by a *Home State regulator* or a *person* subject to prudential supervision by a *regulatory body* in accordance with provisions equivalent to the *Capital Adequacy Directive* or the *Insurance Directives* other than the *authorised fund manager* or the *depository*;
 - (b) the *authorised fund manager* can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
 - (c) the guarantee covers all *holders* within the *authorised fund* and the guarantee is legally enforceable by each *holder* who is intended to benefit from it or by a *person* acting on that *holder's* behalf;
 - (d) the guarantee relates to the total amount paid for a *unit* which for these purposes includes any *preliminary charge* or *redemption charge* or any other costs of buying or

selling units in the *authorised fund*;

- (e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and
 - (f) where the guarantee applies to different *classes of unit*, the guarantee is identical in its application to all *classes* except for the differences attributable to income already received or charges already suffered by the different *classes of unit*.
- (4) The name of an *authorised fund* may indicate a guaranteed capital return or income return or both but only if the total amount paid for a *unit* is guaranteed in accordance with (3).
- (5) The name of an *authorised fund* should not include words implying a degree of capital security (such as "capital protected" or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *prospectus* and (a) or (b) below is satisfied:
- (a) the principles in (3) are satisfied except that for the purposes of (3)(d) the guarantee may relate to an amount not materially less than the total amount paid for a *unit*; or
 - (b) the investment objective and investment policy for the *authorised fund* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.

(6) When determining whether (5) is complied with, the FSA will take into account whether the degree of capital security implied by the name fairly reflect the nature of the arrangements for providing that security. This assessment will take place on a case by case basis.

2.7.3 R The authorised fund manager must ensure that the name of a sub-fund or of a class of share is not undesirable or misleading.

2.7.4 G When deciding whether CIS 2.7.3R is complied with the FSA will take into account the principles in CIS 2.7.2G (3), (4) and (5) as if they related to the name of a sub-fund or share class as well as to the name of an authorised fund. However, it should be noted that CIS 2.7.3R applies generally and not just to the names that include the words "guaranteed" or "capital protected".

2.8 Guarantees and Capital Protection
Application

2.8.1 R This section (CIS2.8) applies to authorised fund managers and depositaries.

Conflicts of interest

2.8.2 R If there is any arrangement intended to result in a particular capital or income return from a holding of units in an authorised fund, or any investment objective of giving protection to the capital value of, or income return from, such a holding, that arrangement or protection must not be such as to cause the possibility of a conflict of interests as between:

(a) holders and the authorised fund manager or depositary; or

(b) holders intended to benefit from the arrangement and holders not intended to benefit from the arrangement.

3.5.2 R Table Contents of the prospectus

This table belongs to CIS 3.5.2R

5 ...

(4) where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required (for instance, if an investor does not satisfy the residence condition for income to be paid or accumulated without tax being deducted), in what circumstances it may be required; ~~and~~

(5) in the case of an *AUT*, the fact that the nature of the right represented by units is that of a beneficial interest under a trust; and

(6) in the case of a class of limited issue shares or limited issue units, the restrictions on the issue and sale of those shares or units.

...

24 (1) In the case of an *umbrella scheme*:

(a) that a *holder* is entitled to exchange *units* in one *sub-fund* for *units* in any other *sub-fund* (other than limited issue units or limited issue shares);

...

...

26 Additional information

Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *manager* of an *AUT*, or which the *directors* or *manager* would have obtained by the making of reasonable enquiries:

- (1) which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating; ~~and~~
- (2) including a statement of any risks which investment in the *authorised fund* may reasonably be regarded as presenting for reasonably prudent investors of moderate means; and
- (3) including, if there is any arrangement intended to result in a particular capital or income return from a holding of units in the authorised fund, or any investment objective of giving protection to the capital value of, or income return from, such a holding:
 - (a) details of that arrangement or protection;
 - (b) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;
 - (c) a description of the risks that could affect achievement of that return or protection; and
 - (d) details of the arrangements by which the authorised fund manager will notify holders of any action required by the holders to obtain the benefit of the guarantee, if appropriate; these arrangements must provide for notice to be given a reasonable amount of time before the action is

required.

4.3.5 R (2) If, on receiving instructions to *issue* or cancel *units*, the *trustee* is of the opinion that (in the case of an *issue*) the *issue* would be in breach of a restriction on *issue* relating to a *class* of *limited issue shares* or *limited issue units* or that it is not in the interests of *unitholders* that:

...

4.4.3 R (3) Paragraph (1) does not apply to *units* of any *class*:

...

(b) if the *sale* of *units* of that *class*:

(i) _____ is prohibited by the *rules* in CIS 13 (Suspension and ~~termination~~ resumption of dealings); or

(ii) _____ would breach a restriction on *sale* applicable to a *class* of *limited issue shares* or *limited issue units*.

4.5.3 R (7) Paragraph (1) does not apply if the *issue* would breach a restriction on *issue* applicable to a *class* of *limited issue shares* or *limited issue units*.

8.5.5 R (1) No payments may be made out of the *scheme property* of an *AUT*...

...

(j) any payment permitted by CIS 8.4.1R (Payment of liabilities on transfer of assets); ~~and~~

(k) value added tax payable in connection with any of (a) to (j); and

(l) _____ any costs incurred in connection with obtaining a

guarantee for the *scheme's* capital value.

11.4.4 R (4) This sub-paragraph (4) applies in respect of an *authorised fund*, subject to sub-paragraph (5)...

...

(e) in the case of an *umbrella scheme*, to remove references to a *sub-fund*, following the approval of the *FSA* to a proposal to alter the *umbrella scheme* by removing that *sub-fund*; ~~or~~

(f) to introduce *limited issue shares* or *limited issue units* unless the directors (for an *ICVC*) or the *manager* and *trustee* (for an *AUT*) consider to do so would involve any holder or potential holder in any material prejudice; or

~~(g)~~ (g) to make any other changes to the *instrument constituting the scheme* which the *directors* (for an *ICVC*) or the *manager* and *trustee* (for an *AUT*) consider does not hold any holder or potential holder in any material prejudice

12.5.8 G Table Main provisions relating specifically to umbrella schemes

This table belongs to CIS 12.5.6G.

Rule/Guidance (CIS)	Subject matter
<u>2.4.5A G(2)</u>	<u>What are limited issue shares?</u>
<u>2.4.5B R(3)</u>	<u>Limited issue shares: requirements</u>
2.4.6R(2)	Rights of <i>share classes</i>
<u>2.6.3G(2)</u>	<u>What are limited issue units?</u>
<u>2.6.4R(3)</u>	<u>Limited issue units: requirements</u>

3.5.2 <u>R</u> (24)	Information to be contained in the <i>prospectus (umbrella schemes)</i>
4.4.3R(1)	<i>Authorised fund manager's obligation to sell</i>
4.7.4R(2)	Forward and historic pricing (single-pricing)
5.1.4(3)	Explanation of <i>CIS 5</i>
5.1.6G Note 2	Investment powers
5 <u>A</u> .2.12R	Investment in other <i>CIS</i>
5 <u>A</u> .2.16G	Significant influence and concentration
5 <u>A</u> .12R	General investment powers and restrictions
8.2.8R	Fee payable on switching
10.3.3(2) and (3)R; 10.3.4(2) & (3)R;	Annual and half-yearly reports
10.4.2(15) and (16)R and 10.4.3R	Report of the <i>directors/manager</i>
10.4.8R	Report of the auditor
10.5.2R(3)	Publication of reports
11.5.2R	<i>Schemes of arrangement</i>
13.1.3R(9)	Suspension and resumption of <i>dealings</i>
14.3R	Termination of a <i>sub-fund</i>
15.4.3R	<i>Manager's obligation to sell</i>
15.7.4R	Forward and historic pricing (dual-pricing)

15.3.9 R (2) If, on receiving instructions to *issue* or cancel *units*, the *trustee* is of the opinion that (in the case of an *issue*) the *issue* would be in breach of a restriction on *issue* relating to a *class* of *limited issue units* or that it is not in the interests of *unitholders* that:

(a) *units* should be issued

(b) *units* should be cancelled

(c) *units* should be issued or cancelled in the number requested by the *manager*;

the *trustee* must give notice to the *manager* that it refuses to *issue* or, as the case may be, cancel, all, or a specified number of, the *units*.

15.4.3 R (3) Paragraph (1) does not apply to *units* of any *class*:

(a) if no *units* of that *class* are in *issue*; or

(b) ~~if the sale of *units* of that *class* is prohibited by CIS 13 (Suspension and termination).~~
if the sale of *units* of that *class*:

(i) is prohibited by the rules in CIS 13 (Suspension and resumption of dealings); or

(ii) would breach a restriction on *sale* applicable to a *class* of *limited issue units*.

15.5.3 R (7) Paragraph (1) does not apply if the *issue* would breach a restriction on *issue* applicable to a *class* of *limited issue units*.

16.1.5A D An application for an *authorisation order* in respect of an *ICVC* must include details of:

- (a) any arrangement intended to result in a particular capital or income return from a holding of *units* in the *ICVC*; and
- (b) any investment objective of giving protection to the capital value of, or income return from, such a holding of *units* in the *ICVC*.

16.1.7A D An application for an *authorisation order* in respect of an *AUT* must include details of:

- (a) any arrangement intended to result in a particular capital or income return from a holding of *units* in the *AUT*; and
- (b) any investment objective of giving protection to the capital value of, or income return from, such a holding of *units* in the *AUT*.

Annex B
Amendments to the Conduct of Business sourcebook

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

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

1 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies: The COB provisions in Table COB TR2 with the labels indicated		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1.1	<i>ETP1</i>	R	<p>Transitional Relief</p> <p>(1) A pre-N2 <i>firm</i> will not contravene any of the provisions labelled <i>ETP1</i> in Table <i>COB TR 2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement, subject to any modification wherever appropriate, to take account of the passing of the <i>Act</i>.</p>	<p>(1) <i>commencement</i> to 30 June 2002, except as specified in (2) and (3) below;</p> <p>(2) for <i>COB 9.3.105R</i>, from <i>commencement</i> to 31 December 2002;</p> <p>(3) for <i>COB 3.9.10R</i>, <i>COB 4.2.15E (7)</i>, <i>COB 5.3</i>, <i>COB 5.7</i>, <i>COB 6.1</i> to</p>	<i>commencement</i>

			<p>(2) Paragraph (1) does not apply to the following:</p> <p>...</p> <p><u>(g) (from 1 November 2002)</u></p> <p><u>COB 6.5.40R(3)(m) and</u></p> <p><u>(n) (Further information for life policies, schemes, insurance or equity ISAs, PEPs and stakeholder pensions).</u></p>	6.8 until a date yet to be specified.	
--	--	--	--	---------------------------------------	--

3.8.7 G (2) ~~(a)~~ — Except in relation to *life policies* providing guaranteed benefits, or *deposits*, the description of an *investment* as ‘guaranteed’ should be used only if there is a legally enforceable arrangement with a third party to meet a claim in full. In such cases sufficient details about the guarantor and the guarantee should be provided before a *person* enters into a transaction relating to the *investment* to enable him to make a fair assessment of the value of the guarantee. A guarantee to the *directors* of a company that issues an *EIS share* is not a guarantee to a *person* invested in the relevant *Enterprise Investment Scheme*.

(a) Except in relation to *life policies* providing guaranteed benefits, or *deposits*, the description of an *investment* as ‘guaranteed’ should only be used where there is a legally enforceable arrangement with a third party to meet the claim in full. In such cases sufficient details about the guarantor and the guarantee should be provided before a *person* enters into a transaction

relating to the investment to enable him to make a fair assessment of the value of the guarantee.

(b) Where the investment is in units of an authorised fund the guarantee should be given by a third party other than the authorised fund manager or the depositary. Firms should note that COB 6.5.40R(3)(m) requires specific information to be included in the key features of an authorised fund in respect of any guarantee or other arrangement intended to result in a particular capital or income return from a holding of units or shares in that authorised fund and in respect of any investment objective of giving protection to the capital value or income return from such a holding. CIS 3.5.2R 26 requires similar information to be contained in the prospectus of an authorised fund. CIS 2.7.2G contains guidance on when the name of an authorised fund should not include the word "guaranteed".

(c) A guarantee to the directors of a company that issues an EIS share is not a guarantee to a person invested in the relevant Enterprise Investment Scheme.

6.5.40 R (3) for regulated collective investment schemes...

...

(l) in relation to SDRT provision:

(ii) Whether the authorised fund manager's policy is such that an SDRT provision may be imposed;

(m) if there is any arrangement intended to result in a particular capital or income return from the units or shares or any investment objective of giving protection to their capital value or income return:

- (i) details of that arrangement or protection;
 - (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the guarantee; and
 - (iii) a description of the risks that could affect achievement of that return or protection including details of what happens when an investment is encashed before the expiry of any related guarantee or protection;
- (n) if there is a class of *limited issue shares* or *limited issue units*, a summary of the restrictions on the issue and sale of those *shares* or *units*.

Annex C
Amendments to the Glossary

Amend the following definitions as shown (underlining indicates new text and striking through indicates deleted text).

- approved bank* (except in CIS) (in relation to a bank account opened by a *firm*):
- (a) if the account is opened at a branch in the *United Kingdom*:
 - (i) the Bank of England; or
 - (ii) the central bank of a member state of the *OECD*; or
 - (iii) a *bank*; or
 - (iv) a *building society* which offers, unrestrictedly, banking services; or
 - (v) a bank which is supervised by the central bank or other banking regulator of a member state of the *OECD*; or
 - (b) if the account is opened elsewhere:
 - (i) a bank in (a); or
 - (ii) a *credit institution* established in an *EEA State* other than in the *United Kingdom* and duly authorised by the relevant *Home State Regulator*; or
 - (iii) a bank which is regulated in the Isle of Man or the Channel Islands; or
 - (c) a bank supervised by the South African Reserve Bank; or
 - (d) any other bank that:
 - (i) is subject to regulation by a national banking regulator;
 - (ii) is required to provide audited accounts;
 - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and
 - (iv) has an annual audited report which is not materially qualified.
- (in CIS) any person falling within (a-c).

<i>eligible</i>	(in <i>CIS</i>) (in relation to a securities market or a derivatives market) a market that satisfies the requirements in <u><i>CIS</i> 5.2.12R or <i>CIS</i> 5A.3.3R (Eligible markets: requirements) in relation to schemes falling under <i>CIS</i> 5 or <i>CIS</i> 5A respectively.</u>
<i>geared securities scheme</i>	a regulated collective investment scheme where the policies which the operator adopts or proposes to adopt mean that as a result of investment in <u>warrants or derivatives</u> , movements in prices of <i>units</i> are likely to be amplified significantly.
<i>higher volatility fund</i>	(a) a geared futures and options scheme, a geared securities scheme, or a warrant scheme;
<u>limited issue share</u>	<u>a share of a class the issue of which is restricted by reference to:</u> (a) <u>the occasion or occasions on which shares of that class may be issued; or</u> (b) <u>the amount or value of shares that may be issued.</u>
<u>limited issue unit</u>	<u>a unit of a class the issue of which is restricted by reference to:</u> (a) <u>the occasion or occasions on which units of that class may be issued; or</u> (b) <u>the amount or value of units that may be issued.</u>
<i>transferable security</i>	(in <i>CIS</i>) a security that is not an investment excluded by an investment within <i>CIS</i> 5.2.9R (Transferable securities) or <i>CIS</i> 5A.2.9R (Transferable securities)" in relation to schemes falling under <u><i>CIS</i> 5 or <i>CIS</i> 5A respectively.</u>

DEALING AS PRINCIPAL INSTRUMENT 2002

Powers exercised

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

Commencement

- C. This instrument comes into force as follows:
 - (1) the amendments in Annex B come into force on 1 May 2003;
 - (2) the remainder of this instrument comes into force on 1 December 2002.

Amendments coming into force on 1 December 2002

- D. SYSC, GEN and SUP are amended in accordance with Annex A to this instrument.

Amendments coming into force on 1 May 2003

- E. MAR, SUP and the Glossary are amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Dealing as Principal Instrument 2002.

By order of the Board
21 November 2002

Annex A

Amendments to SYSC, GEN and SUP

coming into force on 1 December 2002

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

Amendments to Senior management arrangements, systems and controls

SYSC 3.2.8 R (1) A *firm* which carries on *designated investment business* with or for *customers* must allocate to a *director* or *senior manager* the function of:

- (a) having responsibility for oversight of the *firm*'s compliance;
and
- (b) reporting to the governing body in respect of that responsibility.

...

Amendments to the General provisions

General Provisions

Transitional provisions

2 Table

(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
...					
23	Every rule in the <i>Handbook</i> made by the <i>FSA</i>	R	Dealing as principal by certain grandfathered firms ...	From 20 December 2001 until 19 December 2002 <u>30 April 2003</u>	Various dates

(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> ...	G	(1) Paragraph 23 applies to ...	From 20 December 2001 until 19 December 2002 30 April 2003	Various dates

Amendments to the Supervision manual

SUP 3.1.2R Table Applicable sections (see ~~SUP~~ SUP 3.1.1R)

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...		
(4) <i>Bank or building society which in either case carries on <u>designated investment business (Note 2A)</u></i>	SUP 3.1 – SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5) <i>Bank or building society which in either case does not carry on <u>designated investment business (Note 2A)</u></i>	SUP 3.1 – SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
...		
<p>...</p> <p>Note 2A = For this purpose, <i>designated investment business</i> does not include either or both:</p> <p>(a) <u>dealing which falls within the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc) (or agreeing to do so); and</u></p> <p>(b) <u>dealing in investments as principal (or agreeing to do so):</u></p> <p> (i) <u>by a firm whose <i>permission to deal in investments as principal</i> is subject to a <i>limitation</i> to the effect that the firm, in carrying on this regulated activity, is limited to entering into transactions in a manner which, if the firm was an <i>unauthorised person</i>, would come within article 16 of the <i>Regulated Activities Order</i> (Dealing in contractually based investments); and</u></p> <p> (ii) <u>in a manner which comes within that <i>limitation</i>; having regard to article 4(4) of the <i>Regulated Activities Order</i> (Specified activities: general: core investment services by investment firms).</u></p> <p>...</p>		

...

SUP 10.7.9G SYSC 3.2.8R provides that a *firm* which carries on *designated investment business* with or for customers must allocate to a *director* or *senior manager* the function of having responsibility for oversight of

the *firm's* compliance and reporting to the *governing body* in respect of that responsibility.

Annex B

Amendments to MAR, SUP and the Glossary

coming into force on 1 May 2003

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

Amendments to the Market conduct sourcebook

MAR 3.1.2A R In MAR 3.1.2R, the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc) is to be disregarded in determining whether dealing in investments as principal (or agreeing to do so) is a regulated activity.

Amendments to the Supervision manual

SUP 10.9.10R (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).

...

...

SUP 10.9.12R (1) The *significant management (other business operations) function* is the function of acting as a *senior manager* with significant responsibility for a significant business unit which carries on:

- (a) dealing in investments as principal, disregarding article 15 of the Regulated Activities Order (Absence of holding out etc), (or agreeing to do so); or
- (b) an activity which is not designated investment business.

...

Amendments to the Glossary

Amend the following definition as shown:

*inter-
professional
business*

the business of a *firm*:

(a) when it carries on:

- (i) *regulated activities*; or
- (ii) related *ancillary activities*;

to the extent that the *regulated activity* that the *firm* is carrying on is:

- (A) *dealing in investments as principal*; or
- (B) *dealing in investments as agent*; or
- (C) acting as an *arranger*; or
- (D) giving *transaction-specific advice* or agreeing to do so;

but only if that activity is:

- (I) in or in respect of an *inter-professional investment*;
- (II) undertaken with or for a *market counterparty*; and
- (III) carried on from an establishment maintained by the *firm* in the *United Kingdom*;

(b) but excluding the carrying on of the following activities:

- (i) the *approval* by a *firm* of a *financial promotion*;
- (ii) activities carried on between *operators*, or between *operators* and *depositaries*, of the same *collective investment scheme* (when acting in that capacity);
- (iii) *corporate finance business*;
- (iv) *safeguarding and administering investments* and *agreeing to carry on that regulated activity*;

in this definition, the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc) is to be disregarded in determining whether *dealing in investments as principal* or *agreeing to do so*) is a *regulated activity*.

**GENERAL PROVISIONS AND GLOSSARY (AMENDMENT NO 5)
INSTRUMENT 2002**

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 213 (The compensation scheme); and
 - (4) section 214 (General).
- 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 immediately and affects all claims for compensation determined by the compensation scheme on or after 21 November 2002.

Amendment to the Glossary

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

Citation

- E. This instrument may be cited as the General Provisions and Glossary (Amendment No 5) Instrument 2002.

By order of the Board
21 November 2002

Annex

Amendment to the Glossary

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

deposit (1) (except in *COMP*) the *investment*, specified in article 74 and defined in articles 5(2) and 5(3) of the *Regulated Activities Order*, which is in summary: a sum of money (other than one excluded by any of articles 6 to 9 of the *Regulated Activities Order*) paid on terms:

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the *person* making the payment and the *person* receiving it; and
- (b) which are not referable to the provision of property (other than currency) or services or the giving of security;

in this definition, money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if:

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(2) (in *COMP*) the *investment* within (1), but including a sum of money that would otherwise be excluded:

- (a) by article 6(1)(a)(ii) of the *Regulated Activities Order*, where the *person* making the payment is a *credit union* (unless the *person* receiving the payment is also a *credit union*); or
- (b) by article 6(1)(d) of the *Regulated Activities Order*, where the *person* receiving it is a *credit union*.

**INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES
(AMENDMENT NO 3) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority amends the Interim Prudential sourcebook for building societies 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 provisions of the Act relevant to making rules and 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 January 2003.

Amendments to the Interim Prudential sourcebook for building societies

- D. IPRU(BSOC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Building Societies (Amendment No 3) Instrument 2002.

By order of the Board
21 November 2002

ANNEX

AMENDMENTS TO THE INTERIM PRUDENTIAL SOURCEBOOK FOR BUILDING SOCIETIES

In this Annex, underlining indicates new text and striking through indicates deleted text. Entire new sections of text (such as Annex 4B in section 1 of this Annex) are not underlined.

IPRU(BSOC) Volume 1

1.11.1G ...The FSA will discuss with societies where solo consolidation is considered appropriate or necessary, but see section 1.12 , which sets out the FSA's criteria for solo consolidation of mortgage subsidiaries. The FSA also applies these criteria to other types of subsidiaries where they are proposed for solo consolidation. Where solo consolidation occurs...

...

...

1.12.1G (2) ~~are wholly owned by the society~~ are at least 75 per cent owned by the society:...

...1 SOLVENCY CONTENTS...

1.18...

1.19

Credit derivatives 17

...1.18...

1.19

Credit Derivatives

1.19.1 G

Where societies use credit derivatives, provided that they meet the criteria set out in Annex 4B to chapter 4, the risk weighting of an asset should be based on the position after taking account of the credit derivative applied to that asset.

...

2.6.9 G ...

Controllers

2.6.10 G

Societies issuing PIBS should be aware of the requirements on controllers and potential controllers to notify the FSA under sections 178 and 190 of the Act of the acquisition of, or a change in, control, where the exemption set out in the Financial Services and Markets Act 2000

(Controllers)(Exemption)(No.2) Order (SI 2001/3338) does not apply. Guidance on when the exemption does not apply is set out in SUP 11.3.2A G. Societies should also be aware of the requirements on firms in SUP 11.4 to notify the FSA of changes in control, as well as those in SUP 16.4 to submit an annual controller report to the FSA.

...

3.3.1G

...and comply with the Principles for Approved Persons and the Code of Practice. The attention of societies is drawn to the distinction between the controlled functions of director and non-executive director set out in SUP 10.6.2 to 10.6.10.

**...4 FINANCIAL RISK
MANAGEMENT
CONTENTS...**

4A...

4B

Credit Derivatives 29

...

4.3.8G (4) ...

(5)

Credit risk: the control and mitigation of the risk of borrower default, whether relating to wholesale assets, such as large commercial loans or items of liquidity, or to retail assets such as residential mortgages. Societies should take account of the requirements at 6.2.1R and 6.2.2R for assessing the ability and willingness of borrowers to repay their loans, and for a board-approved policy statement on lending. 5B.2.4G provides guidance on credit risk on liquidity.

...

4.4.6G

The Treasury may, by negative resolution order, amend the £100,000 transaction limit and may add factors to, or remove factors from, the list in 4.4.5.(2) above. The factor relating to credit worthiness was added to the original list in section 9A(4)(b) by the Building Societies (Restricted Transactions) Order 2001 (SI 2001/1826). The Treasury may, by affirmative resolution order, make more significant amendments to section 9A.

...

...

4A.1.1G

...An outline description of each approach is set out below, and a table 4A.G “Summary of the five approaches” at the end of this Annex summarises the key features.

...

...

4A.4.4G ...

- (1) Exchange traded futures/options and FTSE (or similar) OTC swaps/options (options to be purchased only; ~~and~~
- (2) foreign exchange swaps and forward contracts, used to hedge currency funding- ; and
- (3) credit derivatives.

4A.7G Summary of the five approaches

POLICY APPROACH	RISK MANAGEMENT	RISK ANALYSIS	HEDGING INSTRUMENTS	FUNDING	PRUDENTIAL & OTHER LIQUIDITY	LOAN ASSETS
ADMINISTERED	CE (+FD) & board Dealing/settlement segregation (minimum 2 persons)	None (But, if fixed rate liquid assets held, then mark to market value and sensitivity analysis required)	None	Sterling only Deposit Liabilities < 35%SDL No fixed rate (> 1 Year) provided that funds received from the wholesale market do not exceed 10% SDL	Sterling only No non-marketable > 1 Yr. No marketable > 5 Yrs	No fixed rate (1 Yr. +)
MATCHED	CE/FD (or FM), (ALCO) & board Dealing/settlement segregation (minimum 2 persons)	Matching report & Monthly (minimum) Gap analysis (Reserves NFR) - No structural hedging No Interest View Minimal limits (to cover residual balances + pipeline products only)	Interest rate & FTSE index Swaps/FRAs/ Caps/Collars/ Floors (purchase only)	Sterling only Deposit Liabilities <35%SDL provided that funds received from the wholesale market do not exceed 25% SDL	Sterling only	Limit on fixed rate (1 Yr. +)
EXTENDED	(CE)/FD/Treasurer + ALCO & board Treasury segregation (front office/back office)	Monthly (minimum) Static Gap (& Static Simulation) - Reserves hedged Interest view Sensitivity limits (earnings, economic value & basis risk) No FX mismatch	Interest Rate & FTSE index Swaps/FRAs/ Caps/Collars/ Floors/Futures/FTSE Options (purchase only) FX Swaps/Forward Contracts Retail derivatives & FX contracts permitted. <u>Credit derivatives</u>	Sterling + Currency Minimum level of administered rate liabilities	Sterling + Currency (limited range of currency instruments)	Minimum Level Of administered Rate Assets
COMPREHENSIVE	FD/Treasurer/Risk Manager + ALCO & board Treasury segregation (front office/middle office/back office)	Very frequent Gap (Reserves Hedged)+ Duration/ Simulation/ (VaR.) Sensitivity limits (earnings & economic value) Basis risk limits FX mismatch <2% Own Funds	Interest Rate & FTSE index Swaps/FRAs/ Caps/Collars/ Floors/Futures/FTSE Options Exotic Options FX Swaps/Forward Contracts/ Options Retail derivatives & FX contracts permitted. <u>Credit derivatives</u>	Sterling + Currency	Sterling + Currency	Sterling + Currency
TRADING	FD/Treasurer/Risk Manager /+ Market Risk Committee/ ALCO & board Treasury segregation (front office/middle office/back office) + banking book/ trading book	Banking Book: Daily (minimum) Gap (Reserves Hedged)+ Duration/ Simulation/ (VaR) Trading Book: VaR - CAD capability	Interest Rate & FTSE index Swaps/FRAs/ Caps/Collars/ Floors/Futures/FTSE Options/ Exotic Options Retail derivatives/FX permitted. FX Swaps/Forward Contracts/ Options Equity Options <u>Credit derivatives</u>	Sterling + Currency	Sterling + Currency	Sterling + Currency

ANNEX 4B

4B Credit Derivatives

4B.1 Introduction

4B.1.1 G This annex contains guidance for building societies on credit derivatives.

4B.1.2G This annex consists of the guidance for banks on credit derivatives (chapter CD of IPRU(BANK)) as modified by additional guidance specific to building societies set out below.

4B.2 Additional Guidance for Building Societies

4B.2.1G This annex sets out additional guidance on credit derivatives for building societies over and above that set out in chapter CD of IPRU(BANK). These additions mostly arise as a result of the particular constitutional structure of building societies and the provisions of the 1986 Act. The FSA will expect societies, when planning to use credit derivatives, to consider these issues in formulating their policies.

4B.2.2G A building society intending to use credit derivatives should have effective systems to measure, record, monitor and control the exposure to each protection seller that is incurred and to identify any residual exposure (net of protection) to the underlying assets for which it is buying protection.

4B.2.3G As with securitisation, the extensive use of credit derivatives to facilitate risk transfer may lead to a change in the profile of the assets for which the society retains the full risk. The FSA will consider this, where relevant, in assessing a society's threshold solvency ratio.

4B.2.4G Nothing in chapter CD should be taken as contradicting the statutory requirements under the 1986 Act, in particular section 9A, which take precedence, as necessary, over chapter CD.

4B.2.5G The guidance contained in chapter CD applies to building societies with the following modifications:

- (1) All references to banks should be taken to include building societies.

- (2) References to the Capital Overview and Large Exposures chapters of IPRU(BANK) do not apply to building societies. They should be taken to refer, instead, to chapters 1 (Solvency) and 7 (Large Exposures) in Volume 1 of IPRU(BSOC). The guidance in chapter CD relating to capital requirements, large exposures, liquidity or solvency should be construed in accordance with the relevant IPRU(BSOC) rules and guidance.
- (3) References to the trading book contained elsewhere in the chapter, apart from the material set out in 4B.2.7 below, will not normally be relevant to building societies

4B.2.6G Sections 1, 2, 3, 5, 9 and 10 of chapter CD will normally apply to all building societies proposing to use credit derivatives. Section 8, which deals with credit spread options, is unlikely to be relevant to building societies.

4B.2.7G Sections 4, 6 and 7 of chapter CD will not normally be relevant to building societies, because:

- (1) section 6 of chapter CD deals with banks as protection sellers, and because of the overriding provisions of section 9A of the 1986 Act, a building society can normally use credit derivatives only as a protection buyer and not as a protection seller.
- (2) sections 4 and 7, which deal with banking/trading book division, and trading book treatments, are unlikely to apply to building societies, because all derivatives are allocated to the banking book for building societies.

4B.2.8G Societies adopting the Extended, Comprehensive and Trading approaches (see Annex 4A) are free to use credit derivatives, but not all such societies may wish to do so. The FSA considers that those societies on the Administered or Matched approaches should not use credit derivatives.

...

- 5C.2G ... fall within the “liquid assets” heading in the annual accounts. The total should also include undrawn as well as drawn amounts under committed facilities provided to other societies. This measure is to be continuous.
- 5C.3 G The FSA expects societies to invest no more than 20% of their prudential liquidity or £5m, whichever is the higher (up to a limit of 5% SDL or £5m whichever is the higher) in aggregate holdings of other societies’ liabilities.
- 5C.4G ... Only the amount drawn down (lent) will constitute a liquid asset ~~and should be taken into account when calculating the aggregate holding of other societies’ liabilities.~~ but the whole amount counts towards the aggregate exposure to other societies’ liabilities as explained above.
- 5C.5G Smaller societies (with total assets of less than £1 billion), can be, as a sub-sector, exposed to collective funding risk. Such risk would be exacerbated if smaller societies relied on committed facilities from each other. Accordingly, it would not, in the FSA’s view, be prudent for smaller societies to rely on, or to provide, committed loan facilities from, or to, other smaller societies.

“CONTENTS...

...7.8 Exemptions...

...ANNEX 7A Form
LEPRI”

...

7.2.2G...

7.2.3G Where societies are protecting large exposures by the use of credit derivatives, they should have regard to section 10 of chapter CD of IPRU(BANK) (see Annex 4B).

...

7.5.3 ... Sections 1.11 and 1.12 sets out the criteria under which the FSA considers applications for solo consolidation ~~for mortgage subsidiaries. In other cases~~ Societies will need to explain on what basis they consider it appropriate or necessary for solo consolidation to be granted...

...

7.6.2R

...using the standard reporting form, LEPR1 -, contained in Annex 7A. Exposures falling within this category should also be reported quarterly by means of Table L of QFS1.

SENSITIVE: COMMERCIAL

**Building Society: Pre-Reporting Statement of Large Exposures Form
LEPR1**

Reporting Date:/...../20...

Name of Society:

Statement completed by:

Name: [BLOCK CAPITALS]

Address:

Post Code:

Position Held:

Signature:

Telephone:

Details of Large Exposure (£000)

The society wishes to take on the following exposure that represents more than 20% of its capital.

Lender Name	Name of counterparty or connected group	Actual Exposure	TOTAL Exposure	Security Value
.....

Please provide a brief description of the main elements of the proposed exposure

.....

.....

.....

.....

Own funds at latest financial quarter end:

Amount (£000)

SUBMISSION: This notification should be sent to the society's usual supervisory contact at the FSA.

Latest quarter end:/...../20...

...

8.3.2G

... They can consider other forms of insurance, such as excess of loss, self-insurance, and use of a captive insurance company. Credit derivatives may, appropriately used, provide an acceptable alternative to mortgage indemnity insurance (societies should refer to the guidance on credit derivatives set out at Annex 4B, which incorporates chapter CD from IPRU(BANK)).

...

CREDIT DERIVATIVES

1 INTRODUCTION

1.1 Legal Sources

1 The FSA's supervisory approach has been developed through consultation with market practitioners and other regulators internationally, and policy will be reviewed as the market continues to develop. There are no internationally agreed regulations explicitly covering credit derivatives under the Basel Accord and EU directives though the treatment of credit derivatives is relevant to the assessment of capital adequacy, and large exposures. The FSA aims to achieve consistency where possible with the capital and large exposures treatment of other similar instruments. The sources identified in the Legal Sources sections of the Capital Overview and Large Exposures chapters are relevant to this chapter.

2 The policy is set out in a separate chapter because it results from the application of a few general principles. Where these principles feed into the mechanism for calculating capital and large exposures, there are cross references to the relevant chapter of the IPRU (BANK).

1.2 Application

3 These obligations apply to all UK banks which use credit derivatives as either protection buyer or protection seller.

See s2.1

- a) Protection buyer and credit risk seller are used interchangeably, as are protection seller/credit risk buyer. These terms are defined below.

4 The policy set out in this chapter does not apply to overseas and EEA banks.

1.3 How this chapter is organised

5 Section 2 outlines basic types of credit derivative and the rationale for their use by banks.

Section 3 highlights risk management issues raised by credit derivatives.

Section 4 covers the trading book/banking book division and valuation.

Sections 5 and 6 cover factors determining the capital treatment of credit derivatives in the banking book for the protection buyer and

protection seller, respectively. This section does not cover credit spread options.

Section 7 covers the capital treatment of credit derivatives in the trading book, excluding credit spread options.

Section 8 covers the capital treatment of credit spread options.

Section 9 covers risk transfer requirements.

Section 10 covers factors determining exposures recorded for large exposures purposes.

2 DEFINITIONS, RATIONALE AND TYPES OF PRODUCT

2.1 Definitions and rationale

1 *Credit derivatives* is a general term used to describe various swap and option contracts designed to transfer credit risk on loans or other assets from one party, the *protection buyer*, to another party, the *protection seller*. The protection seller receives premium or interest-related payments in return for contracting to make payments to the protection buyer, which are linked to the credit standing of a *reference asset* or assets. The term credit derivative may also be used to describe cash instruments where repayment of principal is linked to the credit standing of a reference asset.

- a) *Protection buyer* and *credit risk seller* are used interchangeably in this chapter, as are *protection seller* and *credit risk buyer*.
- b) A *reference asset* is an asset to which payments under the credit derivative contract or instrument are linked; it is usually a security, but could also be a loan or another form of obligation (such as a counterparty exposure under an off balance sheet transaction).

2 Transfer of credit risk may be for the whole life of the reference asset or for a shorter period, and it may be for the full amount of the asset or part of it. A credit derivative may be referenced to a single asset or to a basket of obligations of a single *borrower* or several borrowers.

- a) *Borrower* and *obligor* are used interchangeably to describe the entity generating the reference asset.

3 Banks may use credit derivatives for a number of reasons. These include:

- reducing capital required to support assets on the balance sheet;
 - reducing *credit risk concentrations*;
 - freeing up credit lines;
 - creating *new assets and synthetic assets* to meet wider investor demand; and
 - managing assets on a portfolio basis.
- a) Credit derivatives may be used to reduce *credit risk concentrations* without damaging an existing relationship with the borrower, since there is no transfer of title of the asset.

- b) *New assets and synthetic assets* may widen investment opportunities by, for example, filling gaps in the maturity and credit quality spectrum and providing investment opportunities which some investors would otherwise be unable to access.

2.2 Types of credit derivative

2.2.1 General

4 There are four common types of credit derivative:

- credit default products;
- total return swaps;
- credit linked notes;
- credit spread options.

5 The following examples illustrate how A can assume credit risk on a bond issued by X using various types of credit derivative. B, the counterparty in these transactions, is assumed to own bond X, and is hedging (or laying off) the risk on it. B might, alternatively, have no existing exposure to bond X, in which case it would be taking an unhedged short position in bond X; or B might have an asset similar to bond X, in which case it would be partially hedging that *underlying asset*, but could be exposed to basis risk between the *underlying asset* and bond X (the *reference asset*).

- a) *An underlying asset* is the asset that a protection buyer is seeking to hedge, which is not necessarily identical to the reference asset of the credit derivative used.
- b) *Reference asset* is defined in section 2.1 above.

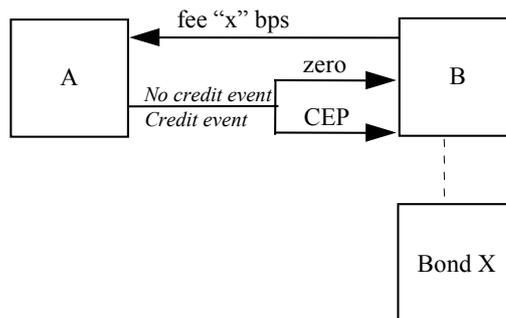
See s2.1

6 These examples assume that risk is transferred directly from the risk seller to the risk buyer. In practice, there is often an intermediate transfer to an *SPV*, which then issues notes to risk buyers.

- a) *SPV* - special purpose vehicle.
- b) Where the risk transfer is made through an unfunded credit derivative (credit default product or a total return swap), the vehicle often invests the funds received from the note issue in a *collateral security* in order to achieve a return on the cash; this return can be paid to investors in addition to the risk seller's payment for the protection.
 - i) *Collateral securities* are usually government or other bonds.

2.2.2 Credit default product

7 A sells credit protection to B for five years on \$50 million nominal of bond X. B pays A a fee of x basis points. Under the terms of the contract, if a defined *credit event* occurs on bond X, A will pay B the *credit event payment* 90 days after the event. If no credit event occurs, the contract will expire after 5 years without any payment from A to B.

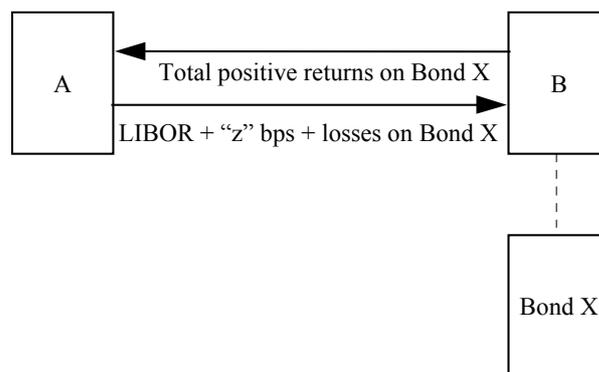


- a) Credit default products (CDPs) are structured so that a payout occurs only when a contractually defined *credit event* (or one of several events) occurs. Credit events normally include bankruptcy, and any payment default on the reference asset and reschedulings, but may also include lesser events such as ratings downgrades. In some contracts a pre-determined materiality (or loss) threshold must also be exceeded for the payment to be triggered.
- b) The *credit event payment* (CEP) is the amount that is paid following a credit event. This is defined in the contract, and is normally one of three types:
 - payment of par value in exchange for physical delivery of the reference asset; some contracts may allow delivery of a variety of assets of the reference name;
 - payment of a fixed amount (sometimes known as a *binary payout*); or
 - payment of par less recovery value. (The reference asset will normally retain some value after a credit event has triggered settlement of the contract. The recovery value is normally determined at a date up to three months after the credit event, by means of a dealer poll or auction.)
- c) Although CDPs may have some of the characteristics of an option, they are often documented as a swap and are treated as a swap by the FSA for capital purposes.

8 In the above example, A has assumed the default risk on bond X from B without funding the position. B has hedged its default risk on bond X, but has acquired a credit exposure to A, since B depends on A to make the credit event payment.

2.2.3 *Total return swap*

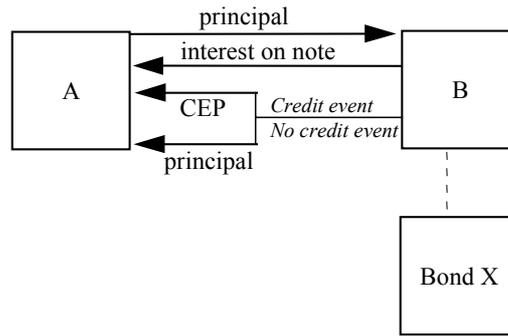
9 A and B enter into a total return swap (TRS) for five years referenced to a notional amount of \$50 million nominal of bond X. B makes periodic payments to A of all cashflows arising from bond X plus any increase in the market value of bond X since the last payment date. On the same dates, A makes payments to B of an interest rate related flow (e.g. LIBOR + z basis points) plus any decrease in the market value of bond X. (Payments may be exchanged on a net basis). If there is a defined credit event, the TRS will usually terminate and the credit event payment will be calculated as though the next normal payment date had been brought forward.



10 B has transferred to A the total performance of bond X (including market risk and default risk) for the duration of the contract, or until there is a credit event. A has assumed this risk without having to fund its position. A and B have acquired credit exposure to each other, since each depends on the other to make payments due under the swap.

2.2.4 *Credit linked note*

11 B issues \$50 million nominal of a five-year note referenced to bond X, and the note pays a fixed or floating rate interest. If no credit event occurs on bond X, the note will mature at par in five years. If a defined credit event occurs on bond X, the note will be redeemed for the credit event payment, 90 days after the credit event.



- 12 A has assumed the credit risk on bond X, and has to fund the position (in contrast to the credit default swap illustrated above). It has also acquired exposure to B of the full amount of the funding it has provided. B has hedged its risk on bond X without acquiring any credit exposure to A, as it has received full cash funding from A.

2.2.5 Credit spread product

- 13 Credit spread products are diverse. A typical example might be as follows: A sells to B a put option on \$50 million nominal of an asset swap on bond X, exercisable at any time in the next year, in exchange for a payment of premium. The option gives B the right to put the asset swap on bond X to A at a strike spread over a pre-determined benchmark rate.

- a) A credit spread option may include further features, for example, relating to a ratings downgrade of bond X.

- 14 A and B have acquired exposure to changes in the credit spread of bond X relative to the benchmark rate which are characteristic of a barrier option. B has also acquired credit exposure to A, since B depends on A to pay amounts due on exercise of the option.

3 RISK MANAGEMENT ISSUES

3.1 Introduction

1 Credit derivatives raise many of the same risk management issues as other new products, credit products, and derivatives. This section highlights areas that are of particular relevance to credit derivatives. Additional conditions to be met before risk transfer is recognised for capital adequacy purposes are set out in section 9.

3.2 Systems

2 Banks using credit derivatives should have adequate systems in place to manage the associated risks.

3 These are likely include:

- adequate management information systems to make senior management aware of the risks being undertaken. This might include information on the level of activity in each of the different products; the ability of the bank (if it is the risk buying organisation) to pursue the underlying borrower when a credit event payment has been triggered; and contractual characteristics of the products (such as fall-back provisions should a dealer poll fail to determine a recovery value following a credit event, and tailoring of standard documentation for particular transactions).
- procedures for ensuring that the credit risk of a reference asset acquired through a credit derivative transaction and any counterparty credit risk arising from an unfunded OTC credit derivative is captured within the bank's normal credit approval and monitoring regime. Banks should be able assess the initial credit risk involved in undertaking the transaction and also to monitor the credit risk on an on-going basis. Information asymmetry (between the buyer and seller of credit risk) may be a significant issue if there is no widely-traded asset of the reference obligor.
- systems to assess and take account of the possibility of default correlation between the reference asset and the protection provider.
- valuation procedures (including assessment and monitoring of the liquidity of the credit derivative and the reference asset) and procedures to determine an appropriate liquidity reserve to be held against uncertainty in valuation. This is particularly important for credit derivatives where the reference asset is illiquid (e.g., a loan), or if the derivative has multiple reference obligors.

3.3 Other operational risks

- 4 The FSA takes into account significant operational risks when setting a bank's minimum (or "trigger") capital ratio, and may in exceptional cases set an explicit capital requirement against such risk.
- 5 Banks should consider how to limit and monitor any legal and reputational risk associated with credit derivatives.
- a) Banks should consider, amongst other things, whether credit derivatives require regulation as insurance business in any of the relevant jurisdictions.
 - b) Banks should consider whether conflicts of interest might arise within the institution in respect of privileged information if there is no widely traded asset of the reference obligor.
 - c) Banks should ensure that transfer of credit risk through a credit derivative does not contravene any terms and conditions relating to the reference asset, and where necessary all consents have been obtained
 - d) Where credit risk to many obligors has been transferred as a package, the bank should consider whether the reputation of the bank might be damaged by subsequent deterioration in the quality of these assets

3.4 Liquidity

- 6 Where a bank has transferred significant credit risk using funded credit derivatives it should be able to demonstrate capability to refinance the exposures that have been transferred.
- a) For example, where the bank has bought protection of shorter maturity than the assets being protected, it should consider how it would obtain funding if a replacement contract were not to be found on maturity of the protection.
- 7 Where a bank has hedged significant credit risk using unfunded credit derivatives of shorter maturity than the underlying exposures, it should consider whether it would have sufficient capital to support the risk in the event of a replacement contract being unavailable immediately on maturity of the credit risk protection, or how such "rollover" risk could otherwise be avoided or limited.

3.5 Remaining asset base

See ch SE

- 8 As with securitisation, the extensive use of credit derivatives to facilitate risk transfer may lead to a change in the profile of the

assets remaining on a bank's supervisory balance sheet, in terms of both quality and spread. The FSA will consider these implications in assessing the bank's overall capital requirements.

4 TRADING BOOK/BANKING BOOK DIVISION

4.1 Introduction

4.1.1 *General principles*

1 Credit derivatives should meet the standard criteria applied to other financial instruments in order to be eligible to be held in a bank's trading book. The standard criteria include ability of the bank to mark to market positions daily on a prudent and consistent basis, and demonstration of trading intent. As with other financial instruments, inclusion of credit derivatives should be within each bank's trading book policy statement agreed with the FSA.

See s5, 6, 7 and 8

2 Credit derivatives not included in the trading book should be included in the banking book. Capital treatment of credit derivatives in the banking book is covered in sections 5, 6 and 8 and in the trading book in sections 7 and 8.

See ch CB

a) The criteria for the trading book are set out in the chapter on the trading book/banking book division.

See s9

b) The activity of issuing credit linked notes with trading intent is eligible to be included in the trading book subject to the risk transfer requirements set out in section 9.

c) Credit derivatives referenced to relatively illiquid reference assets (such as loans) are eligible to be included in the trading book, but an appropriate reserve against uncertainty in valuation should be agreed for illiquid credit risky positions in the trading book policy statement.

4.1.2 *Marking to market*

3 Where credit derivatives referenced to relatively illiquid assets are included in the trading book, the FSA may require significant extra capital to be held against uncertainty in valuation.

4.1.3 *Trading intent*

4 In assessing whether a bank has demonstrated trading intent in relation to credit derivatives business; the FSA may take into account the market structure available to support the business.

a) Factors taken into consideration could include how the positions are managed, the use of standard documentation and market conventions, the number of market makers in the product and in instruments hedging it, and the availability of screen prices.

5 BANKING BOOK - PROTECTION BUYER

5.1 Introduction

1 This section sets out the factors that determine the banking book capital treatment for a protection buyer. Capital needed will depend on the particular structure of the contract/instrument.

See s9 2 The following section assumes that the risk transfer conditions set out in section 9 of this chapter have been met.

See s8 3 This section does not apply to credit spread options. The capital treatment for credit spread options is set out in section 8.

5.2 Funded or unfunded

4 Where an asset is protected in full or in part by a *funded credit derivative*, the FSA recognises the transfer of credit risk by reducing the risk weighted exposure to the reference/underlying asset. The extent to which the risk weighted exposure can be reduced depends on the amount of the funding received and the other factors set out below.

a) A *funded credit derivative* usually refers to a credit linked note. However, both total return swaps and credit default products may also be structured so that exposure to the reference/underlying is funded at inception.

b) This treatment is parallel to that of a loan sub-participation.

See ch BC s3 5 Where an asset is protected in full or in part by an *unfunded credit derivative*, banks may choose to replace the risk weighting of the protected asset with the risk weighting of the counterparty to the credit derivative contract. The extent to which the risk weightings can be replaced depends on the amount of protection received under the contract and the other factors set out below.

a) An *unfunded credit derivative* usually refers to a total return swap or a credit default product.

b) This treatment is parallel to that of a guarantee.

c) If the risk weighting of the counterparty selling protection is higher than that of the protected asset, the risk weighting does not have to be increased.

6 *Materiality thresholds* may affect the amount of protection that is recognised. All credit derivatives involving materiality thresholds should be referred to the FSA.

- a) A *materiality threshold* may either determine the level of loss that must be reached before a credit event is triggered, or may reduce the amount of the payout.

5.3 Payout structure

7 Where the credit event payment is a fixed amount (or binary payout), exposure to the underlying is recognised as guaranteed/reduced by the amount that the bank will receive/retain if the credit event occurs.

8 Where the credit event payment is defined as par less a recovery amount or there is payment of par in exchange for physical delivery of the reference asset, exposure to the underlying asset can be recognised as guaranteed/reduced to zero for the amount protected under the contract.

5.4 Asset mismatch

9 Where the reference asset and the underlying are the same, protection will be recognised subject to the other factors listed in this section.

10 Where the reference asset and the underlying asset being hedged are different, protection can still be recognised if the following criteria are met:

- reference and underlying asset are of the same obligor; and
- reference asset ranks *pari passu* with, or is more junior in a liquidation than the asset being hedged; and
- there are cross default clauses between the reference asset and the underlying asset.
 - a) The FSA may be prepared to accept asset mismatches where there are not cross default clauses if the bank can demonstrate, to the FSA's satisfaction that there are other structural features which eliminate the basis risk between the reference asset and the underlying asset.

5.5 Currency mismatch

11 Where the credit derivative is denominated in a different currency from the reference/underlying asset, the amount of credit protection recognised is reduced by 8% to take account of the contingent foreign currency risk.

- a) For example, a bank has a £1million asset which is protected by a \$ denominated, recovery based, single asset, maturity matched credit derivative, of, say, \$1.5million. If the exchange rate at the outset is \$1.5: £1, the amount of protection recognised would be £920k. If the amount of protection purchased were \$1.62million, the asset would be recognised as fully protected.
- b) The FSA may consider disapplying the 8% reduction in protection where a bank can demonstrate to the FSA's satisfaction that it has hedged the contingent foreign currency risk.

12 Foreign currency positions created by credit derivatives should also be recorded when measuring the bank's foreign exchange exposure. Funded credit derivatives should be treated like all other cash positions. Unfunded credit derivatives should be treated like guarantees.

See ch FX

- a) Further guidance on the calculation of a bank's foreign exchange exposure is contained in the chapter on foreign exchange risk.

5.6 Maturity of the credit derivative compared with the reference/underlying asset

13 Where the maturity of the credit derivative matches that of the underlying asset, the exposure is recognised as guaranteed/reduced and no additional capital is considered to be needed.

14 Where the maturity of the credit derivative is less than that of the underlying asset, recognition of the protection depends on the residual maturity of the credit derivative.

- a) The maturity of credit derivatives with a *step up* and call option is assumed to be the date of the call.
- b) If the protection seller has the option to terminate the credit derivative, the maturity is deemed to be the date at which the option is first exercisable.
 - i) A *step up* is an increase in the protection payment.

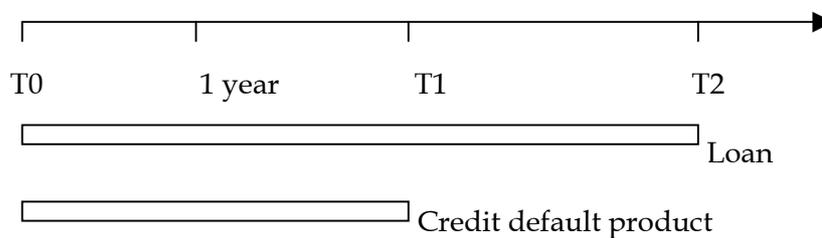
15 If the residual maturity of the credit derivative is less than one year, no protection is recognised.

See ch BC s4

16 If the residual maturity of the credit derivative is one year or over, protection is recognised, but an additional capital charge is made for forward credit exposure to the underlying asset when the credit derivative contract matures. This forward exposure is treated like a commitment with uncertain drawdown, i.e. it attracts a 50% credit conversion factor ('CCF') against the risk weight of the underlying asset.

Example :

time scale:



Suppose that the underlying asset is a loan to a corporate of a tenor equal to T2, risk weighted at 100%, and credit risk protection is bought from a Zone A bank in the form of a credit default product maturing at T1:

At T0, the risk weight on the loan is reduced to 20% (guaranteed portion of the exposure) with an additional capital charge for the forward exposure of 50% (CCF) \times 100%. So the total capital charge is 20% + 50%, = 70%.

Once the residual maturity to T1 reaches one year, protection ceases to be recognised and the risk weight of the loan reverts to 100%.

If the underlying position is an undrawn commitment, the capital treatment resulting from the acquisition of maturity mismatched unfunded protection at T0 is: 20% [risk weight for a Zone A bank] \times 50% (CCF) + 50% (original risk weight of corporate \times CCF) \times 50% (CCF). So the total capital charge is 10% + 25%, = 35%.

17 If the sum of the capital needed for the underlying asset (after protection has been recognised) plus the forward exposure exceeds the original capital requirement for the underlying asset, the credit derivative can be ignored and the underlying asset weighted as normal.

5.7 Multiple names

See s9

18 Where the credit derivative is referenced to more than one obligor (sometimes known as a basket or multiple name product) the nature of the credit protection provided depends on the structure of the contract. Additional conditions would need to be met to ensure transfer of credit risk is not jeopardised by reputational risk, as set out in section 9 of this chapter.

19 If the contract terminates and pays out on the first asset to default in the basket, then protection is only recognised against one asset in the basket. Banks may choose which asset in the basket attracts protection.

20 If the contract allocates protection proportionately amongst assets in the basket (sometimes known as a *green bottle structure*) protection is recognised in setting capital requirements against all the assets in the basket according to the proportions in the contract.

See s9

21 If a bank provides credit enhancement to a special purpose vehicle to which it has transferred credit risk through credit derivatives, the credit enhancement is treated as a deduction from capital in accordance with the FSA's policy on securitisation.

5.8 Open short positions and unrecognised protection

22 Where a bank buys protection in the absence of an underlying exposure (i.e., it has an open short position), or where bought protection is not recognised in calculating the capital needed for an underlying exposure, the credit derivative is ignored for capital adequacy purposes.

6 BANKING BOOK - PROTECTION SELLER

6.1 Introduction

1 This section sets out the factors that determine the banking book capital treatment of a protection seller.

See s8

2 This section does not apply to credit spread options. The capital treatment of credit spread options is set out in section 8.

6.2 Funded or unfunded

3 Through a funded credit derivative, a bank acquires exposure to the reference asset (since performance of the credit derivative depends on that of the reference asset), and also to the credit derivative counterparty (since the bank relies on the counterparty to pass on funds during the life of the contract, and on maturity or following a credit event). Where the counterparty is an SPV, a bank may also have exposure to the collateral securities purchased with the money received from the issuance of securities.

4 The amount at risk is limited to the funding provided, however, and this on-balance-sheet exposure is recorded at the higher of the risk weights of the reference obligor and the counterparty holding the funds and, where applicable, the collateral security.

See ch BC

5 Where a bank has sold protection through an unfunded credit derivative, it acquires exposure to the reference asset only. This *exposure* is recorded as a direct credit substitute weighted according to the risk weight of the reference asset.

a) The *exposure* will be the maximum payout under the contract.

6.3 Multiple names

See s6.2

6 Credit derivatives referenced to single names are treated as set out above.

7 Where credit derivatives are referenced to more than one obligor (a basket or multiple name product), the nature of the credit risk acquired depends on the structure of the contract.

8 If the contract terminates and pays out on the first asset to default in the basket, the bank should hold capital against all the names in the basket.

a) The FSA may consider that this is not needed where a bank can demonstrate, to the FSA's satisfaction, a very strong correlation between the assets in the basket.

- 9 This means that risk weightings are applied to the maximum payout amount under the contract for each of the names in the basket, capped at the equivalent of a deduction from capital.
- 10 A structure which is referenced to the assets in the basket proportionately should be risk weighted according to the assets in the basket in the proportions set out in the contract.

6.4 Payout structure

- 11 Where the amount of the protection is fixed in the contract, the risk weighted exposure to the reference asset(s) is the amount of the payout.
- 12 Where the credit amount payment is based on par less recovery value or where there is physical delivery in exchange for par value, the risk weighted exposure to the reference asset(s) is the maximum payout under the contract.

7 TRADING BOOK TREATMENT

7.1 Introduction

1 This section sets out the capital treatment considered to be applicable to credit derivatives in the trading book.

See s8

2 This section does not apply to credit spread options. The capital treatment for credit spread options is set out in section 8.

7.2 Models

See chs TS and TV

3 Banks may apply to the FSA to include credit derivatives in recognised models under CAD1 and also CAD2 models. Banks may apply for recognition of CAD2 models which quantify partial offsets of specific risk positions where there is a maturity or asset mismatch.

See chs TS and ch TV

4 For details of the benchmarking approach to such models see elsewhere.

See s7.3

5 Banks which do not have recognised models covering credit derivatives should follow the standard approach set out below.

7.3 Standard approach

7.3.1 Introduction

See ch TI

6 This section describes the positions to be recorded for credit derivatives for the purposes of calculating specific risk and general market risk charges under the standard approach. The calculation of specific and general market risk charges is described in the chapter on interest rate position risk.

7.3.2 General principles

7 Total return swaps are represented as two legs: one is a notional position in the reference asset with general and specific risk of the reference asset; the other, representing interest payments under the swap, is a notional position in a Zone A government bond with the appropriate fixed or floating rate.

8 Credit default products are represented as a notional position in the specific risk of the reference asset only (i.e., no general risk position is created in the reference asset). If premium or interest payments are due under the swap, these cashflows are represented as a notional position in a Zone A government bond with the appropriate fixed or floating rate.

9 Credit linked notes are treated as a position in the note itself, with an embedded credit default product. The credit linked note has specific risk of the issuer and general market risk according to the coupon or interest rate of the note. The embedded credit default product creates a notional position in the specific risk of the reference asset (with no additional general market risk position created).

7.3.3 *Specific risk - single reference asset*

See s5.2

10 As noted above, total return swaps, credit default products and credit-linked notes create a specific risk position in the reference asset; the credit risk seller has a short position and the credit risk buyer has a long position.

See ch II s5

- a) For the specific risk position to be treated as a qualifying debt item, the reference asset should meet the standard conditions for a qualifying debt item as defined in the chapter on interest rate position risk.

11 The buyer of a funded credit derivative should also record a long position in the specific risk of the note issuer.

7.3.4 *Specific risk - multiple reference assets*

12 Where a total return swap is referenced to multiple names, and the returns on assets are exchanged according to their proportions in the basket, the bank should record long or short positions in all the reference assets according to the proportions underlying the swap.

See s5.2

13 Where credit default products and credit linked notes are referenced to multiple names the positions recorded depend on the structure of the contract.

14 The credit risk seller of a first to default product or note should record a short position in one reference asset in the basket only. Banks may choose which asset in the basket to record as a short position.

15 The credit risk buyer in a first to default product or note should record long positions in each of the assets in the basket, with the total capital charge for the product capped at the equivalent of deduction from capital, with the exception noted below.

- a) The amount of the position recorded will be the value of the note.
- b) The FSA may consider disapplying the additive treatment where a bank can demonstrate, to the FSA's satisfaction, that there is a very strong correlation between the reference assets in the basket.

16 Where the credit default product or credit linked note is a proportionate structure, positions should be recorded in the reference assets according to the proportions in the contract.

17 Where a multiple-name credit-linked note is rated such as to meet the conditions for recognition as a qualifying debt item, the buyer of credit risk may record the specific risk position in the reference assets as a single long specific risk position with specific risk of the note issuer.

See ch II s5

a) Qualifying debt items are defined in the chapter on interest rate position risk.

18 The credit risk buyer of a funded credit derivative should also record a long position in the specific risk of the note issuer, whether the credit derivative meets the definition of qualifying or not.

7.3.5 *Specific risk offset*

19 Banks may net notional positions in reference assets created by credit derivatives with positions in underlying assets or other notional positions created by other credit derivatives if the following conditions are met:

(a) the underlying and reference assets are issued by the same obligor;

See ch II s3

(b) the underlying and reference asset specific risk positions meet the matching criteria set out in the chapter on interest rate position risk; and

See s9

(c) the conditions set out below are met.

See s7.2

Where the reference asset and the underlying asset do not meet the criteria for netting, no offset is considered to be justified under the standard approach.

20 Materiality thresholds may reduce the amount of the specific risk offset. All credit derivatives involving materiality thresholds should be referred to the FSA.

See s5.2

a) The definition of a materiality threshold is given elsewhere.

7.3.6 *Maturity mismatch*

21 Where a credit default product or credit linked note is of shorter maturity than the reference asset, a specific risk offset is allowed between long and short specific risk positions, but a forward position in specific risk of the reference asset is recorded. The net result is a single specific risk charge for the longer maturity position in the reference asset.

a) The maturity of a credit derivative with a *step up* and call option is assumed to be the date of the call.

i) A *step up* is an increase in the protection payment.

22 This treatment does not apply to total return swaps, where no forward position in specific risk of the reference asset is recorded in cases of maturity mismatch.

7.3.7 *General market risk*

See ch II s6

23 Credit default products do not normally create a general market risk position.

24 Total return swaps create a long or short position in the reference asset and a short or long position in the notional bond representing the interest rate related leg of the contract.

25 Credit linked notes create a long position in the note itself for the credit risk buyer.

7.4 **Counterparty risk**

7.4.1 *General principles*

26 Each party to a total return swap relies on the other for payment, therefore each party records a counterparty risk charge.

See ch DU and
TC

a) The counterparty risk charge is calculated as set out in chapters DU and TC

27 The credit risk seller in credit default product relies on the credit risk buyer to pay the credit event payment if a credit event occurs, and therefore records a counterparty risk charge. The credit risk buyer is exposed to the credit risk seller only if there are future premiums or interest rate related payments outstanding, and these are recorded as a sundry debtor and risk weighted in the normal way.

See chs DU and
TC

- a) The counterparty risk charge is calculated as set out in the chapters on counterparty risk treatments common to the banking and the trading book and counterparty risk in the trading book.

28 There is no counterparty risk charge for credit linked notes.

7.4.2 Potential future credit exposure (add-on)

29 The add-on used when calculating the counterparty exposure for an unfunded OTC credit derivative is determined by whether the reference asset is recognised as a qualifying debt item. If the reference asset is a qualifying debt item, the counterparty risk charge is calculated using interest rate add-ons. Otherwise, equity add-ons should be used.

See ch II s5

- a) Qualifying debt items are defined in the chapter on interest rate position risk.

7.5 Foreign exchange risk

See ch FX

30 Where the credit derivative is denominated in a currency other than the reporting bank's base currency, it will feed into the bank's monitoring of its foreign exchange position in the normal way.

8 CREDIT SPREAD OPTIONS

8.1 General

1 The capital needed for credit spread options are analogous to those of other options on credit risk assets.

8.2 Banking book

8.2.1 Protection buyer

2 The capital reduction/guarantee treatment set out in section 5 in respect of the underlying asset is not considered to be available to the purchaser of a credit spread option.

- a) The amount of protection provided by a credit spread option depends on its mark to market value. However the assumption underlying the banking book framework is accrual accounting.

See ch DU

3 Protection bought using a credit spread option is ignored for capital purposes.

8.2.2 Protection seller

4 Protection sold using a credit spread option is recorded as a direct credit substitute. The amount of exposure will be the par value of the nominal amount of the reference asset.

8.3 Trading book

5 The option carve out treatment should be used for credit spread options only after prior consultation with the FSA. Banks should normally apply for recognition of option models covering credit spread options.

9 RISK TRANSFER CRITERIA

9.1 Scope

1 This section sets out conditions to be met before risk transfer (i.e. protection)/short position is recognised in setting capital requirements for banks which buy protection using credit derivatives in the banking book (see section 6) or selling credit risk in the trading book (see section 7). This section does not apply to credit spread options (see section 8).

2 Where these criteria are not met, protection bought should be ignored in the banking book (and the bank should continue to weight the underlying asset as normal) and a short credit risk position recorded in the trading book should not be offset against another specific risk position.

3 Sections 9.2 to 9.4 apply to both the banking book and the trading book.

4 Section 9.2 applies to all credit derivatives, whether funded or unfunded, single name or multiple names.

5 Section 9.3 applies to funded credit derivatives referenced to single names or multiple names.

- a) For the purposes of section 9, first to default structures referenced to multiple names are considered to be referenced to a *single* name. This is because protection is only recognised against one asset in the basket for capital purposes.

6 Section 9.4 applies to packaged credit derivative transactions, which are funded.

- a) For the purposes of section 9, *packaged* transactions include proportionate credit derivatives referenced to multiple names, and structures which bundle together a series of single name credit derivatives.

9.2 General criteria

7 In order for the protection bought/short position to be recognised the following criteria should be met for all credit derivatives:

- (a) The credit risk transfer should not contravene any terms and conditions relating to the reference asset and where necessary all consents should have been obtained;

- a) This relates mainly to reference assets which are loans.
- (b) At a minimum, the credit events in a credit default product or credit-linked note should cover credit events in the reference asset itself; and
- (c) The credit risk buyer should have no formal recourse to the credit risk seller for losses.

9.3 Criteria for funded single name credit derivatives

8 In order for protection/offsetting short position to be recognised, the following criteria should be met:

- (a) the protection buyer should have no obligation to repay any funding received under the credit derivative except at termination or as a result of a defined credit event (in accordance with the terms of payment defined in the contract); and
 - a) The protection buyer may retain the option to repay funding, provided that the reference asset remains fully performing.
 - b) In proportionate transactions involving baskets of assets, the protection seller may retain the option to refinance where the pool of assets has been reduced by repayment to less than 10% of its maximum value but only where the reference assets are fully performing.
 - c) An exception to this restriction is where the obligation arises from warranties given in respect of the asset at the time of the transaction, provided that these are not in respect of the future creditworthiness of the reference asset.
- (b) the protection buyer should have given notice to the protection seller that it is under no obligation to repay the funding (except as defined in (a) above), nor to support any losses suffered by the protection seller, and that the protection seller acknowledges the absence of that obligation.
 - a) Notice and acknowledgement also applies to the ultimate investors, where the initial protection seller is an SPV.
 - b) This criterion may be met by a highly visible and unequivocal statement that the protection buyer does not stand behind the asset(s) and will not make good any losses suffered in the offering circular (or other analogous documentation).

- 9 For those unfunded transactions where collateral has been taken, the conditions in chapter NE in respect of collateral should also be met for the collateral to reduce/remove the exposure to the reference asset in the banking book or to offset the counterparty exposure in the trading book.

9.4 Criteria for funded packaged transactions

- 10 This section applies to funded credit derivatives referenced to multiple names which have a proportionate payout structure, or where a series of funded single name credit derivatives are packaged together. This section does not apply to unfunded structures or to multiple-name credit derivatives with a first to default structure.

- 11 Packaging of the credit risk of multiple assets for transfer may create operational risks which would be negligible for a single asset. For example, the commercial reputation of a protection buyer could be committed by association with a package of assets, and clean transfer of the risk could be jeopardised by pressure on the protection buyer subsequently to provide support to reduce losses of the credit risk buyer. Such reputational risk is less if the assets concerned are disclosed and they are freely tradable assets.

- 12 The following criteria should be met for protection/offsetting short position to be recognised. Some of these criteria may not need to be met if all the reference obligors are disclosed and all the reference assets are freely tradable assets.

- (a) The bank selling credit risk should be satisfied that the transaction protects it from any liability to the credit risk buyer and ultimate investors, except where the bank has been negligent.

a) Banks can achieve this by ensuring that their auditors and legal advisers are satisfied that the terms of the scheme protect them from liability to the credit risk buyer and ultimate investors and that the scheme meets the FSA's policy.

- (b) The credit risk should initially be transferred to a special purpose vehicle (SPV). The protection buyer should not own any share capital or other form of proprietary interest in or control over the SPV, either directly or indirectly.

a) This applies also to any other group entity within the protection buyer's group that is covered by the FSA's consolidated supervision.

- b) Share capital includes for this purpose all classes of ordinary and preference share capital.
 - c) Control, for these purposes means that the Board of the company used as a vehicle should be independent of the credit risk seller, although the credit risk seller may have one director representing it.
- (c) The name of the SPV should not include the name of the protection buyer nor imply any connection with it.
- (d) The protection buyer should not directly reimburse the vehicle for any of the recurring expenses of the scheme. Although the credit risk seller may make a one off contribution at the initiation of the scheme to enhance the credit-worthiness of the vehicle. Any credit enhancement provided will be treated as a deduction from capital.
- a) Any such credit enhancement should be disclosed in the offering circular (or analogous documentation).
- (e) The credit risk seller should not fund the vehicle (other than the initial credit enhancement described above); in particular it should not provide temporary finance to a scheme to cover cash shortfalls.
- a) The credit risk seller may enter into interest rate and currency swaps with the SPV as long as they do not provide support for losses in the vehicle.

For those unfunded transactions where collateral has been taken, the criteria in chapter NE in respect of collateral should also be met for the collateral to reduce/remove the exposure to the reference asset in the banking book or to offset the counterparty exposure in the trading book.

10 LARGE EXPOSURES

10.1 Introduction

See ch LE

1 The factors that should be considered in determining large exposures recorded for credit derivatives are the same as those for determining capital adequacy, with the exception of the factors noted in this section. Large exposures are covered fully in the chapter on large exposures.

- a) The amount of protection recognised will normally be the same for large exposures as for capital adequacy purposes.

2 Sections 10.2 to 10.5 apply to credit default products, credit linked notes and total return swaps. Section 10.6 applies to credit spread options.

10.2 Banking book and trading book – protection buyer

10.2.1 *Maturity mismatch*

3 For capital adequacy purposes forward credit exposure left by a maturity mismatched credit derivative is treated as an undrawn commitment. Undrawn commitments are treated as an exposure for large exposures purposes, and hence maturity mismatched credit derivatives do not reduce exposure to the underlying.

10.2.2 *Currency*

4 Where the base currency of a funded credit derivative is different from that of the underlying asset, no protection is recognised for large exposures purposes.

10.2.3 *Multiple names*

5 Protection bought/short position created through a credit derivative referenced to multiple names in a first to default structure is recognised for one asset in the basket only for both large exposures and capital adequacy. The same asset should be chosen in each case.

10.3 Banking book - protection buyer

10.3.1 *Unfunded*

6 Where an unfunded credit derivative is treated as a guarantee for capital purposes, banks may choose to record their exposure either to the underlying or to the counterparty in the credit derivative transaction, provided that the treatment adopted is in line with the bank's large exposures policy statement.

10.4 Banking book - protection seller

10.4.1 *Funded*

7 Where a credit derivative is funded, banks should report exposure to both the reference asset(s) and the credit derivative counterparty/issuer for large exposures purposes.

- a) First to default multiple name credit derivatives result in exposures to more than one reference asset.

10.5 Trading book

10.5.1 *Asset mismatch*

See ch LE

8 Offsetting of long and short positions should be calculated in accordance with the chapter on large exposures. Long and short positions may be offset provided the policy in that chapter is followed.

10.6 Credit spread options

This section applies to both the banking book and the trading book.

10.6.1 *Protection buyer/credit risk seller*

9 No protection/offset is recognised for the purchaser of a credit spread option for LE purposes

10.6.2 *Protection seller/credit risk buyer*

10 A credit spread option creates an exposure to the reference asset for LE purposes. The exposure is the par value of the nominal amount of the reference asset.

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(GROUPS DIRECTIVE) INSTRUMENT 2002**

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 (Guidance).
- 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 as follows:
- (1) in paragraph 3(2)(b) of Appendix 4, the words "reduced ... the *related undertaking*" come into force on 1 May 2003; and
 - (2) the remainder of this instrument comes into force on 1 December 2002.

Amendment of the Interim Prudential sourcebook for friendly societies

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Groups Directive) Instrument 2002.

By order of the Board
21 November 2002

Annex

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 4 (Asset valuation rules)

Paragraph 3(2) is amended as follows:

- (2) Where any *shares* are held by a *friendly society* in a *related undertaking* which is not an *insurance undertaking* or *insurance holding company*, the value of the *shares* must not exceed the greater of:
- (a) the value (or, where the shareholding, whether held directly or indirectly, is less than 100%, the relevant *proportional share* of the value), determined in accordance with this Appendix (other than 15(1)(a) to (c)), of the *related undertaking's surplus assets*; and
 - (b) the value of those *shares* as determined under ~~rule 9~~ reduced:
 - (i) by an appropriate amount, to the extent that the *shares* cannot effectively be made available or realised to meet losses (if any) arising in the *friendly society*.
 - (ii) by an appropriate amount, to the extent needed to exclude value attributable to goodwill generated from business with the *friendly society* or any *related undertaking* of the *friendly society* that is an *insurance undertaking* or an *insurance holding company*; and
 - (iii) by the amount by which the value of any *shares* held by the *group undertaking* in a *related undertaking* of the *friendly society* which is an *insurance undertaking* or an *insurance holding company* exceeds the value (or *proportional share*), determined in accordance with this Appendix (other than 15(1)(a) to (c)), of the *surplus assets* of the *related undertaking*.

Paragraph 3(3) is amended as follows:

- (3) The ~~surplus assets~~ surplus assets of a *related undertaking* (other than an *insurance undertaking* or an *insurance holding company*) are its total assets excluding:

...

Paragraph 3(4) is amended as follows:

- (4) The assets selected in (3)(a) to be excluded from the total assets:
- (a) must be of a value at least equal to the amount of the liabilities of the *related undertaking*, determining that value and that amount in accordance with this Appendix (other than 15(1)(a) to (c)) and Appendix 5; and
 - (b) must not include:
 - (i) assets falling within (3)(b), or
 - (ii) assets falling within (3)(c) where the amount is due, or to become due, from a *related undertaking*; but
 - (c) notwithstanding (a), a liability of the *related undertaking* which is a *debt* due to the *friendly society* is not required to be determined at an amount which is higher than the value placed on that *debt* as an asset of the *friendly society*.

Paragraph 4 is amended as follows:

4. The value of any *debt* due, or to become due, from a *related undertaking* must not exceed the amount reasonably expected to be recovered in respect of the *debt* taking into account only the value of:
- (a) the assets identified in 3(3)(a) and, in the case of a *related undertaking* which is an *insurance undertaking*, to cover the *required minimum margin* that would apply if the undertaking were a *directive friendly society* (other than a *flat rate benefits business friendly society*) to which *IPRU(FSOC)* applies (whether it is or not); and
 - (b) any ~~security~~ security held in respect of the *debt*.

Paragraph 15(5A) is inserted after paragraph 15(5) as follows:

- (5A) Assets of *dependants* of the *friendly society* that are *debts* due or to become due from the *friendly society* or from a *dependant* of the *friendly society* must not be taken into account in any of the calculations described in (1).

In Annex B of Appendix 4, paragraphs B11A and B15A are amended as follows:

B11A. Subject to B11B and B11C, The the amount of the friendly society's exposure to assets arrived at under B4 to B11 must be increased by an amount representing the exposure, if any, of the friendly society's dependants to assets of that description; calculating that exposure by applying B4 to B11 to each dependant as if it were a friendly society.

B11B. For the purposes of B11A, the exposure of each dependant must be calculated by applying B4 to B11 to that dependant as if it were a friendly society to which those provisions apply (whether it is or not).

B11C. In relation to a dependant:

(a) which is an insurance undertaking; or

(b) for which 15(1)(a) to (c) have (notwithstanding 3(4)(a)) been applied when valuing the assets selected under 3(3)(a).

11A applies only in relation to the dependant's surplus assets (or proportional share).

B15A. Subject to B15B, The the amount arrived at under B13 to B15 must be increased by the amount by which any dependant of the friendly society is exposed to a the same counterparty.

B15B. In relation to a dependant:

(a) which is an insurance undertaking; or

(b) for which 15(1)(a) to (c) have (notwithstanding 3(4)(a)) been applied when valuing the assets selected under 3(3)(a).

B15A applies only in relation to the dependant's surplus assets (or proportional share).

Chapter 7 (Definitions)

The definition of *dependant* in rule 7.1 is amended as follows:

dependant of a friendly society means –

(a) a ~~subsidiary undertaking~~ of that friendly society; or

(b) a body jointly controlled by that friendly society and another person, within the meaning of section 13 of the 1992 Act,

the value of whose ~~shares~~ *shares* is taken to be the value of its ~~surplus assets~~ *surplus assets* under paragraph 3(1) or (2)(a) of Appendix 4.

The definition of *designated state or territory* in rule 7.1 is amended as follows:

designated state or territory means any *EEA State* (other than the United Kingdom), Switzerland, a state in the United States of America, the District of Columbia, Puerto Rico, Canada or a province of Canada, Australia, South Africa, Singapore and Hong Kong.

A definition of *proportional share* is added as follows:

proportional share means, in relation to a *related undertaking*, the percentage which is the percentage holding (directly or indirectly) in the *related undertaking's* capital.

The definition of *surplus assets* in rule 7.1 is amended as follows:

surplus assets has the meaning given in ~~rule~~ paragraph 3(3) of Appendix 4 except that in relation to a *related undertaking* which is an *insurance undertaking* or an *insurance holding company* it has the meaning given in *IPRU(INS)*.

Guidance

Paragraph 13 is added to Annex 4 (Guidance on margins of solvency and the guarantee fund) as follows:

Shares in and debts due from a related undertaking

13. Annex C of Guidance Note 4.1 (Guidance for insurers and auditors on the Valuation of Assets Rules) in *IPRU(INS)* applies to *friendly societies* for the purposes of the valuation of *shares* held in and *debts* due, or to become due, from a *related undertaking* under paragraphs 3 and 4 of Appendix 4.

Annex 6 (Guidance on prudential reporting) is inserted after Annex 5 as follows:

Annex 6

GUIDANCE ON PRUDENTIAL REPORTING

Intra-group transactions

Section 20 of Guidance Note 9.1 (Preparation of annual returns) in *IPRU(INS)* applies to *friendly societies* for the purposes of the reporting of *material connected-party transactions* under rule 5.25.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(GROUPS DIRECTIVE) INSTRUMENT 2002**

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 (Guidance).
- 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 as follows:
- (1) in rule 4.2(1A)(b), the words "reduced ... the *related undertaking*" come into force on 1 May 2003; and
 - (2) the remainder of this instrument comes into force on 1 December 2002.

Amendment of the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with Annex A to this instrument.

Amendment of the Glossary

- E. The Glossary is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Groups Directive) Instrument 2002.

By order of the Board
21 November 2002

Annex A

Amendments to the Interim Prudential sourcebook for insurers (IPRU(INS))

In this Annex, underlining indicates new text and striking through indicates deleted text. In the case of the new Annex C of Guidance Note 4.1, section 20 of Guidance Note 9.1 and Guidance Note 10.1, the location in IPRU(INS) is indicated, but the text is not underlined.

Chapter 4 (Valuation of Assets) and Appendix 4.2 (Assets to be taken into account only to a specified extent)

Rule 4.2(1) is amended as follows:

- (1) Notwithstanding rule 4.8, The the value of any shares held in a group undertaking which is an insurance undertaking or an insurance holding company may be taken as and, in any event, must not exceed ~~(a) where the shares held are in an insurance undertaking or insurance holding company~~ the value (or, where the shareholding, whether held directly or indirectly, is less than 100%, the relevant proportional share of the value), determined in accordance with the *Valuation of Assets Rules* (other than rule 4.14(1)(a) to (c)), of its *surplus assets*.
- (1A) ~~(b) where the shares held are not in an insurance undertaking or insurance holding company~~ The value of any shares held in a group undertaking which is not an insurance undertaking or an insurance holding company must not exceed the greater of:
 - ~~(i)~~(a) the value (or, where the shareholding, whether held directly or indirectly, is less than 100%, the relevant proportional share of the value), determined in accordance with the *Valuation of Assets Rules* (other than rule 4.14(1)(a) to (c)), of its *surplus assets*; and

~~(ii)~~(b) the value of those *shares* as determined under rule 4.8 reduced:

- (i) by an appropriate amount, to the extent that the *shares* cannot effectively be made available or realised to meet losses (if any) arising in the *insurer*.
- (ii) by an appropriate amount, to the extent needed to exclude value attributable to goodwill generated from business with members of the *insurance group*, and
- (iii) by the amount by which the value of any *shares* held by the *group undertaking* in a *related undertaking* of the *insurer* which is an *insurance undertaking* or an *insurance holding company* exceeds the value (or *proportional share*), determined in accordance with the *Valuation of Assets Rules* (other than rule 4.14(1)(a) to (c)), of the *surplus assets* of the *related undertaking*.

Rule 4.2(3) is amended as follows:

...

- (c) in both cases, must not include:
 - (i) assets falling within (2)(b), or
 - (ii) assets falling within (2)(e) where the amount is due, or to become due, from a *group undertaking*; but
- (d) notwithstanding (a) and (b), a liability of a *group undertaking* which is a *debt* due to the *insurer* is not required to be determined at an amount which is higher than the value placed on that *debt* as an asset of the *insurer*.

Rule 4.2(4)(b) is amended as follows:

- (b) rules 4.14(1)(a) to (c) (or their equivalent in a *designated state or territory*) do not apply for the purpose of valuing shares in group undertakings that are not dependants or for the purpose of the parent undertaking solvency calculation.

Rule 4.3 is amended as follows:

The value of any *debt* due, or to become due, from a *group undertaking* must not exceed the amount reasonably expected to be recovered in respect of the *debt* taking into account only the value of:

- (a) the assets identified in rule 4.2(2)(a); and
- (b) any ~~security~~ security held in respect of the *debt*.

Rule 4.8(3) is amended as follows:

- (3) Subject to (5) and (6) and rules 4.2 and 4.13, the value of an investment to which this rule applies is –

...

Rule (5A) is inserted after rule 4.14(5) as follows:

(5A) Assets of dependants of the insurer that are debts due or to become due from the insurer or from a dependant of the insurer must not be taken into account in any of the calculations described in (1).

Paragraphs 11A and 15A of Part I of Appendix 4.2 are amended as follows:

- 11A. Subject to 11B and 11C, The the amount of the insurer's exposure to assets arrived at under 4 to 11 must be increased by an amount representing the *exposure*, if any, of the *insurer's dependants* to assets of that description, ~~calculating that exposure by applying 4 to 11 to~~

each dependant as if it were an insurer (whether it is or not).

11B. For the purposes of 11A, the exposure of each dependant must be calculated by applying 4 to 11 to that dependant as if it were an insurer to which those provisions apply (whether it is or not).

11C. In relation to a dependant:

(a) which is an insurance undertaking; or

(b) for which rules 4.14(1)(a) to (c) have (notwithstanding rule 4.2(3)(b)) been applied when valuing the assets selected under rule 4.2(2)(a).

11A applies only in relation to the dependant's surplus assets (or proportional share).

15A. Subject to 15B, The the amount arrived at in accordance with 13 to 15 must be increased by the amount by which any dependant of the insurer is exposed to the same counterparty.

15B. In relation to a dependant:

(a) which is an insurance undertaking; or

(b) for which rules 4.14(1)(a) to (c) have (notwithstanding rule 4.2(3)(b)) been applied when valuing the assets selected under rule 4.2(2)(a).

15A applies only in relation to the dependant's surplus assets (or proportional share).

Chapter 5 (Determination of Liabilities)

Rule 5.3A is amended as follows:

- (1) Except to the extent that provision for the deficit has been made (whether in the calculation of *surplus assets* or otherwise) in another group undertaking the value of whose shares is determined having regard to the value of its *surplus assets* (but only to the extent of the insurer's proportional share of that undertaking), An an insurer must make provision in respect of a related undertaking that is an insurance undertaking or insurance holding company:
 - (a) where the *related undertaking* is also a *subsidiary undertaking* of the *insurer*, for the whole of any ~~deficit in the assets available to cover liabilities or represent the *notional required minimum margin solvency deficit*~~; and
 - (b) in any other case, for the *insurer's proportional share* of any such deficit.
- (2) For the purposes of (1), the identification and valuation of assets available to cover liabilities and the *notional required minimum margin* must be determined in accordance with rule 4.2(3), ~~except that any liability which is a *debt* due to the *insurer* need not be valued at more than the value placed on that *debt* as an asset of the *insurer*.~~

Chapter 10 is amended as follows:

Chapter 10

PARENT UNDERTAKING SOLVENCY ~~MARGIN~~-CALCULATION

~~Information to be provided~~ Application and timing

- 10.1 (1) This chapter applies to an *insurer* (other than a *pure reinsurer*) that is a *subsidiary undertaking* of an *ultimate insurance parent undertaking* and whose head office is in the United Kingdom.
- (2) The information and calculations required to be provided under this chapter must be:
- (a) as at the end of the *financial year* of the *insurer*, as at the end of the *financial year* of the *ultimate EEA insurance parent undertaking*, or as at the end of the *financial year* of the *ultimate insurance parent undertaking*;
 - (b) following the relevant principles in Financial Reporting Standard 2 (issued by the Accounting Standards Board in June 1992), as at the same date for every member of the *insurance group* to which the information and calculations relate; and
 - (c) as at a date no later than 12 months from the day after the end of the *financial year* by reference to which the information and calculations were last provided under this chapter or its predecessor.
- (3) Subject to (4), the information and calculations required under this chapter must be provided to the *FSA* no later than 4 months from the end of:

(a) the financial year in question; or

(b) the financial year of the relevant parent, where the information and calculations are provided as at the end of that financial year under (2)(a).

(4) Where the parent undertaking solvency calculation is provided in accordance with rule 10.2(4), the information and calculations required under this chapter must be provided to the FSA no later than:

(a) 6 months from the end of the financial year selected under (2)(a); or

(b) the date by which the parent undertaking solvency calculation is required in the EEA State of supplementary supervision or of the relevant head office under rule 10.2(4), as the case may be,

whichever is earlier.

Information to be provided to FSA

10.2 (1) ~~When it deposits its return,~~ An an insurer must also provide the FSA with a declaration of the following information in respect of itself and (subject to the exceptions in (2)) in respect of each member of the insurance group (including itself) as at the end of the financial year in question:

(a) the name, location of head office and principal activity;

(b) the relationship with each other member of the insurance group, including the amounts and descriptions of holdings of share capital and voting rights;

(c) whether the member of the group is a subsidiary undertaking of

the *ultimate insurance parent undertaking* and, if different, of the *ultimate EEA insurance parent undertaking*;

- (d) subject to (2), the *ultimate insurance parent undertaking's* *proportional share* of, or if the group member is a *subsidiary undertaking* of that parent the whole of, any ~~deficit in the assets available to cover the group member's liabilities and represent its notional required minimum margin~~ *solvency deficit*;
- (e) subject to (2), the *ultimate EEA insurance parent undertaking's* *proportional share* of, or if the group member is a *subsidiary undertaking* of that parent the whole of, any ~~deficit in the assets available to cover the group member's liabilities and represent its notional required minimum margin~~ *solvency deficit*; and
- (f) a statement that:
 - (i) the declaration has been properly prepared in accordance with this rule, and
 - (ii) proper records have been maintained and adequate information obtained by the *insurer* for the purpose of the declaration required by this rule ~~and the information required by rule 9.39~~, and
 - ~~(iii) reasonable enquiries have been made by the insurer for the purpose of identifying material connected party transactions.~~

(2) (1)(d) and (e) do not apply with respect to a group member (other than the insurer) where:

- (a) the parent undertaking solvency calculation in relation to the ultimate insurance parent undertaking or the ultimate EEA

insurance parent undertaking, as the case may be, is positive;

- (b) the group member is not a *parent undertaking* of the *insurer*;
- (c) the group member is not a *participating undertaking* in the *insurer*;
- (d) the group member is not a *related undertaking* of the *insurer*;
- (e) the group member's *solvency deficit* does not exceed 5% of the *positive parent undertaking solvency calculation* in relation to the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking*, as the case may be; and
- (f) the *insurer* has complied with (1)(d) or (e) (as the case may be) in relation to sufficient group members so that the sum of the *solvency deficits* in the remaining group members does not exceed 10% of the *positive parent undertaking solvency calculation* in relation to the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking*, as the case may be.

The parent undertaking solvency calculation

~~(2)~~ (3) Subject to (4), (5), (6) and (7), ~~The~~ the declaration required by (1) must also include ~~separate statements in respect of each of the *ultimate insurance parent undertaking* and *ultimate EEA insurance parent undertaking* of:~~

- (a) calculations ("the parent undertaking solvency calculations") in respect of each of the *ultimate insurance parent undertaking* and *ultimate EEA insurance parent undertaking* of the value, as determined in accordance with the *Valuation of Assets Rules* (other than rule 4.14(1)(a) to (c)), of its *surplus assets*,

less:

- (i) any provision for *related undertakings* valued on the basis of rule 5.3A (except to the extent already ~~included~~ allowed for in the value of *surplus assets*), and
 - (ii) where the *surplus assets* are valued at nil, the amount of any deficit in the assets available to cover:
 - (A) any liabilities not already provided for, and
 - (B) the *notional required minimum margin* (if any) of the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking*, as the case may be; and
 - (b) ~~if the result of the calculation in (a) either of the *parent undertaking solvency calculations* is negative, a statement as to the reasons why such deficit or deficits has or have arisen and of any remedial action taken or planned.~~
- (4) If the competent authority in an *EEA State* other than the United Kingdom has agreed to be the supervisor responsible for exercising supplementary supervision of the *insurer* under Article 4(2) of the *Insurance Groups Directive* or, where no such agreement has been reached, but:
- (a) the head office of the *ultimate EEA insurance parent undertaking* is situated in an *EEA State* other than the United Kingdom and that parent is itself an *insurance undertaking* (other than a *pure reinsurer*); or
 - (b) where that parent is not an *insurance undertaking*, another member of the *insurance group* is an *insurance undertaking*

(other than a pure reinsurer) whose head office is situated in an EEA State other than the United Kingdom, and that member is:

(i) a parent undertaking of the insurer, or

(ii) has a notional required minimum margin which exceeds the notional required minimum margin of the insurer,

then the insurer may provide the information and calculations required under (1)(d) and (e) and the parent undertaking solvency calculation in relation to the ultimate EEA insurance parent undertaking prepared in accordance with the requirements in the EEA State of supplementary supervision or of the relevant head office for:

(c) the valuation of assets and the determination of liabilities of insurance undertakings and insurance holding companies; and

(d) the calculation of the required minimum solvency margin of insurance undertakings.

(5) If the head office of the ultimate insurance parent undertaking is situated in a designated state or territory other than an EEA State, then the insurer may provide:

(a) the parent undertaking solvency calculation in relation to the ultimate insurance parent undertaking prepared in accordance with accounting practice applicable for the purposes of the regulation of insurance undertakings in the state or territory of the head office:

(i) adapted as necessary to apply the general principles set out in paragraphs 1. B, C and D of Annex I of the Insurance Groups Directive, and

ultimate EEA insurance parent undertaking of the insurer is itself an insurer to which chapter 4 of IPRU(INS) or IPRU(FSOC) applies, then the insurer is not required to provide a parent undertaking solvency calculation in relation to that parent.

Rules for determining surplus assets and deficits

- (3) 10.3(1) For the purposes of (1) and (2) rule 10.2, the amount of any deficit and the identification of *surplus assets* must be determined as though:
- (a) ~~all references in rule 4.2(2)(a), (c), (d), (e) and (3) to the “group undertaking” were references to the *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking*, as applicable;~~
 - (a) the phrase “except in the case of an *ultimate insurance parent undertaking* or an *ultimate EEA insurance parent undertaking* which is a *mutual* which carries on *long-term insurance business*,” was inserted in front of rule 4.2(2)(d);
 - (b) ~~rule 4.2(2)(b) was replaced with “assets that are interests directly or indirectly held in the capital of the *ultimate insurance parent undertakings* or *ultimate EEA insurance parent undertakings*, as applicable”; and~~
 - (e) (b) rule 4.2(2)(f) was replaced with “assets that cannot effectively be made available or realised to make good any deficiency of assets of the *ultimate insurance parent undertakings* or *ultimate EEA insurance parent undertakings*, as the case may be applicable”; and
 - (c) notwithstanding rule 5.2(2), where the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking* has issued cumulative preference *shares*, liabilities

in respect of such *shares* may be left out of account:

- (i) to the extent that they (taken with the *used notional group solvency margin*) do not exceed 50% of the *notional group solvency margin*, but
- (ii) liabilities in respect of *shares* which are redeemable for the purposes of section 159 of the *Companies Act* may be left out of account only to the extent that they (taken with the total of liabilities in respect of redeemable cumulative preference *shares* and *subordinated debt* with a fixed maturity in the *used notional group solvency margin*) do not exceed 25% of the *notional group solvency margin*.

(2) In determining the *surplus assets* or *solvency deficit* of a *group undertaking* which is not a *related undertaking* of the *insurer*, appropriate approximations or generalisations may be applied where they are likely to provide the same, or a lower, amount of *surplus assets* or the same, or a higher, amount of *solvency deficit* to that which would otherwise have been required under rule 10.2.

Format of declaration required under rule 10.2(1)

10.4 (4) (1) The declaration required by rule 10.2(1) and (3):

- (a) ~~must be made in writing and deposited with the *FSA* at the same time as the documents required by rules 9.3 and 9.4~~ comply with the requirements of *SUP 16.3*;
- (b) ~~subject to (d),~~ must be signed by the persons described in rule 9.33(1)(a); ~~and~~
- (c) ~~subject to (2),~~ must include a statement from the auditors of the

insurer (or of an insurer under (d)) that, in their opinion, it has been properly compiled in accordance with rule 10.2 from information provided to the insurer by other members of the insurance group and from the insurer's own records; and

(d) may be provided on behalf of the insurer (the first insurer) by any other insurer to which rule 10.2 applies and which is a member of the insurance group (the second insurer) where:

(i) it is signed by two directors of the second insurer, and

(ii) it contains a statement that it has been copied to the board of directors of the first insurer.

(2) The statement under (1)(c) is not required to include the parent undertaking solvency calculation or a calculation with respect to that parent under rules 10.2(1)(d) or (e):

(a) where the parent undertaking solvency calculation is provided in accordance with rule 10.2(4); and

(b) to the extent that a statement is provided from auditors qualified in the EEA State of supplementary supervision or of the relevant head office, that in their opinion the calculation complies with the requirements applicable in that state to the preparation of solvency calculations for insurance groups pursuant to the Insurance Groups Directive.

Chapter 11 (Definitions)

The definition of *Accounts and Statements Rules* in rule 11.1 is amended as follows:

rules 9.1 to 9.36E and rule 9.39 of Chapter 9.

The definition of *dependant* in rule 11.1 is amended as follows:

a *subsidiary undertaking* the value of whose *shares* is taken to be the value of its *surplus assets* under rule 4.2(1) or (1A)(a).

The definition of *designated state or territory* in rule 11.1 is amended as follows:

any *EEA State* (other than the United Kingdom), Switzerland, a state in the United States of America, the District of Columbia, Puerto Rico, Canada or a province of Canada, Australia, South Africa, Singapore and Hong Kong.

A definition of *Insurance Groups Directive* is added to rule 11.1 as follows:

Directive of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (1998/78/EC).

A definition of *notional group solvency margin* is added to rule 11.1 as follows:

in relation to an *ultimate insurance parent undertaking* or an *ultimate EEA insurance parent undertaking*, the sum of:

(a) the *notional required minimum margin* (if any) of that parent; and

(b) the sum of that parent's *proportional shares* of the *notional required minimum margins* of its *related insurance undertakings*.

A definition of *parent undertaking solvency calculation* is added to rule 11.1 as follows:

the calculation required under rule 10.2(3)(a).

The definition of *profit reserves* in rule 11.1 is deleted:

~~has the same meaning as future profits.~~

The definition of *proportionate share* in rule 11.1 is deleted and replaced with the definition of *proportional share* as follows:

~~in the case of a *related undertaking* of an *insurer*, the percentage holding (directly or indirectly) of the *related undertaking* capital~~

in relation to a *related undertaking*, the percentage which is the percentage holding (directly or indirectly) in the *related undertaking's* capital.

The definition of *relevant regulatory requirements* in rule 11.1 is amended as follows:

~~for the purposes of rules 4.2(2)(b) and (3)(a):~~

- (a) in the case of a *group undertaking* that is an *insurance undertaking*, *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking* established in a *designated state or territory*, at the option of the *insurer*; ~~either:~~
 - (i) the regulatory requirements of that state or territory applicable to an undertaking carrying on *direct insurance business* (even if it only carries on *reinsurance business* or is an *insurance holding company*), or
 - (ii) the requirements referred to in (b); and
- (b) in the case of any other *insurance undertaking* or *insurance holding company*, the rules in *IPRU(INS)* applicable to an *insurer* with its head

office in the United Kingdom (whether or not it is such an *insurer*).

A definition of *solvency deficit* is added to rule 11.1 as follows:

deficit in the assets available to cover the undertaking's liabilities and represent its *notional required minimum margin* (if any).

A definition of *used notional group solvency margin* is added to rule 11.1 as follows:

in relation to an *ultimate insurance parent undertaking* or an *ultimate EEA insurance parent undertaking*, the sum of:

- (a) in the case of a parent which is itself an *insurance undertaking*:
 - (i) all liabilities in respect of cumulative preference *shares* left out of account by it in accordance with rule 2.10(3), and
 - (ii) all liabilities in respect of *subordinated debt* left out of account by it in accordance with a direction under section 148 of the *Act*,

or, in either case, in accordance with the *relevant regulatory requirements* of the state or territory where the head office of the parent is situated, as the case may be;
- (b) the parent's *proportional shares* of all liabilities in respect of cumulative preferences *shares* left out of account by its *related insurance undertakings* in accordance with rule 2.10(3) or the *relevant regulatory requirements* of the state or territory where the head office of the relevant *insurance undertaking* is situated, as the case may be;

and
- (c) the parent's *proportional shares* of all liabilities in respect of *subordinated debt* left out of account by its *related insurance*

undertakings in accordance with a direction under section 148 of the Act or the relevant regulatory requirements in the state or territory where the head office of the relevant insurance undertaking is situated, as the case may be.

Appendix 9.6 (Certificates by Directors and Actuary and Report of the Auditors)

Paragraph 1(bb) is inserted after paragraph 1(b) in Part 1 of Appendix 9.6 as follows:

(bb) that reasonable enquiries have been made by the insurer for the purpose of identifying material connected-party transactions;

Guidance Notes

Paragraph 3 of **Guidance Note 2.1** (Hybrid capital: admissibility for solvency) is amended as follows:

3. Restrictions on cumulative preference *share* capital under rules 2.10 and ~~2.10~~ 5.2(2) are not dealt with in this Guidance.

Paragraph 5.51 is added to **Guidance Note 4.1** as follows:

One effect of transactions between an *insurer* and other *group undertakings* may be to inflate the *business amount*. CP145 proposed amendments to the definition of *business amount* to restrict the effect of intra-group *debts* on the *business amount*. Although these amendments have not yet been implemented, in its response to CP145 the *FSA* stated that it intended to introduce a (possibly modified) form of the proposal in CP145 on 1 May 2003. In the meantime, if the *business amount* is inflated by intra-group transactions such that an *insurer* is able to a material extent to take advantage of higher asset and counterparty *exposure* limits than would otherwise apply, then this is a fact of which the *FSA* would expect notice. Accordingly, under such circumstances, the *insurer* should inform the *FSA*, under Principle 11 in the Principles for Businesses, of the situation and the approximate effect.

Annex C is inserted after Annex B of **Guidance Note 4.1** (Guidance for insurers and auditors on the Valuation of Assets Rules) as follows:

Annex C

Shares in and debts due to a group undertaking

Shares in a group undertaking (rule 4.2)

1. Rule 4.2 applies to the valuation of all *shares* held by the *insurer* in *group*

undertakings. Group undertakings are:

- the *insurer*;
- its *related undertakings* (undertakings in which the *insurer* has a holding of 20% or more of the voting rights or capital);
- its *participating undertakings* (an undertaking which has a holding of 20% or more in the *insurer*); and
- the *related undertakings* of its *participating undertakings*.

2. *Shares* in a *group undertaking* may be valued either as arms-length investments under rule 4.8 (see paras 4.63 to 4.76 of **Guidance Note 4.1**) or under rules 4.2 (1) to (4). *Shares* in *group undertakings* that are *insurance undertakings* or *insurance holding companies* (see paragraph 4 of **Guidance Note 10.1** for guidance on *insurance holding companies*) may not be given a higher value than the *surplus assets* in those undertakings calculated according to rules 4.2(2) to (4), but otherwise the *insurer* has the option whether or not to use rule 4.8. If rule 4.8 is used, then admissibility limits apply and from 1 May 2003 there must be a deduction for intra-group goodwill under rule 4.2(1A)(b)(ii) (see 5). When valuing *shares* in a *group undertaking*, rules 4.2 (2) to (4) require net asset value to be used with certain adjustments.

3. The purpose of the adjustments to the net asset value is to assess the regulatory solvency of an *insurer*:

- taking into account its proportional interest in excess assets of *group undertakings* (see 1.B on proportionality in Annex I of the *Insurance Groups Directive*);
- eliminating double-gearing whether arising from intra-group investment, reciprocal financing, intra-group holdings of unpaid *share* capital or otherwise;
- including only assets of *group undertakings* to the extent they are

available to cover the liabilities and *required minimum margin* of the *insurer*; and

- ensuring that the liabilities and *notional required minimum margin* of *group undertakings* are only covered by assets that are available for this purpose.

Basic calculation

4. The method set out in rules 4.2 (2) to (4) for valuing *shares* in a *group undertaking* is in four stages.
 - First, assets of that undertaking are selected to cover its liabilities (and any *notional required minimum margin*). Rule 4.2(3) restricts the assets that may be used and how the assets and liabilities may be valued.
 - Second, rules 4.2(2)(b)-(f) require certain other assets to be excluded to arrive at *surplus assets*.
 - Third, the *surplus assets* are valued under the *Valuation of Assets Rules* (excluding any admissibility limits under rule 4.14(1)(a)-(c)). Admissibility limits are applied at a later stage (see 17).
 - Finally, a lower value than this may be used following rules 4.1(4) and 4.2(1).

Where the liabilities (and any *notional required minimum margin*) cannot be covered, there are no *surplus assets* and the result will be zero. If the undertaking is a *related undertaking* which is an *insurance undertaking* or *insurance holding company*, then the *insurer* must make provision for the *proportional share*, and where the *related undertaking* is a *subsidiary* make provision for the full amount, of the deficit in the assets available to cover liabilities or represent the *notional required minimum margin* (see rule 5.3A). Where the responsibility of the *insurer* is strictly and

unambiguously limited to its share in the capital of a *related undertaking* which is a *subsidiary*, the *Insurance Groups Directive* allows a provision to be limited to the *proportional share* of the deficit. The *FSA* will consider an application for a modification of rule 5.3A under section 148 of the *Act* in such circumstance. Where a provision has been made by another member of the *insurance group*, the amount of the *insurer's* provision may be reduced by its proportionate interest in that other member of the *insurance group*. In particular, where a deficit in an intermediate *related undertaking* is due solely to a deficit in another *related undertaking* below it in the ownership chain, both being *insurance undertakings* or *insurance holding companies*, the *insurer* only needs to make provision once. Where an *insurer* is obliged to support a *group undertaking* or to meet its liabilities, a provision would be also be needed.

5. Where a *group undertaking* is not an *insurance undertaking* or *insurance holding company*, it may be valued at *market value* under rule 4.8 (see rule 4.2(1A)(b)). This allows goodwill in non-*insurance group undertakings* to count towards an *insurer's required solvency margin* where appropriate. However the value of any *shares* held in a *group undertaking* arrived at under rule 4.2 is a maximum value which may not always be the appropriate value. Under rule 4.2(1A)(b)(i), *market value* must not exceed the value that could effectively be made available or realised to meet losses (if any) arising in the *insurer*. The *FSA* considers that value relating to future income streams generated from business with other members of the *insurance group* may be impaired when one or more members of the group are facing problems, this being precisely a situation in which an *insurer* might wish to realise such value. From 1 May 2003, therefore, goodwill generated from business with members of the *insurance group* (which only includes *insurance undertakings* and *insurance holding companies*) must also be excluded (see rule 4.2(1A)(b)(ii)). It is clearly difficult to identify a single suitable methodology for calculating internal goodwill. But an *insurer* should be able to analyse the difference between the quoted price of the *group undertaking* and its net asset value applying an appropriate estimate of the proportion of the undertaking's

business which is intra-group. The basis for this will depend on the type of business of the undertaking but might, for example, be post-tax operating profits or turnover or funds under management. There may be further complications if, for example, provision is already made against elements of future profits. In such circumstances *insurers* may prefer to make a safe-side approximation for internal goodwill and may wish to highlight the impact of the deduction in a note to the *return*.

6. A similar point arises for direct or indirect holdings by the *group undertaking* in *shares* in a *related undertaking* of the *insurer* that is an *insurance undertaking* or *insurance holding company*. Valuation of the *group undertaking* at *market value* under rule 4.8 may mean that ~~the~~ *shares* in the *related undertaking* are valued at more than (the appropriate share of) its *surplus assets*. Any such excess will be eliminated by virtue of rule 4.2(1A)(b)(iii).
7. An *insurer* may value *shares* in a *group undertaking* which is not an *insurance undertaking* or an *insurance holding company* under one of the two permitted methods (that is, under rule 4.8 or rule 4.2 (2) to (4)) for the purposes of determining its *required margin of solvency* and the other method for the *parent undertaking solvency calculation* (see Guidance Note 10.1) in relation to the *insurance group* of which it is a member.
8. Where an *insurer* is valuing its *shares* in an *insurance holding company* which itself has *shares* in both *insurance* and non-*insurance related undertakings*, the *insurance holding company* should be valued applying rules 4.2(1) or 4.2(1A) to its *related undertakings*.
9. Rule 4.2(1) prescribes a maximum valuation of *shares* in a *group undertaking*. This allows approximate methods and shortcuts to be used if they can be reasonably relied on not to overstate the result. It also allows an *insurance undertaking* to be excluded from the solvency margin test by ascribing it a nil value. This shortcut may be used where a *group undertaking* is immaterial, its inclusion would be misleading or the information required is not readily

available. However, rule 5.3A requires that where a deficit exists in a *related undertaking* that is an *insurance undertaking* or an *insurance holding company*, a provision must be made and it may not simply be valued at nil.

10. The reference to rule 4.2(2)(a) in rule 4.3 means that *debts* due must not be valued at more than the assets available to the debtor to cover them. The effect of this is that the market valuation option is available for valuing *shares* in a *group undertaking* which is not an *insurance undertaking* or an *insurance holding company*, but not for valuing loans to such *group undertakings*. The reason for this is that while *shares* can normally be realised at the market price, a loan can only be repaid from the assets of the debtor and so its value for solvency purposes should not exceed the value of the assets available to repay the loan. Where these assets include *shares* in another *group undertaking* that is not an *insurance undertaking* or an *insurance holding company*, those *shares* may be valued in accordance with rule 4.2(1A).

11. Surplus assets (see rule 4.2(2)) are a *group undertaking's* total assets less:

- the assets selected to cover its liabilities and its *notional required minimum margin*. As set out in rule 4.2(4)(a) for *insurance undertakings* located in a *designated state or territory* these assets may be identified as to value, admissibility, nature, location or matching either under the requirements of the *designated state or territory*, or the *Valuation of Assets Rules*. For any other *group undertaking*, assets must be valued according to the *Valuation of Assets Rules* which will require revaluation of assets and liabilities (in particular *long-term insurance business liabilities* will need to be valued on an actuarial basis in accordance with the *Determination of Liabilities Rules*) and for *insurance undertakings* carrying on *general insurance business*, *claims equalisation reserves* will need to be calculated as if the undertaking were an *insurer* with its head office in the United Kingdom;
- assets that represent holdings in the *insurer's* and the *group*

undertaking's own capital, whether held directly or indirectly;

- profit reserves and future profits in an *insurer* carrying on *long-term insurance business*. (where profit reserves and future profits are treated as *implicit items* available to meet the *notional required minimum margin* by means of a direction under section 148 of the *Act* this applies only to any excess of value after the liabilities and *notional required minimum margin* of the undertaking have been covered);
- *long-term insurance funds* and other similar funds including a fund that represents amounts yet to be apportioned between *policyholders* and for other purposes. Such assets may nevertheless be used to cover liabilities and the *notional required minimum margin* of the fund referred to in the first bullet (This deduction does not apply to a life *mutual* that is the *ultimate insurance parent undertaking* for the purpose of the *parent undertaking solvency calculation*.);
- unpaid *share* capital (whether called or otherwise), other amounts that may become due on capital, and similar amounts if those amounts are or will become due from members of the *group undertaking*; and
- assets that cannot effectively be made available or realised to meet a *solvency deficit* in the *insurer*. Amounts subject to regulatory constraints (eg. regulatory capital requirements or dividend restrictions) and exchange control restrictions should be excluded. Tax liabilities or other costs might also affect the availability of assets.

12. Where a *group undertaking* which is an *insurance undertaking* is established in a *designated state or territory*, the *notional required minimum margin* may be either the actual *margin of solvency* that its home state requires it to hold (or, for a *pure reinsurer*, the amount that would be required if it were a direct *insurer* – in some territories *pure reinsurers* are not supervised) or the *required minimum margin*. In all other cases, the *notional required minimum margin* is the *required minimum margin* that would apply if the *group*

insurance undertaking were a UK *insurer* (whether it is or not).

However an application may be made to the *FSA* for a direction under section 148 of the *Act* modifying its rules to allow application of the local regulatory requirements of another state or territory if the applicant can satisfy the tests in section 148 and demonstrate that the requirements in question are ‘at least comparable’ to the standards set out in the *First Life* and *First Non-Life Directives*.

13. For the purposes of rules 4.2(2) to (4), liabilities and the assets selected to cover them and the *notional required minimum margin* must be valued in the same manner as the *notional required minimum margin* is determined (that is, either under the requirements of the *designated state or territory*, or under the rules in *IPRU(INS)* applicable to an *insurer* with its head office in the United Kingdom, as the case may be). *Surplus assets* are valued under the *Valuation of Assets Rules*.
14. *Designated states and territories* are EEA states (excluding the UK), Switzerland, any state of the USA and Puerto Rico, Canada or a province of Canada, Australia, South Africa, Singapore and Hong Kong. Since the UK is not a designated state, the *notional required minimum margin* of a Lloyd's corporate name that is a *group undertaking* will be the *required minimum margin* applicable to a UK *insurer*. A consequence of this is that letters of credit, which can be used under Lloyd's rules to cover solvency, are disallowed assets.
15. In some *designated states and territories* there may not be an exact equivalent to the *FSA's required minimum margin*. In such circumstances the *notional required minimum margin* for any jurisdiction should be ascertained by reference to the trigger for regulatory intervention which is in effect most nearly equivalent to the *required minimum margin* which would apply if the undertaking were an *insurer*. In the case of a US state whose insurance regulation is based on the model published by the National Association of Insurance Commissioners, *FSA* considers that the *notional required minimum margin* will generally correspond to the highest point at which any

regulatory or corrective action is triggered. If an *insurer* considers that this is inappropriate in a particular case and intends to adopt a different approach, it should inform the *FSA* and explain the circumstances (see Principle 11 of the Principles for Businesses and *SUP* 15).

16. Where UK rules are applied to a non UK *group undertaking* not located in a *designated state or territory*, *implicit items* cannot be valued in the absence of a direction under section 148 of the *Act* waiving the rule (see rule 2.10(5)). The *FSA* will normally grant a waiver in cases which meet the criteria in **Guidance Note 2.2**. For a *group undertaking* in a *designated state or territory*, *implicit items* have the value that local requirements permit and no direction under section 148 is needed. For a *group undertaking* in the UK, the value would be determined under any direction to it under section 148 of the *Act*.

Admissibility limits for shares valued under rules 4.2(2) to (4)

17. When applying asset and *counterparty* concentration limits (under rule 4.14) to an *insurer* that holds *shares* in a *related undertaking*, it is necessary to ensure that *exposures* of both the *insurer* and its *related undertakings* are taken properly into account. For this purpose a distinction is drawn between *subsidiary undertakings* which are valued in relation to their *surplus assets (dependants)* and *related undertakings* which are either not *subsidiary undertakings* or which are valued under rule 4.8 (see 4.2(1A)). Because the former are valued in relation to their own assets and the *insurer* has a majority control over those assets we have considered it appropriate to add assets held by a *dependant* to assets of the same description held by the *insurer* in order to arrive at the aggregate *exposure* to which the concentration limits are applied. For other *related undertakings* we consider that it is more appropriate to apply concentration limits directly to the *insurer's* holdings in those undertakings.
18. Hence, if a *group undertaking* is a *dependant* (that is a *subsidiary* that is valued by reference to its *surplus assets*), rule 4.14(5)(f) disapplies admissibility limits on the value of *shares* held in it by the *insurer*.

Instead paragraphs 11A and 15A of **Appendix 4.2** require that the underlying assets of the *dependant* are taken into account when determining the admissible assets of the *insurer* under rule 4.14 (see table 4.12 – 7A-E).

19. Where admissibility limits have been applied when arriving at the *dependant's surplus assets* paragraphs 11C and 15B of **Appendix 4.2** require only the *surplus assets* (or *proportional share*) of the *dependant* to be taken into account when determining the *admissible assets* of the *insurer* (See table – 7A, B & D). This applies in two cases:

i) where the *dependant* is itself an *insurance undertaking*. In this case rule 4.2(3)(a) requires admissibility limits to be applied to the assets selected to cover the *dependant's* liabilities and the *notional required minimum margin* (see Table - 6A). If the *dependant* is established in a *designated state or territory*, the admissibility requirements would be those of its home state if the *insurer* has opted to use home state requirements when selecting assets to cover *liabilities* and the *notional required minimum margin* of the *insurance undertaking*. If the *insurer* has not opted to use home state requirements or the *dependant* is not established in a *designated state or territory*, rule 4.14 would apply. Because admissibility limits only apply to the assets selected to cover the *dependant's* liabilities and *notional required minimum margin* other assets which may be inadmissible at the level of the *dependant* (including assets that exceed admissibility limits in the *dependant insurance undertaking*) may be included within *surplus assets*, if they are not excluded by rules 4.2(2)(b)-(f). This enables the *insurer* to value as *surplus assets*, subject to its own admissibility limits, holdings of the *dependant* in an investment over and above the admissibility limits that apply to the *dependant*. This does not allow the *insurer* to include amounts arising from under-valuation imposed by home state requirements which would require a direction under section 148 of the *Act*. Any application for such a direction would need to demonstrate that in the circumstances of the *dependant* the home state requirements are over prudent as a whole and not just that there are hidden

reserves.

ii) where the *insurer* has chosen to apply admissibility limits (applicable to the non-insurance *dependant*) to the non-insurance *dependant* in arriving at its *surplus assets* despite the fact that it is not required to do so under rule 4.2(3)(b) (see Table - 6B&D). It may be advantageous to opt to apply admissibility limits in arriving at the *dependant's surplus assets* because if they have not been applied, all underlying assets of the *dependant* must be taken into account when determining the *admissible assets* of the *insurer* (see Table - 6C&E & 7C&E). Since admissibility limits are determined by reference to the *business amount* of the *insurer* only with no supplementary amount being added to reflect the *dependant's business amount* this may result in a greater (downwards) adjustment to the value of the *insurer's* assets. The objective of these rules is to avoid a situation in which admissibility limits are either applied to an excessive degree or not applied at all.

20. Paragraphs 11A and 15A of **Appendix 4.2** do not apply to *shares* in *subsidiary undertakings* which are not *dependants* or in *group undertakings* which are not *subsidiary undertakings* (see table – 7F-I). In such cases the *insurer's* admissibility limits will apply directly to these *shares* (see Table - 5F-I).

Intra-group debt

21. Except in the situation described in the next paragraph, where an *insurer* owes a *debt* to a *related company* or *group undertaking*, it should make full provision under rule 5.2(2) for all expenses that would arise if it had to make repayment of the *debt* either immediately or, if the *debt* is for a fixed term, on expiry of the term. These would include expenses, including taxes, that might be incurred on realising assets to meet the *debt*.

22. Where the *debt* is a long-term arrangement in lieu of payment of dividends or repayment of capital by a *subsidiary undertaking*, the *insurer* should provide for all the costs, including taxes, that would be incurred

on payment of a dividend or repayment of capital (including winding-up the *subsidiary undertaking* if it is dormant).

23. Under rule 4.2(3)(d) *debts* to the *insurer* need not be given a higher value than the value placed on that *debt* by the *insurer*. In certain circumstances it can be advantageous to restrict the value of a *debt*, so that a greater value can be placed on the equity holding in the *related undertaking* (for example, see 19).

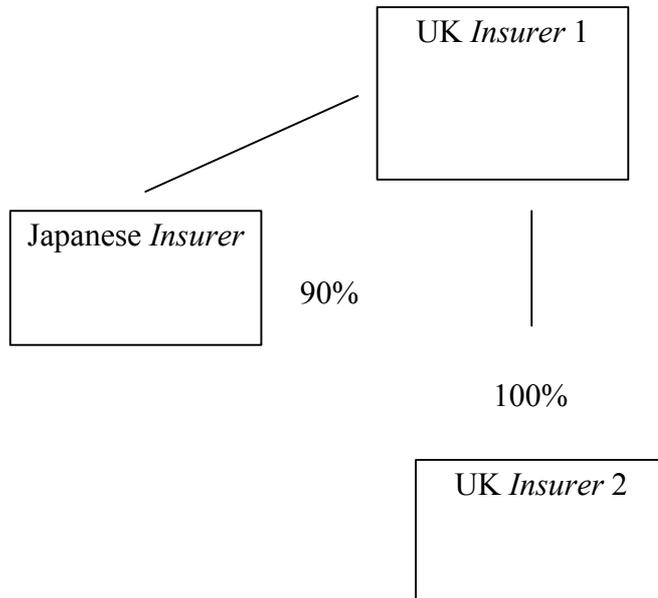
Table: Treatment of shares in a group undertaking (rules 4.2, 4.3, 4.14 & 5.3A)

Relationship of the group undertaking to the insurer	Is the group undertaking an insurance undertaking or insurance holding company?	Basis of valuation	Is the group undertaking a dependant?	Is the investment itself restricted under rule 4.14?	Are admissibility limits applied when covering liabilities and notional required minimum margin (if any)?	Must the underlying assets be aggregated with the insurer's exposure for admissibility purposes?	Does provision need to be made by the insurer for any deficit?	
1	2	3	4	5	6	7	8	
Subsidiary undertaking	Insurance undertaking	Surplus assets (cap)	yes	No	Yes	Surplus assets only	Yes (100%)	A
Subsidiary undertaking	Insurance holding company	Surplus assets (cap)	yes	No	Yes (optional)	Surplus assets only	Yes (100%)	B
Subsidiary undertaking	Insurance holding company	Surplus assets (cap)	yes	No	No (optional)	Yes	Yes (100%)	C
Subsidiary undertaking	No	Surplus assets	yes	No	Yes (optional)	Surplus assets only	No	D
Subsidiary undertaking	No	Surplus assets	yes	No	No (optional)	Yes	No	E
Subsidiary undertaking	No	Market value	No	Yes	No	No	No	F
Non-subsidiary undertaking	Yes	Surplus assets (cap)	No	Yes	No	No	Yes (pro-rata)	G
Non-subsidiary undertaking	No	Surplus assets	No	Yes	No	No	No	H
Non-subsidiary undertaking	No	Market value	No	Yes	No	No	No	I
Note 1		Notes 2 & 3		Note 4	Note 5	Note 6	Note 7	

Notes to the table:

1. Rules 4.2 and 4.3 apply to the value of *shares* in or *debts* due from *group undertakings*. *Group undertakings* extend, under chapter 10, to the *insurer*, its *related undertakings*, its *participating undertakings* and the *related undertakings* of its *participating undertakings*.
2. Rule 4.2(1)(a) requires the value of *shares* in a *group undertaking* which is an *insurance undertaking* or *insurance holding company* to be based on its *surplus assets*, determined in accordance with the *Asset Valuation Rules* which require *exposure* in excess of the *permitted asset* and *counterparty exposure* limits to be deducted. For *shares* in any other *group undertaking* either the *surplus assets* can be used, or a market value arrived at by applying rule 4.8. *Insurers* have a free choice as to which to use (the higher may in overall terms be more costly because of the inter-relationship between this rule and the admissibility rules), and may make a different choice for the purpose of the *parent undertaking solvency calculation* (but under Principle 11 the *FSA* would expect to be informed).
3. Although for a non-*insurance undertaking* there is a choice as to whether to use *surplus assets* or market value for the purpose of valuing *shares*, rule 4.3 requires the *surplus asset* approach to be taken for valuing *debts*.
4. Rule 4.14(1) requires the *permitted asset* and *counterparty exposure limits* to be applied to all assets of an *insurer* that are not exempt under 4.14 (5) to (6). There is an exemption under rule 4.14(5)(f) for *shares* in or *debts* due or to become due from a *dependant*. A *dependant* is defined in rule 11.1 as a *subsidiary undertaking*, the value of whose *shares* is taken to be its *surplus assets* under rule 4.2(1) or (1A)(a).
5. Admissibility limits are applied to *dependants* that are *insurance undertakings* when choosing assets covering the liabilities and *notional required minimum margin*. Application to other *dependants* is optional.
6. Paragraphs 11A and 15A of **Appendix 4.2** require the *insurer's* own *exposure* to assets of a particular description to be increased by an amount representing the *asset exposure* or the *surplus asset exposure*, if any, of the *insurer's dependants* to assets of that description. The *surplus asset exposure* only applies if admissibility limits are applied to *dependants* when choosing assets covering liabilities and *notional required minimum margin*.
7. Rule 5.3A requires an *insurer* to make provision in respect of a *related undertaking* that is an *insurance undertaking* or *insurance holding company*, in the case of a *subsidiary undertaking* for the whole of any deficit in the assets available to cover liabilities or represent the *notional required minimum margin*, and in the case of a non-*subsidiary undertaking* for the *proportional share* of any such deficit to the extent that provision has not already been made elsewhere for such deficit. *Related undertaking* is defined in rule 11.1 as an undertaking in which a *participation* is held by another undertaking or which is a *subsidiary undertaking*.

Example: Calculation of Solvency Margin



UK Insurers 1 and 2 are required to meet the *required solvency margin* (UK Insurer 2 will not be required to submit a separate *parent undertaking solvency calculation* in respect of Insurer 1 because this calculation provides substantially the same information - see **Guidance Note 10.1**).

Proforma Solvency Margin Calculation:

Example assets and liabilities on regulatory *return* basis:

Company	Assets (excluding book value of subsidiaries)	Liabilities	RMM/Notional RMM
	£m	£m	£m
UK <i>Insurer 1</i>	150	80	50
UK <i>Insurer 2</i>	100	60	20
Japanese <i>Insurer</i>	50	40	20

Step 1 – Calculate the values of subsidiaries of Insurer 1

	UK <i>Insurer 2</i> *	Japanese <i>Insurer</i>
	£m	£m
Assets	100	50
Less: liabilities	(60)	(40)
Net assets	40	10
RMM	(20)	(20)
Surplus/(deficit)	20	(10)

* This is the *margin of solvency* to be reported for *Insurer 2* (assuming it has

no *group undertakings*).

Step 2 – Calculate the solvency position of Insurer 1

	£m	£m
Assets of <i>Insurer 1</i> (excluding book value of subsidiaries)		150
Less: liabilities & RMM of <i>Insurer 1</i>		<u>(130)</u>
Net assets of <i>Insurer 1</i> (excluding subsidiaries)		20
Add: surplus value of UK <i>Insurer 2</i> *	20	
Less: <u>full</u> deficit for Japanese <i>Insurer</i> **	<u>(10)</u>	
		<u>10</u>
Solvency surplus (deficit) for <i>Insurer 1</i>		<u>30</u>

* Admissibility limits are not applied at this level but in this example, where the *group undertaking* is a *dependant*, *surplus assets* would have be added to any assets of the same description/to the same *counterparty* held by *Insurer 1* in order to calculate the admissibility of assets held by *Insurer 1* (according to paragraphs 11A & 15A of Appendix 4.2).

** Where a *subsidiary undertaking* which is an *insurance undertaking* or *insurance holding company* has a *solvency deficit*, its full value must be brought in as a notional liability, even where the *subsidiary undertaking* is less than 100% owned.

If in the above example UK *Insurer 2* were an overseas *insurer* which in turn had an *insurance subsidiary undertaking*, step 1 would be to calculate the value of the *subsidiary undertaking* of *Insurer 2*. If *Insurer 2* were located in a

designated state or territory this could either be done according to the local requirements of the *designated state or territory* or according to UK rules, at the option of *Insurer 1*. The former may produce a different outcome from the latter. If *Insurer 2* were located outside the *designated states or territories* *FSA* rules would apply. If its *insurance subsidiary undertaking* were located in a *designated state or territory*, this would give *Insurer 1* the option of using *FSA* or local requirements in determining the assets required to cover liabilities and the *notional required minimum margin* in that subsidiary.

Paragraph 5.5(12) of **Guidance Note 9.1** (Preparation of returns) is amended as follows:

(12) ~~Two~~ Three supplementary notes are specified:

...

(c) the amount of each provision made under rule 5.3A in respect of a deficit in a *related undertaking* which is an *insurance undertaking* or *insurance holding company* and the identity of the undertaking should be stated (code 1403). Such provisions should be included in line 22 of **Form 14**.

Paragraph 5.6(15) of Guidance Note 9.1 is amended as follows:

(15) ~~Three~~ Four supplementary notes are specified:

...

(d) the amount of each provision made under rule 5.3A in respect of a deficit in a *related undertaking* which is an *insurance undertaking* or *insurance holding company* and the identity of the undertaking should be stated (code 1504). Such provisions should be included in line 22 of **Form 15**.

Paragraph 10.1(7) of Guidance Note 9.1 is amended as follows:

(7) ~~Six~~ Seven notes are specified:

...

(g) details of any *material connected-party transactions* as required under rule 9.39 should be stated (code 2007).

Paragraph 14.1(10) of Guidance Note 9.1 is amended as follows:

(10) Eight supplementary notes are specified to **Form 40**:

...

(j) details of any *material connected-party transactions* as required under rule 9.39 should be stated (code 4009).

The following section 20 is added at the end of Guidance Note 9.1 as follows:

20. **MATERIAL CONNECTED-PARTY TRANSACTIONS
(rule 9.39)**

Supplementary notes to Forms 20 and 40

20.1 Rule 9.39 requires an *insurer* that has agreed to, or carried out, a *material connected party transaction* to provide a supplementary note describing it to **Form 40** (for a transaction relating to *long-term insurance business*) or **Form 20** (for other transactions). The reference codes should be 4009 and 2007, respectively.

Openness with regulators

20.2 (1) The duty to report *material connected-party transactions* should be seen in the context of Principle 11 of the Principles

for Businesses:

"A *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *FSA* appropriately anything relating to the *firm* of which the *FSA* would reasonably expect notice."

- (2) The *FSA* will therefore expect *insurers* to inform them about transactions with other *group* members who are significant for regulatory purposes even if they do not strictly fall within the reporting requirement under rule 9.39.

Connected-party transactions

- 20.3 (1) The scope of the phrase '*connected party*' is wider than that of the *insurance group* to which the *parent undertaking solvency calculation* applies. A *connected party* includes:

- the *related undertakings* of the *insurer*;
- the immediate, intermediate and ultimate *parent* and *participating undertakings* of or in the *insurer*; and
- the *related undertakings* of *participating undertakings* in the *insurer*.

A *connected party* may also be a natural person who holds a *participation* in any of the undertakings noted above (see definitions in rule 11.1 of *IPRU(INS)*).

- (2) A *connected-party transaction* is defined as "the transfer of assets or liabilities or the performance of services by, to or for a *connected* person irrespective of whether or not a price is charged". As such it includes (but is not limited to):
- loans and similar advances to or from a *connected* person, including inter-company balances and other

such operating arrangements,

- investments in the *securities* or *shares* of the *connected* person purchased by the *insurer*,
- investments in the *securities* or *shares* of the *insurer* purchased by the *connected* person,
- guarantees issued to the *connected* person by the *insurer* (and other similar off-balance sheet transactions), or vice versa,
- *reinsurance* cessions to and acceptances from the *connected* person,
- agreements to share the costs of the *connected* person, or to share the costs of the *connected* person with a third party,
- payment of commission (including profit-commission and commission on *reinsurance* premiums) and other acquisition costs to the *connected* person,
- transfer of property to or from the *connected* person, including investments, land, equipment and *debts*, and
- transfer of liabilities to or from the *connected* person, including transfers of business under section 105 of the *Act*.

(3) Dividends payable are not intended to be covered by the disclosure requirement unless they are part of a wider transaction (because they are already disclosed in the *return*).

- (4) A series of transactions that may include intermediate stages with third parties, but are in substance a transaction involving a *connected-party transaction*, are likely to be a *connected-party transaction*.

Materiality

- 20.4 (1) The materiality of transactions is determined by reference to the *long-term insurance business amount* for transactions relating to *long-term insurance business*, and the *general insurance business amount* for all other transactions. The price or consideration paid or received is not necessarily determinative of value for the purposes of assessing whether the transaction is a *material connected-party transaction*, since the real value of an inter-group transaction may be greater (see definition of *material connected-party transaction*).
- (2) Similar transactions, taken together, are material (for the purposes of rule 9.39) if when combined they exceed 5% (in terms of price or value) of the *long-term insurance business amount* or *general insurance business amount*, as applicable. For this purpose the measurement should be done at the time or times the transactions take place. Rather than make a precise measurement, an estimate may be used that is likely to be an underestimate of the *business amount* to avoid the risk of not reporting transactions that should be reported. In general similar transactions will include those of the same type with the same or another *connected* party. Transactions would normally be considered to be of the same type if they were combined in the same heading in the *profit and loss account*, balance sheet or note to the financial statements of the *insurer*, or form part of a connected series of transactions. However, other groups of transactions may be considered as similar even if they do not meet the above criteria.

Aggregation of disclosure

- 20.5 (1) Rule 9.39(3) allows (but does not require) transactions with the same *connected* person to be disclosed on an aggregated basis unless separate disclosure is needed for a proper understanding of the effects of the transactions upon the financial position or profitability of the *insurer*.
- (2) Similar transactions (as described in 20.4(2)) with the same *connected* person may be aggregated, for instance all *reinsurance* premiums paid to a *connected* person may be aggregated. However, different types of transaction may not be appropriate for aggregation. For instance it would not in general be appropriate to aggregate loans to a *connected* person with equipment sold to that *connected* person.
- (3) Transactions with different *connected* persons of the same type should not be aggregated. For instance, commissions paid to two or more *connected* persons should not be aggregated, even if they need to be taken together to establish materiality, since separate disclosure will normally be necessary for a proper understanding (rule 9.39(3)).
- (4) Rule 9.39 does not allow an exemption from disclosure similar to that offered under Financial Reporting Standard No 8 ‘Related Party Disclosures’ where the results of the *insurer* and *connected* persons are reported in consolidated financial statements. *Insurance groups* may have a direction under section 148 of the *Act* allowing preparation of a consolidated **Form 20**. *Insurers* will nevertheless still need to disclose *material connected-party transactions* separately for each *insurer* member of the group. As this is a requirement of Article 8 of the *Insurance Groups Directive*, it is unlikely that the *FSA* would be able to waive the requirement of individual

disclosure.

Disclosure

- 20.6 (1) The information to be disclosed is set out in rule 9.39(2). The disclosure should be adequate to allow the reader of the *returns* to understand the nature of the relationship of the *insurer* with the *connected* person, and the nature of the transaction and its effect upon the financial position and the performance of the *insurer*.
- (2) Therefore, disclosure should include the transactions during the period and any amounts unpaid or outstanding in respect of those transactions at the end of the period.
- (3) Consistent descriptions of transactions should be used in subsequent *returns*.
- (4) The name of each *connected* person should be stated in full.
- (5) Where disclosures under this rule would merely duplicate disclosures reported under other supplementary notes (e.g. large *counterparty exposures*) a cross-reference to the other supplementary notes should fulfil the requirement.

Guidance Note 10.1 is added as follows:

GUIDANCE NOTE 10.1

THE PARENT UNDERTAKING SOLVENCY CALCULATION

Introduction

1. This guidance relates to the *parent undertaking solvency calculation* required by the *Insurance Groups Directive* and implemented in Chapter 10 of

IPRU(INS). The calculation is formulated on a basis analogous to the basis on which *shares* in *group undertakings* are valued for the *required solvency margin* (see paragraphs 4.7 to 4.12 of **Guidance Note 4.1**), but in contrast the *parent undertaking solvency calculation* is applied to an *insurer's ultimate insurance parent undertaking* and its *ultimate EEA insurance parent undertaking*, if different. Valuation of *shares* in *group undertakings* at the solo level focus "downwards" on the *insurer's* holdings in *group undertakings*, whereas the *parent undertaking solvency calculation* focuses "upwards" towards the ultimate parent of the *insurance group* of which it is a member.

Application and scope

2. Under rule 10.1 the *parent undertaking solvency calculation* applies only to an *insurer* whose head office is in the UK (other than a *pure reinsurer*) which is a *subsidiary undertaking* of an *insurance undertaking* (whether engaged in *direct insurance business* or a *pure reinsurer*) or an *insurance holding company* (either of these would be an *insurance parent undertaking*). If an *insurer* has no such parent it is not required to do the *parent undertaking solvency calculation* although it is required to report *material connected-party transactions* (see section 20 of **Guidance Note 9.1**).
3. The information and calculations to be provided under Chapter 10 are in respect of the *insurer* and each member of its *insurance group*. The *insurance group* consists of the *insurer's ultimate insurance parent undertaking* and its *related undertakings* which are *insurance undertakings* or *insurance holding companies*.
4. An *insurance holding company* is an undertaking whose main business is to acquire holdings in *subsidiary undertakings* that are wholly or mainly *insurance undertakings*. In interpreting 'main business' and 'mainly *insurance undertakings*' the factors which should be taken into account include:
 - whether the main activity of the undertaking is to acquire or hold *shares* and *securities* of *insurance undertakings* or *insurance holding*

companies;

- the proportion of the gross assets of the undertaking represented by its *participations in insurance undertakings;*
- the proportion of the net assets of the undertaking represented by its *participations in insurance undertakings;*
- the proportion of income (being gross written premiums, turnover or other similar items) of the group from *insurance business;* and
- the risk to capital within the group from the *insurance business* carried on within the group.

An *insurance holding company* under the *Insurance Groups Directive* cannot normally also be a *financial holding company* under the *Banking Co-ordination Directive* and *Capital Adequacy Directive (93/6/EEC)*. Where there is doubt, *firms* should consult their supervisor.

5. Where an *insurer* to which Chapter 10 applies has several *insurance parent undertakings*, the *parent undertaking solvency calculation* applies only to the *ultimate* (worldwide) *insurance parent undertaking* and the *ultimate EEA insurance parent undertaking*, if different. Thus parent calculations do not have to be performed for intermediate parents. Where it is unclear who the *ultimate insurance parent undertaking* is (e.g. in the case of a joint venture), the *insurer* should discuss the issue with the *FSA* well in advance of the time when the calculation is to be provided.
6. Article 3 of the *Insurance Groups Directive* allows *group undertakings* to be excluded from supplementary supervision in certain circumstances including where the undertaking is of negligible interest with respect to the objectives of supplementary supervision or where inclusion would be inappropriate or misleading. Circumstances under which the *FSA* will consider applications for a waiver under section 148 of the *Act* to exclude undertakings under this

provision include *group undertakings* which are in run-off or liquidation. For instance if the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking* is in liquidation and the *insurer* is ring-fenced from any claims in respect of that parent, the *FSA* may consider an application to waive the requirements of Chapter 10 in respect of that parent; a condition of waiver may be that another company is treated as the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking*.

Timing

7. The *parent undertaking solvency calculation* must be provided within four months of the end of the financial year to which it relates except in the circumstances described in 11 and 12. Under rule 10.1(2), the calculation will generally be made by reference to the last *financial year* (the *financial year in question*) of the *insurer* and will thus be provided within one month from the end of the period for filing the *insurer's return* (or one and a half months where the *return* is not deposited electronically). However rule 10.1(2) allows the calculation to be provided in appropriate cases by reference to the financial year end of the *ultimate insurance parent undertaking* or the *ultimate EEA insurance parent undertaking*. An *insurer* wishing to change the reference date of its group solvency report from its own year end to that of its parent or vice versa should ensure that this does not result in the period between reports being greater than 12 months. If this causes difficulty the *FSA* will consider a modification if the criteria of section 148 of the *Act* are met.
8. Although the information and calculations required under Chapter 10 do not form part of the annual *return*, the *FSA* will adopt a similar enforcement approach to non-compliance with all aspects of Chapter 10, including the timing of submissions, as it does for the annual *return*.

Calculation and reporting responsibilities

9. Where several *insurers* to which Chapter 10 applies have the same *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking*

or both, the *parent undertaking solvency calculation* requirement applies to all of them. In these circumstances, under rule 10.4(1)(d), one *insurer* may submit the information required in Chapter 10 on behalf of the other *insurers* in the *insurance group*. This should consist of one package of the relevant information with confirmation that the *insurer* submitting the information has made it available to the Boards of directors of the other *insurers* in the *insurance group*. The purpose of this requirement is to ensure that all the *insurers* in the group are aware of the relevance of the group information to themselves.

10. Where the requirements of rule 10.2(4) are met (in most cases where an EEA competent authority has agreed to be responsible for exercising supplementary supervision or the head office of the *insurer's ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking* is situated in another *EEA State*), the UK *insurer* may, instead of complying with rules 10.2(1)(d) and (e) and 10.2(3), provide a *parent undertaking solvency calculation* and the information required under rule 10.2(1)(d) and (e) prepared under the requirements of that other State.
11. In these circumstances, it will remain the *insurer's* responsibility to ensure that the calculation is submitted to the *FSA*. This must be done within the period set by the relevant competent authority or within six months of the relevant year-end date, whichever is the earlier.
12. Rules 10.2(5) and 10.2(6) allow the method of preparing the *parent undertaking solvency calculation* to be adapted where the head office of the *ultimate insurance parent undertaking* is outside the EEA.
13. Where the *parent undertaking solvency calculation* and deficit details required under rules 10.2(1)(d) and (e) have been prepared according to the requirements of another *EEA State*, an audit statement by a local auditing firm to that effect should fulfil the requirement in rule 10.4(1)(c) in respect of that calculation. Where such an audit statement is supplied and has been included in a declaration under Chapter 10 submitted by an *insurer*, the UK auditor

should exclude the information from the scope of its review.

14. Where an *insurance group* consists of an *ultimate insurance parent undertaking* which is itself an *insurer* whose head office is in the UK and which has a UK *insurance subsidiary* or *subsidiaries* which is or are themselves *insurers*, the *parent undertaking solvency calculation* will cover the same *group undertakings* as the parent's own adjusted solvency requirement. The results may differ because admissibility limits will not apply to the *parent undertaking solvency calculation* (and hence that calculation will often produce a higher result). The subsidiary *insurer* need not in these circumstances deposit the *parent undertaking solvency calculation*. However, this does not affect the requirement to provide information under rule 10.2(1).

15. As with the solo *firm* rules, accounts drawn up according to local accounting standards and requirements may be used for *designated states or territories*, adjusted if necessary to meet the regulatory requirements in Chapter 10. *Insurers* may apply for a direction under section 148 of the *Act* modifying *FSA* rules to allow them to use other relevant local requirements. In that event it will generally be necessary to establish that they are at least equivalent to UK standards (and see *SUP* 8).

16. Under rule 10.1(2)(b), where a member of an *insurance group* has a different year end to that by reference to which the Chapter 10 information and calculations are provided, the principles of Financial Reporting Standard 2 should be followed; that is:
 - where the period difference is three months or less, the most recently completed financial statement should be used;
 - where the period difference is greater than three months, adjustments should be made for material differences.

17. Even where the *group* of which the *insurer* is a member holds interests in *insurance undertakings* through a corporate structure which does not

constitute an *insurance group* as defined, the *FSA* may need full information about the *group* of which the *insurer* is a member in order to exercise effective supervision over the *insurer*. In these circumstances the *FSA* may, under its powers in Part XI of the *Act*, require information about that *group* to be supplied in broadly equivalent terms to that provided for under Chapter 10. Similarly where an *insurance group* is part of a wider *group*, the *FSA* may require information about that wider *group*.

Basic requirements

18. Rule 10.2(1) (a) to (c) requires information about each member of an *insurance group* and the relationship between them. This may be provided in the form of the example at the end of this Guidance Note or by means of an annotated structure chart together with a list of cross-holdings of *shares* by class and voting rights in each *insurer* and *insurance holding company* in the *insurance group*. Where an *insurer* submits an annual close links report under *SUP* 16.5, a cross-reference to information in that report may be sufficient to the extent that it also satisfies the information requirements in rule 10.2(1)(a) to (c) (in these circumstances auditors should include the close links report in the scope of their statement). Principal activity is not included in the close links report and so must be disclosed here.

19. Rule 10.2(1)(d)&(e) require details of the *ultimate*, and *ultimate EEA*, *insurance parent undertaking's* share of any *solvency deficits* in certain members of the *insurance group*. These requirements apply to deficits in *insurance group* members which are *participating* undertakings in the *insurer* and *related undertakings* of the *insurer*, to individual deficits of more than 5% of the positive *relevant parent undertaking solvency calculation* and to sufficient deficits as may be necessary to ensure that deficits not reported do not exceed 10% of the relevant positive *parent undertaking solvency calculation*. Where information on deficits is provided by one member of the *insurance group* on behalf of other members, it must cover the *participating undertakings* in and *related undertakings* of all those other members. The *insurer* will need to perform sufficient analysis on *insurance group*

members outside the direct ownership chain for whom it is not reporting deficits to ascertain that these limits are not breached. Where the relevant *parent undertaking solvency calculation* is negative, all deficits must be reported. The *FSA* considers this minimum level of information on deficits in members of an *insurance group* to be essential for identification of potential risks to an *insurer* arising from its membership of an *insurance group*.

20. The valuation of members of an *insurance group* for the purposes of the *parent undertaking solvency calculation* in rule 10.2(3) is the same as for valuation of *group undertakings* for solvency purposes in rule 4.2 except that the admissibility limits in rule 4.14(1)(a) to (c) are not applied. Thus the *ultimate insurance parent undertaking's surplus assets* and the *ultimate EEA insurance parent undertaking's surplus assets* include their *proportional share of surplus assets* of each member of the *insurance group* (*insurance holding companies* being treated as if they were *insurers* with a nil *required minimum margin*), but with excluded excess assets added back in. Once *surplus assets* have been identified at the level of the *ultimate insurance parent undertaking* and the *ultimate EEA insurance parent undertaking*, they must be restated according to *FSA* valuation rules (except where rules 10.2(4) and (5) otherwise provide – these set out the conditions under which the *parent undertaking solvency calculation* and information on deficits may be prepared in accordance with local requirements, namely, where the parent is located in an *EEA State* or in another *designated state or territory*).
21. Rule 10.2(3) requires a statement of the group *surplus assets* position and an explanation of any deficit, including information on any remedial action taken or planned. The *parent undertaking solvency calculation* is only a requirement to provide information rather than a formal test. If there is a negative result, the explanation should include sufficient information for the *FSA* to determine whether there is a threat to the financial position of the *insurance group* and the *insurers* within it. This may not necessarily be the case. Equally a positive result may not necessarily indicate the absence of such a threat. The objective is that the *FSA* should have sufficient information to

determine whether it should investigate further or take other action. *Insurers* should therefore be ready to provide the *FSA* with background documentation on the calculation if required.

22. Notwithstanding 21, a positive result from the calculation is the standard that an *insurance group* is in normal circumstances expected to achieve. During the life of the interim prudential rules, the *FSA* will consider each case according to its particular facts and will consider using its own-initiative or other power under the *Act* where it considers a threat to the financial position of an *insurer* exists. A potential threat may be indicated, inter alia, by a deficit in the *parent undertaking solvency calculation*, a deficit in the solvency position of individual members of the *insurance group* and by certain intra-group exposures. The *FSA* intends to harden the *parent undertaking solvency calculation* into a requirement in the Integrated Prudential Sourcebook (see CP 97). Details of this will be consulted on in mid-2003 in the context of the implementation of the proposed Financial Groups Directive due to be adopted by the end of this year which will introduce supplementary supervision for financial conglomerates and amend certain aspects of the European directives governing supplementary supervision of insurance groups and financial groups. Financing arrangements which are likely to outlast the expected life span of the Interim Prudential Sourcebook should be made with this in mind.
23. The *Valuation of Assets Rules* permit *shares* in non-*insurance group undertakings* to be valued at *market value* as determined under rule 4.8 (see rule 4.2(1A)(b)). This allows goodwill in non-*insurance group undertakings* to count towards an *insurer's required solvency margin* where appropriate. However the value of any *shares* held in a *group undertaking* arrived at under rule 4.2 is a maximum value which may not always be the appropriate value. Under rule 4.2(1A)(b)(i), *market value* must not exceed the value that could effectively be made available or realised to meet losses (if any) arising in the *insurer*. The *FSA* considers that value relating to future income streams generated from business with other members of the *insurance group* may well be impaired when one or more members of the group are facing problems, this

being precisely a situation in which an *insurer* might wish to realise such value. From 1 May 2003, therefore, goodwill generated from business with members of the *insurance group* (which only includes *insurance undertakings* and *insurance holding companies*) must also be excluded (see rule 4.2(1A)(b)(ii)). It is clearly difficult to identify a single suitable methodology for calculating internal goodwill. But an *insurer* should be able to analyse the difference between the quoted price of the *group undertaking* and its net asset value applying an appropriate estimate of the proportion of the undertaking's business which is intra-group. The basis for this will depend on the type of business of the undertaking but might, for example, be post-tax operating profits or turnover or funds under management. There may be further complications if, for example, provision is already made against elements of future profits. In such circumstances *insurers* may prefer to make a safe-side approximation for internal goodwill and may wish to highlight the impact of the deduction in a note to the *return*.

Hybrid capital

24. The *FSA* may, in appropriate cases, by a direction under section 148 of the *Act* modifying its rules, allow an *insurer* to count the value of certain types of hybrid capital instruments which are issued by a member of the *insurance group* that is not an *insurer* towards a proportion of their group's *notional group solvency margin*, thus enhancing the result of the *parent undertaking solvency calculation*. The type of instruments that will normally be eligible for such treatment and the terms which such instruments should meet in order to qualify are in general the same as those which would apply had the instrument been issued by the *insurer*. These criteria are set out in **Guidance Note 2.1** (and see *SUP* 8).

25. The basis on which a direction under section 148 of the *Act* may permit hybrid capital to count as pure capital, as set out in paragraph 25 of **Guidance Note 2.1**, is different in the case of an issue by an *insurance parent undertaking* from the basis on which hybrid capital is dealt with at the level of *insurers* within the *insurance group*. In the case of parents, the hybrid capital

position is viewed on a group-wide basis. The 50% and 25% limits which, in the case of *insurers*, apply by reference to the *required margin of solvency*, apply, in the case of the parent, by reference to the *insurance group's notional group solvency margin*. This is calculated as the sum of the group's *proportional shares* of the *notional required minimum margins* of the *insurance undertakings* in the group. The limits are reduced by the amount of any hybrid capital issued by members of the *insurance group* (whether in that case those members are *insurance undertakings* or not) and left out of account in determining the liabilities of those members (the *insurance parent undertaking* may itself have a *notional required minimum margin* if it is an *insurance undertaking* in its own right). (See the definitions of *notional group solvency margin* and *used notional group solvency margin* in rule 11.1).

26. If an *insurer* guarantees, directly or indirectly, the issue of hybrid capital instruments by its *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking*, such a guarantee will be taken into account by the *FSA* when determining whether to allow *insurers* in the group to count any part of the hybrid capital issued by the relevant *insurance parent undertaking* towards the *notional group solvency margin* (such guarantees should be disclosed in the annual *return* in supplementary note 1402 or 1502). If the guarantee counteracts the effect of any subordination in that hybrid capital, then it is unlikely that the *FSA* would allow the hybrid capital to count towards the *notional group solvency margin*.
27. The procedure that an *insurer* should follow to support an application for a direction under section 148 of the *Act* in respect of its liability arising from the issue of hybrid debt by an *insurance parent undertaking* varies from the procedure set out in **Guidance Note 2.1** and *SUP 8* only insofar as the application should be made by the relevant *insurer* or *insurers* in respect of the *parent undertaking solvency calculation* in rule 10.2(2) rather than the *Determination of Liabilities Rules* in chapter 5 of *IPRU(INS)* (one *insurer* may submit a declaration under Chapter 10 on behalf of itself and other *insurers* in its *insurance group*).

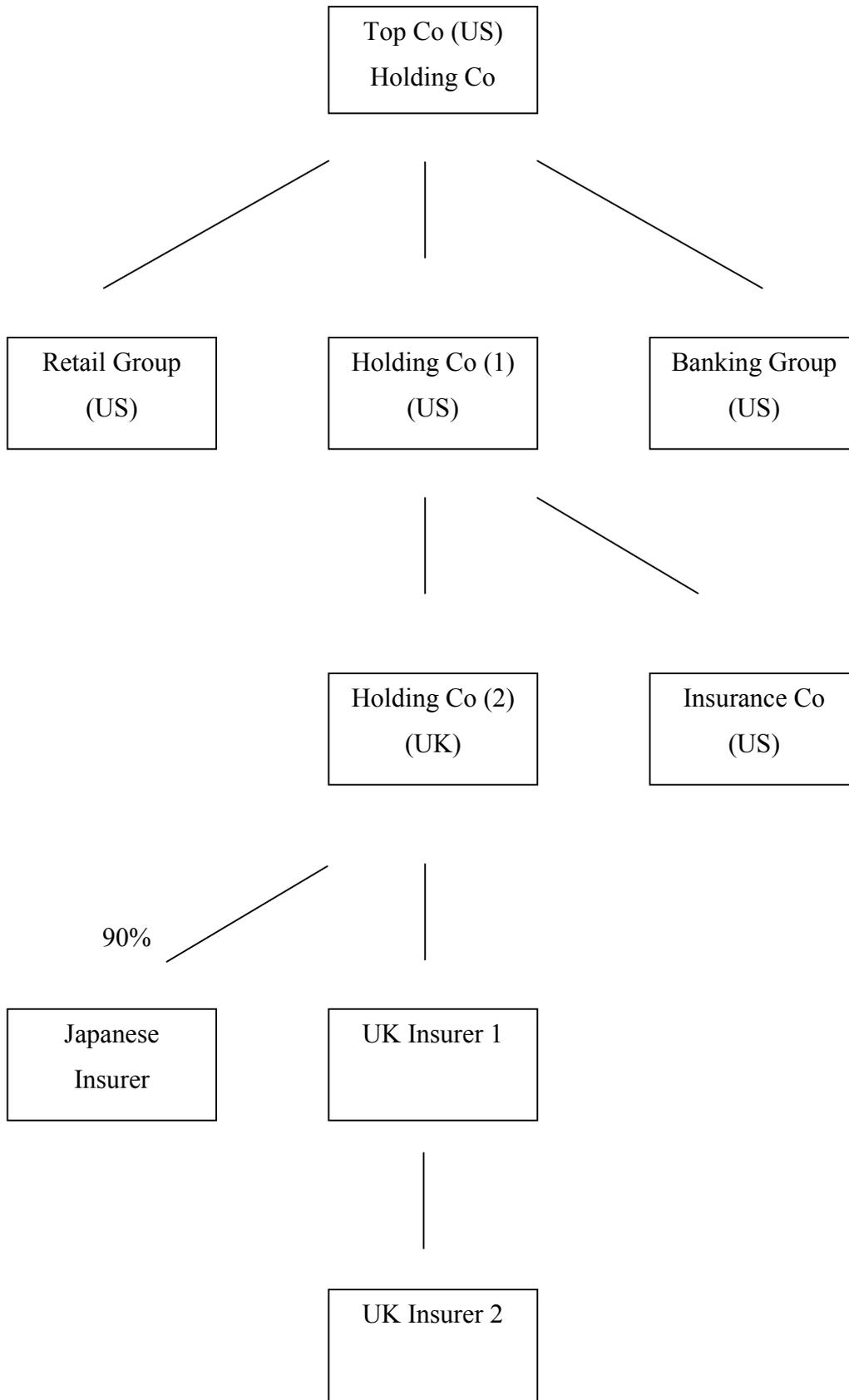
28. A proportion of liabilities in respect of cumulative preference *shares* issued by an *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking* may also be left out of account for the purpose of enhancing the result of the *parent undertaking solvency calculation* in accordance with rule 10.3(1)(c).
29. The *FSA* will expect to be consulted at an early stage on plans by *insurance groups* to raise hybrid capital.

EU co-ordination

30. A working group of EEA competent authorities has been meeting on an occasional basis with a view to developing a protocol on co-operation for the purposes of the application of the *Insurance Groups Directive*. This has involved allocating responsibility for co-ordinating the parent undertaking solvency requirements on a group by group basis to the supervisors in the state in which most of a group's business is conducted. That supervisor is responsible for selecting the calculation method and administering the *parent undertaking solvency calculation* in co-ordination with other relevant EEA supervisors of the *insurance group*.
31. The *FSA* will inform *insurers* which are members of an EEA *insurance group* about agreements made with other EEA competent authorities regarding responsibility for the parent undertaking calculation. If that responsibility lies with the UK, then the *insurer* should prepare its *group's parent undertaking solvency calculation* in accordance with *FSA* rules and this Guidance Note. If that responsibility lies with another *EEA State*, the *insurer*:
- a) may be required by a member of its *insurance group* in that other member state to provide local information for the preparation of the group *parent undertaking solvency calculation* under the requirements of that other *EEA State*; and
 - b) may submit the *parent undertaking solvency calculation* prepared under

that other state's requirements in lieu of the calculation set out in rule 10.2(3) (see rule 10.2(4)).

A. Example: Calculation of Parent Undertaking Solvency Margin



Note: All companies are 100% owned unless otherwise indicated.

UK *Insurers* 1 and 2 will be required to submit *parent undertaking solvency calculations* in respect of:

- ◆ Holding Co (1) – which is the *ultimate insurance parent undertaking*, and
- ◆ Holding Co (2) – which is the *ultimate EEA insurance parent undertaking*.
- ◆ No *parent undertaking solvency calculation* is required in respect of Top Co as this is a “mixed activity” holding company, i.e. a *parent undertaking* which is not itself an *insurer* or an *insurance holding company* (an undertaking whose main activity is the holding of *participations* in *insurance undertakings*). If, however, the insurance activities of the Top Co group significantly outweighed the retail and banking activities, the *ultimate insurance parent undertaking* calculation would be carried out at the Top Co level.

Proforma Solvency Margin Calculation

Example balance sheets:

Company	Assets (excluding book value of investments in other insurance group members)	Liabilities	RMM/Notional RMM
	£m	£m	£m
Holding Co (1)	100	90	nil
Insurance Co (US)	200	120	40

Holding Co (2)	10	60	nil
Japanese Insurer	50	40	20
UK Insurer 1	150	80	50
UK Insurer 2	100	60	20

The parent solvency position needs to be calculated from the bottom of the group upwards.

Step 1 – Calculate the values of subsidiaries of Holding Co (2)

	UK Insurer 2	UK Insurer 1 excluding UK Insurer 2	UK Insurer 1 including UK Insurer 2	Japanese Insurer
	£m	£m	£m	£m
Assets	100	150	170*	50
Less: liabilities	(60)	(80)	(80)	(40)
Net assets	40	70	90	10
RMM	(20)	(50)	(50)	(20)
Surplus(deficit)**	20	20	40	(10)

* Assets of UK *Insurer 1* of £150m plus surplus in UK *Insurer 2* of £20m.

** Asset and counterparty limits are dis-applied in the parent calculation. When excess assets have been excluded in the surpluses of *Insurer 1* and *2* they should be added back in.

Step 2 – Calculate the solvency position of Holding Co (2)

	£m	£m
Assets of Holding Co (2) (excluding book value of investments in other <i>insurance group</i> members)		10
Less: liabilities of Holding Co (2)		<u>(60)</u>
Net assets of Holding Co (2) excluding <i>participations</i>		(50)
Add: <i>surplus assets</i> of UK <i>Insurer</i> 1 (incl. <i>Insurer</i> 2)	40	
Less: <u>Full</u> deficit for Japanese <i>Insurer</i> * _____		<u>(10)</u>
		<u>30</u>
Solvency surplus / (deficit) for Holding Co (2)		<u>(20)</u>

*Where an *insurance subsidiary undertaking* has a *solvency deficit*, the full value of that *solvency deficit* must be brought in as a notional liability, even where the subsidiary is less than 100% owned.

Step 3 – Calculate the values of the immediate subsidiaries of Holding Co (1)

	Holding Co (2) (see above)	US Insurer
	£m	£m
Assets	50*	200
Less: liabilities	(70)**	(120)
Net assets	(20)	80

RMM	nil	(40)
Surplus / (deficit)	(20)	40

*Assets of Holding Co 2 of £10m plus values of *participations* of £40m.

** Liabilities of Holding Co 2: £60m plus deficits in *participations* of £10m.

Step 4 – Calculate the solvency position of Holding Co (1)

	£m	£m
Assets of Holding Co (1) (excluding book value of investments in other <i>insurance group</i> members)		100
Less: liabilities of Holding Co (1)	<u>(90)</u>	
Net assets of Holding Co (1) excluding <i>participations</i>		10
Add: surplus value of US Insurer	40	
Less: deficit for Holding Co (2)	<u>(20)</u>	
Solvency surplus / (deficit) Holding Co (1)		<u>20</u>
		<u>30</u>

B: Example: Parent Undertaking Reporting Format

Declaration under IPRU (INS) Chapter 10

Firm's name:

FSA reference number:

Date:

■ IPRU(INS) 10.2R (1)*

A	B	C	D	E	F	G
Company Name 10.2R (1)(a)	Location of Head Office 10.2R (1)(a)	Principal Activity 10.2R(1)(a)	Relationship with other members of Insurance Group 10.2R(1)(b) & 10.2R(1)(c)		Ultimate insurance parent's share of solvency deficit in company (if any) 10.2R(1)(d)***	Ultimate EEA insurance parent's share of solvency deficit in company (if any) 10.2R(1)(e)***
			Amount / description of shareholding **	Amount / description of shareholding directly held **		

* The information in columns A to E may alternatively be provided in the form of an annotated group structure chart. Also information already provided in an Annual Close Links Report (see SUP 16.5R) need not be duplicated here.

** including classes of shares and voting rights.

*** where deficits have or may have been excluded as a result of the exemptions in (d) or (e), this should be disclosed (it is not necessary to disclose the number or amounts of such deficits).

IPRU(INS) 10.2R (3)

	Rule	Ultimate Insurance Parent Undertaking £	Ultimate EEA Insurance Parent Undertaking £
Surplus assets	10.2R (3)(a)	A	A
Less			
Any provision for related undertaking	10.2R (3)(a)(i)	B	B
Any deficit in assets available to cover:			
- any liabilities not already provided for	10.2R (3)(a)(ii)(A)	C	C
- the notional minimum margin (if any) of the ultimate (ultimate EEA) insurance parent	10.2R (3)(a)(ii)(B)	D	D
Surplus /deficit (E= A-B-C-D)		E	E

Annex B

In the Glossary of Definitions in the FSA Handbook, the definition of *designated State or territory* is amended as follows:

any *EEA State* (other than the *United Kingdom*), Australia, Canada or a province of Canada, Hong Kong, ~~New Zealand~~, Singapore, South Africa, Switzerland, ~~the USA~~ a State in the United States of America, the District of Columbia or Puerto Rico.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INVESTMENT BUSINESSES
(AMENDMENT NO 2) INSTRUMENT 2002**

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).
- 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 February 2003.

Amendments to the Interim Prudential sourcebook for investment businesses

- D. IPRU(INV) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Investment Businesses (Amendment No 2) Instrument 2002.

By order of the Board
21 November 2002

Annex

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

Chapter 5: Financial Resources for Investment Management Firms

(page 28 of 33)

Table 5.2.3(5)(e) OTHER ASSETS REQUIREMENT

...
PART II
RISK FACTORS

Assets

Assets and Off-Balance Sheet Items	Risk Factor
---	--------------------

Cash at bank and in hand and equivalent items Assets secured by acceptable collateral including deposits and certificates of deposit with lending institutions	NIL
---	-----

Amount due from trustees of authorised unit trusts	NIL
---	-----

Note

This only applies to *firms* who are *authorised unit trust managers* in relation to authorised unit trusts they manage.

<u>Amount due from <i>depositories</i> of <i>ICVC's</i></u>	<u>NIL</u>
---	------------

Note

This only applies to *firms* who are *authorised corporate directors* in relation to *ICVC's* they operate.

Other receivables due from or explicitly guaranteed by or deposits with <i>category a</i> <i>bodies</i>	NIL
---	-----

Other receivables due from or explicitly guaranteed by or deposits with <i>category b</i> <i>bodies</i>	1.6%
---	------

Pre-payments and accrued income (See paragraph 10 of Part II of Table 5.2.2(1)) 8%

All other assets 8%

...

APPENDIX 1 (INTERPRETATION)

GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

Insert in the appropriate alphabetical position, the following new term:

securities means shares, debentures, government and public securities, warrants and certificates representing securities.

...

Annex D Interim Prudential Sourcebook for Investment Businesses: Required Forms

13.1 FORM OF SUBORDINATED LOAN AGREEMENT FOR PERSONAL INVESTMENT FIRMS (SEE IPRU (INV) Chapter 13)

NOTES FOR COMPLETION OF THIS DOCUMENT

This subordinated loan Agreement is to be used for injecting additional funds into a firm on a semi-permanent basis. This loan should normally be made in cash. You should speak to FSA before completing the Agreement if you intend to make the loan by a transfer or assignment of assets.

- (1) *This is the standard form prescribed by FSA for long term or short term subordinated loans. A long term subordinated loan must have an original maturity of at least five years or, where it has no fixed term, be subject to five years' notice of repayment; a short term subordinated loan must have an original maturity of at least two years or, where it has no fixed term, be subject to ~~five~~ two years' notice of repayment. Delete from the heading and from paragraph 4(2) (Repayment of the Loan) whichever period in brackets is not relevant.*

...

1. DEFINITIONS

"Subordinated Liabilities" means all Liabilities to the Lender in ~~is~~ respect of the Loan and all interest payable thereon.

...

5. SUBORDINATION

...

- (2) (a) No payment of the Subordinated Liabilities (other than in respect of interest) shall be made ~~an~~ at any time under sub-paragraph (1) above unless the Borrower has obtained FSA's prior written consent to such payment and that consent has not been withdrawn.

...

9. [This Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present partners or [either] [any] of them or the assumption of new Partners or by a change of name it being provided that:
- (a) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligation contained in it until such time as the Lender and the remaining Partner[s] shall agree in writing to release a retired Partner from such obligations and FSA has given its written consent to the release; and
 - (b) in the event of a new partner being assumed as a Partner of the Borrower the other partners shall procure that the said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum to it as the Lender and FSA may consider necessary.

The obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally. ^{**} +]

Chapter 13: Financial Resource Requirements for Personal Investment Firms

13.10 Financial Resources Test 1 - Own Funds Requirement

13.10.3 R (1) Where a Category B3 *firm* with 1- 25 *advisers* has a facility under the PASS Loan Agreement Scheme it may make an adjustment in its *own funds* calculation in accordance with (2).

- (2) a *firm* in (1) can regard as additional to its *own funds* the lower of either:
- (a) the amount of the loan facility agreed (less any loan repayments already made and less the amount of the facility withdrawn or lapsed); or
 - (b) the amount of the *firm's* provision for redress (net of any professional indemnity insurance recoverable) ~~at the relevant *annual accounting* reference date~~ at the time of its application for the loan facility.

FOURTH MOTOR INSURANCE DIRECTIVE INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following 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 150(2) (Actions for damages);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706) (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000).
- 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 19 January 2003.

Amendments to the Handbook

- D. (1) COND is amended in accordance with Annex A to this instrument.
- (2) GEN is amended in accordance with Annex B to this instrument.
 - (3) COB is amended in accordance with Annex C to this instrument.
 - (4) AUTH is amended in accordance with Annex D to this instrument.
 - (5) SUP is amended in accordance with Annex E to this instrument.
 - (6) The Glossary is amended in accordance with Annex F to this instrument.

Remaking of the General Provisions and Glossary

- E. The rules in GEN 2, other than GEN 2.1.8R, and the Glossary are made under the powers at paragraph A(2) (in addition to the powers under which they are already made).

Citation

F. This instrument may be cited as the Fourth Motor Insurance Directive Instrument 2002.

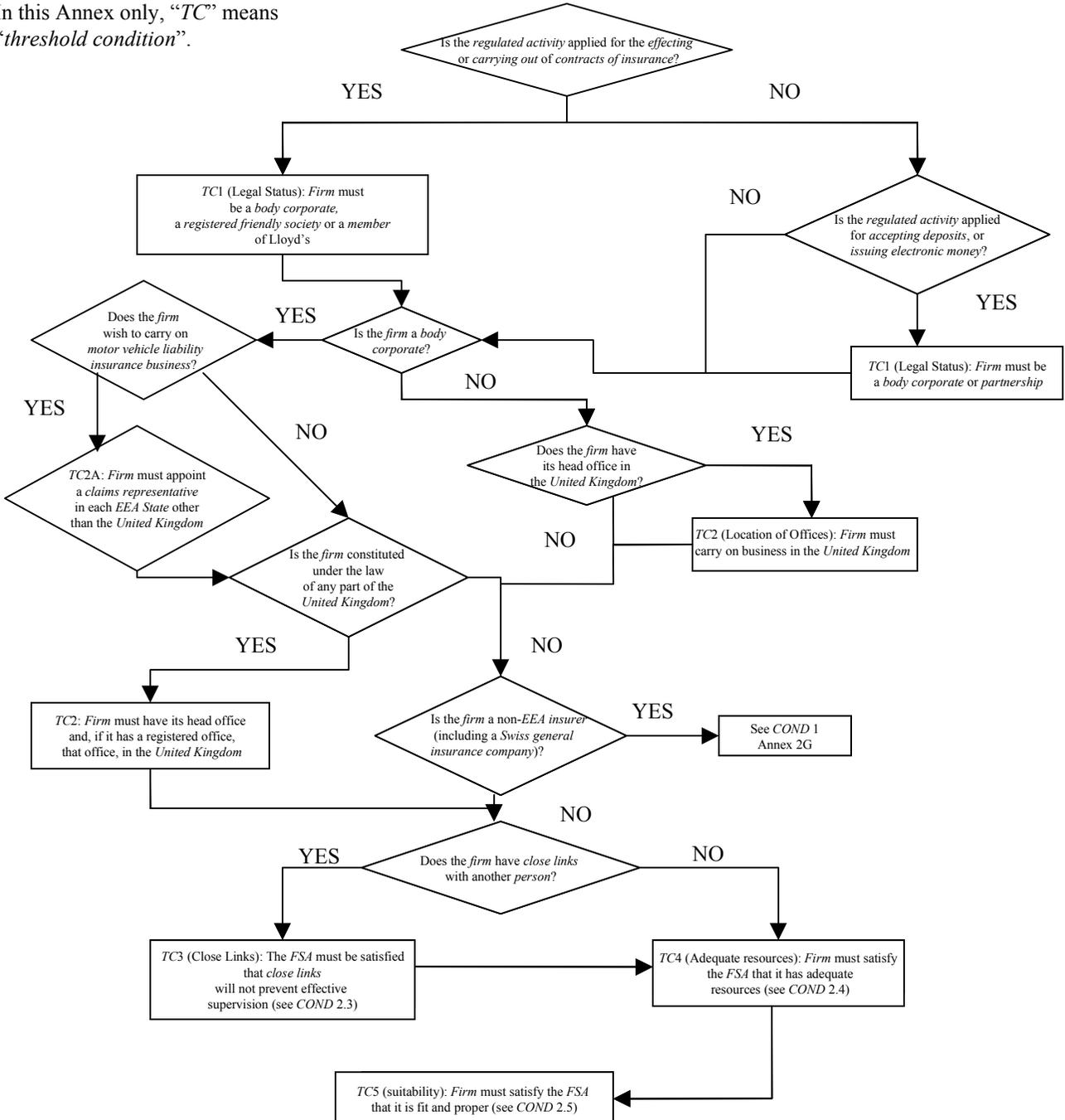
By order of the Board
21 November 2002

Annex A

Amendments to the Threshold Conditions

COND 1 Annex 1G Replace the flowchart at Annex 1G with the following new chart:

In this Annex only, “TC” means “threshold condition”.



Insert after COND 2.2, the following new section:

2.2A Threshold condition 2A: Appointment of claims representatives

2.2A.1 Table Paragraph 2A, Schedule 6 to the Act

“Appointment of claims representatives

2A - (1) If it appears to the Authority that –

(a) the regulated activity that the person concerned is carrying on, or is seeking to carry on, is the effecting or carrying out of contracts of insurance, and

(b) contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land (other than carrier’s liability) are being, or will be, effected or carried out by the person concerned,

that person must have a claims representative in each EEA State other than the United Kingdom.

(2) For the purposes of sub-paragraph (1)(b), contracts of reinsurance are to be disregarded.

(3) A claims representative is a person with responsibility for handling and settling claims arising from accidents of the kind mentioned in Article 1(2) of the fourth motor insurance directive.

(4) In this paragraph “fourth motor insurance directive” means Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC.”

2.2A.2G *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 in each EEA State other than the United Kingdom.*

2.2A.3G *Rules and guidance concerning a motor vehicle liability insurer’s obligations in relation to the appointment of its claims representatives,*

and the responsibilities and duties that the *motor vehicle liability insurer* must give to, or impose on, its *claims representatives* are set out in *COB* 6.8.19G to *COB* 6.8.29G.

Annex B

Amendments to the General provisions

In this Annex, underlining indicates new text.

Schedule 4 The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *GEN*.

...

The following articles of the *Regulated Activities Order*:

...

Regulation 3 of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I 2002/1775).

Regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706).

Annex C

Amendments to COB

In this Annex, underlining indicates new text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

COB Miscellaneous Transitional Rules

1 Table

(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>3</u>	<u>COB 6.8.26R to COB 6.8.28R</u>	<u>R</u>	<u>Fourth Motor Insurance Directive</u> <u>COB 6.8.26R to COB 6.8.28R apply only to claims received by a motor vehicle liability insurer or a claims representative on or after 19 January 2003.</u>	<u>From 19 January 2003</u>	<u>19 January 2003</u>

...

6.8.2G (2) This section implements certain requirements of the Fourth Motor Insurance and the Third Life and Non-Life Directives.

After COB 6.8.18R, insert the following new section:

Motor Vehicle Liability Insurers: claims representatives

- 6.8.19G
- (1) Under *threshold condition 2A* (Appointment of claims representatives), 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* in each *EEA State* other than the *United Kingdom*.
 - (2) If any *person* carrying on *motor vehicle liability insurance business* becomes aware, or has information which reasonably suggests, that that *person* has failed to satisfy, may have failed to satisfy or may not in the foreseeable future be able to satisfy, *threshold condition 2A* (or any *threshold condition*), that *person* must notify the *FSA* immediately (see *SUP 15.3.1R*).

- 6.8.20R 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 claims arising from an accident in the cases referred to in article 1 of the *Fourth Motor Insurance Directive*.
- 6.8.21R (1) When a *motor vehicle liability insurer* 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) If the information at (1) changes in any material way, the *motor vehicle liability insurer* must give the *MIIC* and each other *information centre* details of that change within ten *business days* of that change.
- 6.8.22R A *motor vehicle liability insurer* 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, arising from an accident occurring 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*.
- 6.8.23G *COB* 6.8.22R (3) does not prevent a *claims representative* from seeking additional authority or instructions from a *motor vehicle liability insurer*, if its existing authority or instructions are insufficient to allow it to handle and settle a claim. However, it does prevent a *claims representative* from purporting to decline to deal with, or

transfer responsibility for, claims properly referred to that *claims representative* by an *injured party*, or an *injured party's* representative.

6.8.24G Nothing in the *rules* and *guidance* at COB 6.8.19G to COB 6.8.29G prevents, or is intended to prevent:

- (1) a *motor vehicle liability insurer* from appointing more than one *claims representative* in one, or more than one, *EEA State*; or
- (2) a *claims representative* from acting for more than one *insurer* or *member*; or
- (3) a representative, appointed by a *motor vehicle liability insurer* under SUP 13.5.2R or regulation 3(d) of the *EEA Passport Rights Regulations*, from acting as that *motor vehicle liability insurer's claims representative* as well.

6.8.25G The appointment of a *claims representative* does not in itself constitute the opening of a branch or the creation of an establishment (see article 4(8) of the *Fourth Motor Insurance Directive*).

Motor Vehicle Liability Insurers: claims handling

- 6.8.26R
- (1) Within three months of receipt of a claim for damages from an *injured party*, or his representative, the *motor vehicle liability insurer* must (directly, or through a *claims representative*):
 - (a) make a reasoned offer of settlement, if liability is admitted and damages have been fully quantified; or
 - (b) provide a reasoned reply to the points made in the *injured party's* claim, if liability is denied, or not admitted, or the claim for damages has not been fully quantified.
 - (2) If liability is initially denied, or not admitted: within three months of any subsequent admission of liability, the *motor vehicle liability insurer* 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.
 - (3) 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 *motor vehicle liability insurer* must (directly, or through a *claims representative*) make a reasoned offer of damages, if liability is admitted at that time.

- (4) A claim for damages will be fully quantified under (1)(a), (2) or (3) when the *injured party* provides written evidence which substantiates or supports the amounts claimed.

6.8.27R

- (1) If the *motor vehicle liability insurer*, or its *claims representative*, does not comply with COB 6.8.26R(1)(a), (2) or (3), the *motor vehicle liability insurer* must pay simple interest on any damages eventually paid, unless interest is awarded by any tribunal which determines the *injured party's* claim.
- (2) If (1) applies, the amount of interest that the *motor vehicle liability insurer* must pay must be calculated as follows:
- (a) the interest calculation period:
- (i) begins three months after:
- (A) receipt of the claim for damages, if the *motor vehicle liability insurer* or its *claims representative* breaches COB 6.8.26R(1)(a); or
- (B) any subsequent admission of liability, if the *motor vehicle liability insurer* or its *claims representative* complies with COB 6.8.26R(1)(a) but breaches COB 6.8.26R(2); or
- (C) the subsequent receipt of a fully quantified claim for damages, if the *motor vehicle liability insurer* or its *claims representative* complies with COB 6.8.26R(1)(a) and (2) but breaches COB 6.8.26R(3); and
- (ii) ends on the date when the *motor vehicle liability insurer* pays compensation to the *injured party*, or the *injured party's* authorised representative;
- (b) the interest rate to be applied throughout the period in (a) is the Bank of England's base rate (from time to time), plus four per cent.

6.8.28R

A *motor vehicle liability insurer* will be taken to have received a claim, or a fully quantified claim, for damages when that claim, or fully quantified claim, for damages is delivered to the *motor vehicle liability insurer*, or a *claims representative*, by any *person* by any method of delivery which is lawful in the *motor vehicle liability insurer's*, or its *claims representative's*, respective State of residence or establishment.

- 6.8.29G
- (1) *COB* 6.8.26R to *COB* 6.8.28R 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) *COB* 6.8.19G to 6.8.28R 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, *insurers*.

...

COB Schedule 4 - Powers exercised

1 Table G

4 The following powers and related provisions in or under ~~relating to~~ the *Act* have been exercised by the *FSA* to make the *rules* in *COB*:

- 2 Section 118(8) (Market abuse)
- 3 Section 138 (General rule-making power)
- 4 Section 139(1) and (4) (Miscellaneous ancillary matters)
- 5 Section 145 (Financial promotion rules)
- 6 Section 147 (Control of information rules)
- 7 Section 149 (Evidential provisions)
- 8 Section 156 (General supplementary powers)
- 9 Section 238(5) (Restrictions on promotion)
- 10 Section 247 (Trust scheme rules)
- 11 Regulation 6(1) of The Open-Ended Investment Companies Regulations 2001
Regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)

12 The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COB*:

- 13 Section 157(1) (Guidance)

COB Schedule 5 - Rights of actions for damages

4 Table

			Right of action under section 150		
Chapter/ Appendix	Section/ Annex	Paragraph	For private		For other person?
			Person?	Removed?	
			
		Any <i>rule</i> in <i>COB</i> which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that <i>designated investment</i>	Yes	No	Yes Any other <i>person</i>
		<u>COB 6.8.27R</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u> <u>Any</u> <u>other</u> <u>person</u>
		All other <i>rules</i> in <i>COB</i>	Yes	No	No

Annex D

Amendments to AUTH

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

- 3.8.2G (1) There are ~~five~~six *threshold conditions* and certain additional conditions applying to a *firm* with *Part IV permission*:
- ...
- (c) *threshold condition 2* (Location of offices) provides that:
- (i) a *body corporate* constituted under the law of any part of the *United Kingdom* must have its head office and, if it has one, its registered office, in the *United Kingdom*; and
- (ii) a non body corporate with its head office in the *United Kingdom* must carry on business in *United Kingdom*;
- (ca) *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 in each *EEA State* other than the *United Kingdom*.
- ...
- (2) *Threshold conditions ~~2.A~~, 3, 4, and 5* enable the *FSA* to assess the applicant in the light of the activities it wishes to carry on and, in particular, make it clear that suitability to carry on one *regulated activity* does not mean that the applicant is suitable to carry on all *regulated activities*. ~~These~~ *Threshold conditions 3, 4 and 5* do not apply to *Swiss general insurance companies*.

Annex E

Amendments to SUP

In this Annex, underlining indicates new text.

6.3.13G The application for variation of *Part IV permission* will need to provide information about the *classes of contracts of insurance* for which variation of *Part IV permission* is requested and also those *classes* qualifying to be carried on on an ancillary or supplementary basis. For example, an insurer applying to vary its permission to include class 10 (motor vehicle liability, other than carrier's liability) must satisfy the FSA that it will meet, and continue to meet, threshold condition 2A (Appointment of claims representatives). 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.

...

6.3.25G Table Information which may be required. See SUP 6.3.24G

<i>Type of business</i>	Information which may be required
...	...
<i>Insurance Business</i>	<ol style="list-style-type: none">1. A <i>Scheme of operations</i> in accordance with <i>SUP Appendix 2</i>2. <u>(If the application seeks to vary a permission to include motor vehicle liability insurance business) details of the claims representatives required by threshold condition 2A (Appointment of claims representatives), if applicable.</u>
...	...

...

10.9.20G The significant management (settlements) function does not include claims representatives.

Annex F

Amendment to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<u>claims representative</u>	<u>a person appointed by a motor vehicle liability insurer to satisfy the requirements of threshold condition 2A or COB 6.8.20R.</u>
<u>Fourth Motor Insurance Directive</u>	<u>the Directive of the European Parliament and the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (No 2000/26/EC).</u>
<u>information centre</u>	<u>a centre established by an EEA State to meet its obligations under article 5 of the Fourth Motor Insurance Directive (Information Centres).</u>
<u>injured party</u>	<u>(in COB 6.8) 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.</u>
<u>MIIC</u>	<u>the Motor Insurers' Information Centre.</u>
<u>Motor Insurers' Information Centre</u>	<u>the information centre appointed to meet the United Kingdom's obligations under article 5 of the Fourth Motor Insurance Directive (Information Centres).</u>
<u>motor vehicle liability insurance business</u>	<u>general insurance business of class 10, other than:</u> <u>(a) carrier's liability;</u> <u>(b) pure reinsurance of that class.</u>
<u>motor vehicle liability insurer</u>	<u>(a) a firm with permission to carry on motor vehicle liability insurance business;</u> <u>(b) any person carrying on the regulated activity of managing the underwriting capacity of a Lloyd's syndicate in respect of members whose insurance business at Lloyd's includes motor vehicle liability insurance business.</u>

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 9)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:
 - (1) the amendments in Annex C come into force on 1 April 2003;
 - (2) the remainder of this instrument comes into force on 1 January 2003.

Amendments to the Conduct of Business sourcebook

- D. The transitional rules in the Conduct of Business sourcebook are amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook is amended in accordance with Annexes B and C to this instrument.
- F. Schedule 1 to the Conduct of Business sourcebook (Record keeping requirements) is amended in accordance with Annex D to this instrument.

Amendments to the Glossary

- G. The Glossary is amended in accordance with Annex E to this instrument.

Citation

- H. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 9) Instrument 2002.

By order of the Board
21 November 2002

Annex A
Amendments to the Conduct of Business Transitional Rules
coming into force on 1 January 2003

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

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

2 Table COB TR 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
...					
3.4	<i>TSP 3</i>	R	<p>Know your customer and suitability</p> <p>...</p> <p>(2) The relief in (1) will apply so long as there is no relevant change in the <i>customer's</i> personal and financial circumstances.</p> <p>(3) <u>Paragraph (2) applies only for relevant changes of which a <i>firm</i> ought reasonably to be aware assuming compliance with COB 5.2.5R (Requirement to know your customer)</u></p>	<p>Indefinitely (as regards (1) and (2))</p> <p>Indefinitely from 1 January 2003 (as regards (3))</p>	<i>commencement</i>
...					

Annex B

Amendments to the Conduct of Business sourcebook coming into force on 1 January 2003

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

COB 3: Financial promotion

Annex 1 G

An overview of some of the main exemptions contained in the
Financial Promotion Order (G)

2 Table

Article no. and name of exemption	Type of promotion: Unsolicited real time, non- real time	Controlled activity/ Controlled investment	Other conditions
... 18 Mere conduits	All	All	Made by a <i>person</i> who acts as a mere conduit for it (<u>other than <i>electronic commerce communications</i></u>).
<u>18A</u> <u>Electronic commerce communications: mere conduits, caching and hosting</u>	<u>All</u>	<u>All</u>	<u>Where the making of the communication constitutes the provision of an information society service of a kind described as 'mere conduit', 'caching' or 'hosting' under the E-Commerce Directive and the conditions mentioned in the directive are met.</u>

...			
<p>20B <u>Incoming electronic commerce communications</u></p>	<p><u>Non-real time</u></p>	<p><u>All</u></p>	<p><u>Incoming electronic commerce communications other than:</u> (1) <u>a communication which constitutes an advertisement by the operator of a UCITS scheme of units in that scheme; or</u> (2) <u>a communication consisting of an invitation or inducement to enter into a contract of insurance, where made by an undertaking with authorisation in accordance with article 6 of the First Life Directive or the First Non-Life Directive, and the insurance falls within the scope of any of the Insurance Directives; or</u> (3) <u>an unsolicited communication made by electronic mail.</u></p>
...			

...

5.2.10 When a *firm* arranges a *pension opt-out* or *pension transfer* from an R OPS for a *private customer* as an *execution-only transaction*, the *firm* must make and retain indefinitely a clear record to evidence that no *advice on investments* was supplied to the *private customer*.

...

5.3.14 If, following a *personal recommendation* by the *firm*, a *private*
R *customer*:

- (1) buys, sells, surrenders, converts, cancels, or suspends *premiums* for or contributions to a *life policy*, *pension contract* or *stakeholder pension scheme*; or

...

...

5.3.18 The *firm* must provide the letter required by COB 5.3.14 R to the
R *customer*:

- (1) in the case of a *life policy*, *pension contract* or *stakeholder pension scheme*, where the *cancellation rules* require notification of the right to cancel, no later than the issue of the post-sale notice of the *customer's* right to cancel; or

...

...

Record keeping requirements

5.3.19A A *firm* must make and retain a record of a *private customer's* suitability letter that it has provided in satisfying COB 5.3.14 R. The record must be retained for a minimum period after the letter is provided, as follows:
R

- (1) for a record relating to a *pension transfer*, *pension opt-out* or *free-standing additional voluntary contribution (FSAVC)*, indefinitely;
- (2) for a record relating to a *life policy*, *pension contract* or *stakeholder pension scheme*, six years;

(3) in any other case, three years.

...

5.3.28 R When a firm promotes a *personal pension scheme*, including a *group personal pension scheme*, by means of a *direct offer financial promotion* to a group of *employees*, the firm must:

- (1) be satisfied on reasonable grounds that the *pension scheme* is likely to be at least as suitable for the majority of the *employees* as a *stakeholder pension scheme*; ~~and must~~
- (2) record why it thinks the promotion is justified; and
- (3) retain the record for a minimum period of six years after the *financial promotion* is last communicated.

...

6.7.5 G Table Cancellable investment agreements-
This table belongs to COB 6.7.4 G

Cancellable Investment agreements			
	Post-sale right to cancel?	Pre-sale right to withdraw?	Maximum period of reflection
...			
B. Agreements where the right arises only if advice is given.			

<i>Units in an AUT₂ recognised scheme or ICVC (within an ISA or PEP)</i>	Yes ⁸	Yes ⁸	14 days for cancellation ² 7 days for withdrawal
<i>ISA or PEP not mentioned in any row above</i>	No	Yes ⁷	7 days
<i>Units in an AUT₂ recognised scheme or ICVC (outside an ISA or PEP)</i>	Yes	No	14 days ²
<i>EIS</i>	No	Yes ⁷	7 days
Notes:			
...			
8. For <i>units</i> in an <i>AUT₂ recognised scheme</i> or <i>ICVC</i> (within an <i>ISA</i> or <i>PEP</i>), the <i>firm</i> can choose to offer a pre-sale right to withdraw rather than a post-sale right to cancel (see <i>COB 6.7.14R(1)</i>). There is no right to cancel or withdraw for a second or subsequent <i>ISA</i> .			

...

6.7.17 R Table Cancellable investment agreements – non-life
This table belongs to *COB 6.7.7 R (1)* and *COB 6.7.14 R (1)*

Cancellable investment agreements – non-life	
Investment agreements for which an individual customer has:	
Column 1	Column 2
a right to cancel under <i>COB 6.7.7R(1)</i> (subject to column 2).	no right to cancel where any one or more of the following cases applies

Cancellable investment agreements – non-life

Investment agreements for which an individual customer has:

Column 1

Column 2

<p>...</p> <p>C. Subscriptions (see notes 1 and 2 in <i>COB 6.7.18R</i>) which can be invested only in <i>units</i> (whether or not held within an <i>ISA</i>, <i>PEP</i> or <i>pension contract</i>) in an <i>AUT</i>, <i>recognised scheme</i> or <i>ICVC</i> purchased from the:</p> <p>...</p>	<p>...</p> <p>13. The agreement relates to a <i>recognised collective investment scheme</i> and the agreement is with an <i>operator</i> who is not:</p> <p>(a) an <i>authorised person</i>; or</p> <p>(b) carrying on business in the <i>United Kingdom</i>.</p> <p>...</p>
--	--

...

- 8.1.5 (1) A *firm* should provide the following essential details of a transaction, to the extent they are relevant:
- E

...

- (b) such information as the *customer* has ~~on his own initiative~~ agreed with the *firm* (in the case of a *private customer*, agreed in writing with his informed consent), or is in accordance with the custom of a non-UK market in which the transaction was arranged; or

...

- (2) To despatch a confirmation promptly, a *firm* should:
 - (a) despatch it no later than the *business day* following the day the transaction was *executed* (as specified in COB 8.1.12 R) or within any period agreed with specified by the *customer* ~~on his own initiative~~ (in the case of a *private customer*, agreed in writing with his informed consent); or
 - (b) despatch a copy of a confirmation received from a third party together with additional information, if any, to the *customer* as soon as practicable, but in any event no later than the *business day* following receipt; ~~and or~~
 - (c) when the *firm* has issued or redeemed units in a regulated collective investment scheme, despatch it at the latest on the *business day* following the day the issue or redemption price was determined, ~~when the *firm* has issued or redeemed units in a regulated collective investment scheme~~, unless (b) applies; or
 - (d) when a *firm* executes a transaction in:
 - (i) an OTC derivative; or
 - (ii) stock lending or borrowing; or
 - (iii) a repo; or
 - (iv) rights to or interests in OTC derivatives;

despatch a confirmation as soon as practicable in accordance with proper standards of market practice for the *investment* concerned.

...

8.1.6 R A firm need not despatch a confirmation when:

...

(3) the *firm* has agreed with the *customer* (or, in the case of a *private customer*, agreed in writing with his informed consent) has been requested by the customer in writing not to supply confirmations that confirmations need not be supplied, either generally or in specified circumstances (but see *COB* 8.1.7 R and *COB* 8.1.8 R); or

...

8.1.7 R A *firm* which is not an *OPS firm* referred to in *COB* 8.1.8 R may rely upon the exceptions in *COB* 8.1.6 R (3) or *COB* 8.1.6 R (4) only if any *periodic statement* which the *firm* provides to the *customer* in accordance with *COB* 8.2 (*Periodic Statement*) (and subject to the exceptions in *COB* 8.2.6 R) it provides to the *customer* a *periodic statement* ~~contains~~ containing the information that would have been contained in a confirmation despatched in accordance with *COB* 8.1.3 R (other than information which has since become irrelevant) relating to the transactions *executed* during the relevant period.

...

8.2.10 E Table Periodic statements: timing and content
This table belongs to *COB* 8.2.7 E

Periodic statements: timing and content

...				
Adequate information	(3)	A <i>periodic statement</i> should contain:		
		...	information that a <i>private customer</i> habitually resident outside the <i>United Kingdom</i> , or an <i>intermediate customer</i> , has <u>agreed that the firm should provide</u> on his own initiative agreed with the firm as adequate ; or	
		...		

...

11.5.3 R Table Rules applicable to trustee firms which are not depositaries and to which COB 11.5.1 R (2) applies

This table belongs to COB 11.5.1 R (2).

Chapter	Description	Modifications
...		
2.5	Exclusion of liability	' <i>Customer</i> ' and ' <i>private customer</i> ' mean 'trustee' or ' <u>trust</u> ' as appropriate.

Annex C

Amendments to the Conduct of Business sourcebook coming into force on 1 April 2003

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

COB 3: Financial promotion

Annex 4 G

5 Table C

Bond Funds

A firm constructing a financial promotion for corporate bond funds or similar contracts should take account of the following:

(1) Clear description of the risk

Yields offered by bonds often reflect in part the risk rating of the issuer. Investment in such bonds brings an increased risk of default on repayment and this in turn translates into a risk that the capital value of the fund will be affected. Financial promotions for funds which invest in riskier bonds should clearly explain this point to recipients. The prominence and wording of the explanation should reflect both the risk profile of the portfolio held by the fund, and the prominence given to information about the yield on the fund. The main body of the financial promotion should state that the yield or the capital value of the fund (or both) can fluctuate, as the case may be.

...

Bond Funds

(4) Running and redemption yields

~~Whilst the running yield indicates the expected level of current income for investors, managers should take the redemption yield into account when considering how to portray the prospects for future investors. They should also take into account, and explain, any material difference between the two.~~

If a yield figure is to be quoted, then both the gross redemption yield and the running yield should be mentioned with equal prominence. This is to ensure that a balanced impression is given of both the short-term and the long-term prospects for the fund. When quoting the gross redemption yield, the main body of the *financial promotion* should also mention the fact that it is a prediction, and is not guaranteed.

A *firm* should take into account, and explain, any material differences between the yield figures.

(5) Describing the yield and growth prospects

~~Where it is the case, the fact that both the yield and the capital value of the fund can fluctuate should be disclosed. A *firm* needs to be careful when describing the future yield or growth prospects of a fund. The prominence and tone given to descriptions of future prospects should reflect a reasonable assessment of the fund taking into account, for example, the redemption yield, whether charges are taken from capital, and the general economic climate.~~

...

After COB 6.5.56R, insert the following new paragraphs:

Pension income withdrawals and phased retirement

6.5.57R When a scheme member or *policyholder* described in COB 6.5.53R (2) indicates to the provider of that scheme or policy that he is considering or has decided:

- (1) to discontinue an *income withdrawal* arrangement; or
- (2) to take out a further sum of money from his pension fund to buy an annuity as part of a phased retirement arrangement;

the provider of that scheme or policy must send the scheme member or *policyholder* the information required by *COB* 6.5.53R, unless the scheme member or *policyholder* has already been sent the information by the provider in the previous 12 *months*.

6.5.58G

COB 6.5.57R is intended to ensure that, when a scheme member or *policyholder* is considering or has decided to discontinue an *income withdrawal* arrangement and buy an annuity, he receives a further reminder from his current provider of the information required by *COB* 6.5.53R (3). Similarly, where a scheme member or *policyholder* has opted for phased retirement, *COB* 6.5.57R requires his pension plan provider to send him this information when he is about to buy a further annuity. This may be several years after the information on the *open market option* was previously sent to the scheme member or *policyholder* and will ensure that he is made aware, at the time he decides to buy an annuity, of the advantages and disadvantages of using the *open market option*. However, it is not necessary to send the information to scheme members or *policyholders* described in *COB* 6.5.57R (1) or (2) if the provider has already done so in the previous 12 *months*.

Annex D

**Amendment to COB Schedule 1
coming into force on 1 January 2003**

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

...				
COB 5.2.10R	Private customer: Pension opt-out or transfer from an <i>OPS</i> on an execution-only basis	Execution-only transaction, no investment advice given	Upon execution	<u>Indefinitely</u>

<u>COB 5.3.19AR</u>	<u>Private customer:</u> <u>Suitability</u> <u>relating to a</u> <u>pension opt-out</u> <u>or transfer, or</u> <u>FSAVC</u>	<u>Suitability letter</u>	<u>After letter sent</u>	<u>Indefinitely</u>
<u>COB 5.3.19AR</u>	<u>Private customer:</u> <u>Suitability</u> <u>relating to a life</u> <u>policy, pension</u> <u>contract, or</u> <u>stakeholder</u> <u>pension scheme</u>	<u>Suitability letter</u>	<u>After letter sent</u>	<u>6 years</u>

<u>COB 5.3.19AR</u>	<u>Private customer:</u> <u>Suitability</u> <u>relating to any</u> <u>other case</u>	<u>Suitability letter</u>	<u>After letter sent</u>	<u>3 years</u>
---------------------	---	---------------------------	--------------------------	----------------

...				
COB 5.3.27R	...	...	...	...
<u>COB 5.3.28R</u>	<u>Direct offer</u> <u>personal pension</u> <u>scheme</u>	<u>Record of</u> <u>justification for</u> <u>promotion</u>	<u>On making the</u> <u>promotion</u>	<u>6 years</u>
<u>COB 6.6.19R</u>	...	...	...	...
...				

Annex E

Amendments to the Glossary coming into force on 1 January 2003

Amend the following definition as shown (underlining indicates new text and striking through indicates deleted text).

special purpose vehicle a *body corporate*, explicitly established for the purpose of securitising assets, whose sole purpose (either generally or when acting in a particular capacity) is to carry out one or more of the following functions:

- (a) issuing *designated investments* other than *life policies*;
- (b) redeeming or terminating or repurchasing (whether with a view to re-issue or to cancellation) an issue, (in whole or part) of *designated investments* in connection with the *issue*, redemption, termination or repurchase of *designated investments* other than *life policies*;
- (c) entering into transactions or terminating transactions involving *designated investments* in connection with the *issue*, redemption, termination or re-purchase of *designated investments* other than *life policies*;

~~Subject to the special purpose vehicle having been-~~

- (i) ~~explicitly established for the purpose of securitising assets; and~~
- (ii) ~~assessed by a rating agency.~~

**MARKET CONDUCT SOURCEBOOK
(TRANSACTIONS BETWEEN STABILISING MANAGER AND AGENT)
INSTRUMENT 2002**

Powers Exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers 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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 January 2003.

Amendments to MAR

- D. MAR is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as Market Conduct Sourcebook (Transactions Between Stabilising Manager and Agent) Instrument 2002.

By order of the Board
21 November 2002

Annex
Amendments to MAR

After MAR 2.6.5R(2), insert the following new paragraphs:

- 2.6.5R (3) Paragraph (1) does not apply where:
- (a) the transaction between the *stabilising manager* and his agent is undertaken solely for the purpose of re-allocating the economic risk of positions that were taken by the *stabilising manager* and his agent in the course of *stabilising action* and is priced accordingly; and
 - (b) the *relevant securities* are, and the transactions are in, *investments* that:
 - (i) fall within article 77 or 78 of the *Regulated Activities Order* (bonds, etc), or article 79 (instruments, etc) or 80 (certificates, etc) which confer rights only in respect of *investments* falling within article 77 or 78 ; and
 - (ii) are not exchangeable for or convertible into, and do not give rights to acquire, dispose or subscribe for, *investments* falling within article 76 of the *Regulated Activities Order* (shares, etc), or articles 79 or 80 which confer rights in respect of *investments* falling within article 76.

2.6.6G *MAR* 2.6.5R prohibits transactions between a *stabilising manager* and his agent unless it is not reasonable to expect both the principal and agent to know the identity of their counterparty or where *MAR* 2.6.5R(3) applies. *MAR* 2.6.5R(3) is designed to permit a transaction between a *stabilising manager* and his agent that takes place in the debt markets, typically at the end of the *business day* or *stabilising period*, that “squares up” positions taken in the course of *stabilising action*. The reference to price in *MAR* 2.6.5R(3)(a)

reflects the need to be mindful that although the transaction may in practice, for example, be effected at a price that is the average of the constituent transactions, so not the prevailing market price, the purpose behind the transaction is to re-allocate economic risk established in the course of *stabilising action* and is not to mislead the market. *MAR 2.6.5R(3)(b)* has been drafted to ensure that the prohibition in *MAR 2.6.5R(1)* remains applicable to the issue of and transactions in any *investment* that provides a right to acquire or subscribe for, or may eventually be converted or exchanged into, a *share*.

APPLICATION FEES (2002/2003) (NO 2) INSTRUMENT 2002

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 156 (General supplementary powers);
 - (2) paragraph 17(1) of Schedule 1 (Fees).
- 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 December 2002.

Amendments to AUTH

- D. AUTH is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Application Fees (2002/2003) (No 2) Instrument 2002.

By order of the Board
21 November 2002

Annex

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

AUTH 4: Authorisation Fees

Authorisation fees payable in relation to the period from 1st April 2002 to 31st March 2003

Part 1 – Authorisation fees payable

1 Table

Application type (see Part 2)	Amount payable
(a) Version 1 credit unions – authorisation <u>Credit unions - registration of common bond</u>	£200
(b) Credit unions – registration of common bond <u>Version 1 credit unions – authorisation</u>	£300
(c) E-money issuers	£750

...

SUPERVISION MANUAL (AMENDMENT NO 10 AND CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 60 (Applications for approval);
 - (3) section 138 (General rule-making power);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).

Commencement

- B. This instrument comes into force as follows:
- (1) Annexes C and D come into force on 30 September 2003; and
 - (2) the remainder of this Instrument comes into force on 1 December 2002.

Amendments to the Supervision manual

- C. The Supervision manual is amended in accordance with Annex A and Annex C to this instrument.

Amendments to the Training and Competence Sourcebook

- D. The Training and Competence Sourcebook is amended in accordance with Annex B to this instrument.

Amendments to the Authorisation manual

- E. The Authorisation manual is amended in accordance with Annex D to this instrument.

Citation

- F. This instrument may be cited as the Supervision Manual (Amendment No 10 and Consequential Amendments to the Handbook) Instrument 2002.

By order of the Board
21 November 2002

Annex A

Amendments to the Supervision Manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

After paragraph 15 of the transitional provisions, insert the following new provisions. The column headings are shown for convenience.

(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
15A	<i>Rules in SUP 20</i>	R	<p>If, on or before 31 December 2002, a firm submits to the FSA a completed Form C under SUP 10.13.6R (Ceasing to perform a controlled function) in relation to:</p> <p>(1) the <i>customer trading function</i> relying on SUP 10.10.13R(1)(b) (Corporate finance adviser function); or</p> <p>(2) the <i>investment adviser function</i> relying on SUP 10.10.20R(1) (Investment management function) (as that rule has effect from 1 December 2002);</p> <p>SUP 20 (Fees Rules) applies as if the form had been processed on receipt.</p>	From 1 December 2002 to 31 December 2003	Various dates
15B	Transitional rule 15A	G	(1) The purpose of the amendment to SUP 10.10.13R(1)(b), which	From 1 December 2002 to 31	1 December 2002

December
2003

came into force on 1 December 2002, is to avoid the need to be approved for both the *corporate finance advisory function* and the *customer trading function*.

- (2) The purpose of the amendment to *SUP* 10.10.20R(1), which came into force on 1 December 2002, is, in part, to avoid the need to be approved for both the *investment management function* and the *investment adviser function*.
- (3) The purpose the transitional *rule* 15A is to enable a *firm* to take advantage of those *rules* immediately for fees purposes. However, the *FSA* does not anticipate completing processing the withdrawals until 31 March 2003. The *FSA Register* will reflect the withdrawal as at the date of the processing.

...

...

10.1.3G

The *rules* in this chapter specify descriptions of 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*~~ Regulated Activities), is that every *firm*, except an overseas firm to which *SUP* 10.1.6R applies, must apply to the *FSA* for

the approval of one or more *persons* to perform a *controlled function* on its behalf.

...

10.3.3G *Arrangement* is defined in section 59(10) of the *Act* as any kind of *arrangement* for the performance of a function which is entered into by a firm or any of its contractors with another person and includes the appointment of a *person* to an office, his becoming a *partner*, or his employment (whether under a contract of service or otherwise). For the provisions in this chapter relating to outsourcing, see *SUP* 10.12.3G and *SUP* 10.12.4G.

...

10.4.1R ~~(1)~~ Each of the functions described in *SUP* 10.4.5R (the *table of controlled functions*) is a *controlled function*.

10.4.2G *SUP* 10.4.1R ~~(1)~~, together with the *table of controlled functions* in *SUP* 10.4.5 R, specifies, in brief terms, the descriptions of the *controlled functions*. ~~*SUP* 10.4.1 R (2) provides that the o~~Other rules in this chapter contain the detail of the description for each function. Further *rules* in this chapter contain provisions which will apply to each description as indicated in those *rules*: see in particular *SUP* 10.1 for the application provisions.

10.4.3G ~~*SUP* 10.4.1 R (3) also addresses the position of an approved person who is carrying on activities which are unrelated to regulated activities or are otherwise outside the description of a controlled function. The fact that the a person may be approved for one purpose does not have the effect of bringing all his activities within the that controlled function.~~

...

10.6.3G 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 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. ~~he~~ 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*.

...

10.6.5G The definition of *director* includes a *person* in accordance with whose directions or instructions the *directors* are accustomed to act. Such a *person* is defined in section 741 of the Companies Act 1985 as a ‘shadow director’. The *directors* of a *holding company* would not, as such, be shadow *directors*. However, where, for example, a member of a *holding company* board frequently gives instructions to *directors* of a *firm*, either on his own or through a committee which takes frequent executive decisions, the *firm* should consider carefully whether he (and other members of the committee) should be approved to perform this function. ~~Neither would a~~ An individual is not be a shadow *director* (or *director*) because his job description included the word “director”. Whether a *person* is a *director* within the definition is a question of fact in each case.

...

10.8.5G This function is often performed by a *senior manager* who is given the title of Head of Risk, or who is a member of a Risk Committee. Other examples of titles are Head of Credit Risk and Head of Market Risk (but the fact that an individual may use one of these titles does not necessarily mean that he is performing a *controlled function*).

...

10.9.13G Where SUP 10.9.1 R and SUP 10.9.12 R apply, the *senior manager* could, for example, be the head of a unit carrying on the activities of: retail banking, personal lending, corporate lending, leasing assets, issuing credit cards, trade finance, loan syndicates or debt, 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 could put, or potentially put, his *firm* at significant risk. This function would not extend to every proprietary trader.

...

10.9.17G Where SUP 10.9.1R and SUP 10.9.16R apply, the individual performing this function would typically be the Chief Treasurer, or a member of a high level committee (that is, a *person* who, together with others, has authority to commit the *firm*) such as an Asset and Liability Committee or an Executive Committee or Credit Committee. In the case of the *Society of Lloyd’s*, it would include being a member of the Market Board (or a successor committee performing the functions of the Market Board).

...

10.10.1R ~~SUP 10.10 (the eCustomer functions) applies only in relation to a regulated activity to which COB applies under COB 1.4 with respect to activities carried on from an establishment maintained by the firm (or by its appointed representative) in the United Kingdom.~~

10.10.2G (1) — Without SUP 10.10.1R the descriptions of the *customer functions* would extend to functions wherever they are performed. The effect of SUP 10.10.1R is that the descriptions are limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of COB conduct of business regulation.

(2) ~~COB 1.4 (General application: Where?) specifies the rules which apply to *regulated activities* by reference to the location from which the activity is carried on. For example, where the *regulated activity* is carried on from an establishment maintained by a *firm* (or by its *appointed representative*) in the *United Kingdom*, COB applies in full but special provisions apply in relation to *financial promotion*. See COB 1.4 for further details.~~

...

10.10.7R (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* ~~in so far as to the extent that:~~

— (a) ~~his activities relate to designated investment business;~~
and

— (b) ~~he is appropriately supervised by an *approved person* approved for this function *advising on investments*.~~

...

10.10.10G It is a matter for the *firm* to ~~decide what level of supervision is appropriate for an individual from overseas to whom SUP 10.10.7R(3) applies.~~ However, ~~†~~The FSA would expect an the individual 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 *private customers* on

packaged products or is a broker fund adviser). The effect of this is that the individual who may previously have been required to comply fully with the United Kingdom examination requirements, now need not pass the relevant regulatory module of an approved examination (see TC 2.5.5R(3) and (4)).

...

- 10.10.13R
- (1) The *corporate finance adviser function* is the function of:
- (a) giving advice to *clients* ~~only solely~~ in connection with *corporate finance business*; and
 - (b) performing functions within the *customer trading function* in connection with giving that advice.
- (2) 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.

10.10.13AG

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. The effect of this is that the individual, who may previously have been required to comply fully with the United Kingdom examination requirements, now need not pass the relevant regulatory module of an approved examination (see TC 2.5.5R(3) and (4)).

...

- 10.10.16R
- (1) The *customer trading function* is the function of *dealing*, as principal or as agent, and ~~arranging~~ arranging (bringing about) deals in investments with or for, or in connection with, *private customers* and *intermediate customers* where:
- (a) the *dealing* or *arranging deals* is governed by COB 7 (~~d~~Dealing and managing); and
 - (b) the *person* performing the function is not ~~advising~~ advising on or ~~managing~~ managing investments unless approved to perform the *investment adviser function* or

the *investment management function*.

- (2) 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.

...

10.10.20R

- (1) The *investment management function* is the function of ~~managing investments and, when ancillary to that function, functions within:~~

~~(1) the *customer trading function*; and~~

~~(2) the *investment adviser function*.~~

(a) acting in the capacity of an *investment manager*; and

(b) performing functions within:

(i) the *investment adviser function*; and

(ii) the *customer trading function*;

in connection with acting as an *investment manager*.

- (2) 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.

10.10.21G

Note that the definition of *managing investments* provides that the activity consists of ~~managing assets comprising or including certain *specified investments* "in circumstances which involve the exercise of discretion"~~*investment manager* is a person who, in summary, manages *designated investments* on a discretionary or non-discretionary basis under the terms of a discretionary or non-discretionary management agreement. If a person seeks to perform the *controlled function* of *advising on investments* outside of the agreement, he will need to be approved for the *investment adviser function*.

10.10.22G

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. The effect of this is that the individual, who may previously have been required to comply fully with the United Kingdom examination requirements, now need not pass the relevant regulatory module of an approved examination (see TC 2.5.5R(3) and (4)).

...

10.12.4AG

Where the notification of an appointed representative (SUP 12.7.1R) is linked to an application for approval (SUP 10.12 (Applications for approval and withdrawing an application for approval)), any delay in receiving the notification under SUP 12.7.1R may delay the FSA's approval of the individuals employed by that appointed representative who will be performing controlled functions for the firm.

...

10.13.7R(2)

Form C is qualified if the information it contains:

(a) relates to the fact that the firm has dismissed, or suspended, the approved person from its employment; or

...

...

10.13.12R (2)

When giving the information to A under (1), B must have regard to the purpose of the request and in particular to:

...

(b) any relevant outstanding or upheld complaint from an eligible complainant against that person;

...

...

(1) If, in relation to a firm which has completed Form A (SUP 10 Ann 4D), any of the details in section 3.01

...		
29	How and when must the <i>firm</i> report to the <i>FSA</i> potentially adverse information about an <i>approved person's</i> fitness and propriety?	<p>Normally, the <i>firm</i> should report such matters to the <i>FSA</i> on Form D once it is reasonably satisfied as to the information's validity. See <i>SUP</i> 10.13.16R. See also Principles for Businesses 11 (PRIN<i>PRIN</i>) and Statements of Principle 4 (APER<i>APER</i>).</p> <p>However, if an <i>approved person</i> is dismissed, is suspended, or resigns while under investigation by the <i>firm</i>, the <i>FSA</i> or another regulatory body, <u>or there are any other matters that might affect the individual's fitness and propriety to perform a controlled function</u>, the <i>firm</i> should inform the <i>FSA</i> (<i>SUP</i> 10.13.7R) that it will be submitting a Form C containing adverse information.</p>
...		

After Table 1 in *SUP* 10 Ann 1G, insert the following new table:

How do the customer functions relate to the activities and training and competence requirements?

2 Table

<u>Activity</u>	<u>Paragraph 1 of the table in TC 2.1.4R</u>	<u>Controlled Function</u>	<u>SUP</u>
<u>Advising and dealing</u>	(a) - (c)	<i>investment adviser function</i> (CF21)	<u>10.10.7R</u>
		<i>investment adviser (trainee) function</i> (CF22)	<u>10.10.11R</u>

<u>Managing</u>	<u>(d) and (e)</u>	<u>investment management function (CF27)</u>	<u>10.10.20R</u>
<u>Advising (without dealing)</u>	<u>(f) - (h)</u>	<u>investment adviser function (CF21)</u>	<u>10.10.7R</u>
		<u>investment adviser (trainee) function (CF22)</u>	<u>10.10.11R</u>
	<u>(i)</u>	<u>corporate finance adviser function (CF23)</u>	<u>10.10.13R</u>
	<u>(j) - (m)</u>	<u>investment adviser function (CF21)</u>	<u>10.10.7R</u>
		<u>investment adviser (trainee) function (CF22)</u>	<u>10.10.11R</u>
	<u>(n)</u>	<u>adviser on syndicate participation at Lloyd's function (CF25)</u>	<u>10.10.15R</u>
	<u>(o)</u>	<u>pension transfer specialist function (CF24)</u>	<u>10.10.14R</u>

SUP 10 Ann 4D

Form A

Application to perform controlled functions under the approved persons regime

Notes for Form A

SECTION 3 – ARRANGEMENTS AND CONTROLLED FUNCTIONS

...

(Page iii)
section 3.03:

The effective date is the date on which the *firm* wishes the *candidate* to begin performing *controlled functions* (subject to approval). **This should be left blank unless there is a reason for the effective date to be beyond the FSA's published standard response times.** ~~For instance, a *firm* may wish to be sure a *candidate* has been approved before they take up their post~~

...

(Page iv)
section 4
(final paragraph)

...
Candidates who are applying for *significant influence functions* (CF1 to 20) are required to submit a copy of their curriculum vitae, in addition to completing section 4 of this Form, unless the application is for a governing function of an appointed representative. It should be attached securely to the Form.

...

Form A

3.05 Complete this section only if the application is on behalf of more than one firm. List all firms within the group (including the firm entered in 2.01) for which the candidate requires approval and the requested controlled function for that firm.

...

4.01b
4.02
4.03b
4.04b
4.05b

In each case, at row c. substitute “not employed” for “unemployed”.

...

section 7

SECTION 7 NOTES

(final paragraph)

With reference to the above, ~~the~~ FSA may seek to verify the information given in this Form including answers pertaining to fitness and propriety. I authorise the FSA to make such enquiries and seek such further information as it thinks appropriate in the course of verifying the information given in this Form. I also understand that the results of these checks may be disclosed to ~~my employer~~ the firm submitting this application.

SUP 10 Ann 6R

Form C Notice of ceasing to perform controlled functions

Notes for Form C

(Page ii)

Form C is qualified if:

The purpose of this Form

...

- 2. a *firm* dismisses, or suspends, an *approved person* from its employment; or

SUP 10 Ann 7R Form D Notification of changes in personal information or application details

Section 4

Declaration and signatures

DECLARATION OF APPROVED PERSON

The *firm* must ask the individual to make the declaration only where the *firm* becomes aware of information that would reasonably be material to the assessment of the *approved person's* continuing fitness and propriety.

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).

SUP 10 Ann 8R Form E Internal transfer of an approved person

Notes for Form E

...

(Page ii)

The purpose of this Form Form ~~BC~~ must be used if the individual is ceasing to perform a *controlled function* ~~but~~ and the *firm* is not seeking approval in respect of another *controlled function*.

...

12.5.2G (1) Regulation 3 of the *Appointed Representative Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* ... contains a provision enabling the *firm* to:

(a) impose such a ~~requirement~~ prohibition; or

...

...

12.7.3AG Where a notification is linked to an application for approval under section 59 of the Act (Approval for particular arrangements), see SUP 10.12.4AG.

...

SUP Appendix 2 Insurers: Scheme of operations

App 2.2.3G In accordance with the *Insurance Directives*, an *insurer* whose *margin of solvency* has fallen below its ~~*required minimum margin of solvency*~~, or its *guarantee fund*, is required, by the *rules* set out in this appendix, to submit a *scheme of operations*, together with an explanation of how the *margin of solvency* will be adequately restored, and a *firm in run-off* which has previously submitted a *scheme of operations* is required to submit a plan for restoration.

...

App 2.3.1R Unless SUP App 2.3.3R applies, if an *insurer's margin of solvency* falls below its *required margin of solvency*, it must, within 28 days of the firm becoming aware of this event, submit to the *FSA* a plan for the restoration of a sound financial position including:

- (1) a *scheme of operations* (see SUP App 2.9); and
- (2) an explanation of how, if at all, and by when, it expects its *margin of solvency* to be adequately restored to the required *margin of solvency*.

...

App 2.3.3R If an *insurer's margin of solvency* falls below its *required margin of solvency* and the *insurer* has previously submitted either a *run-off plan* in accordance with SUP App 2.5.1R, or a *scheme of operations* in accordance with SUP 2.3.1R, the *insurer* must, within 28 days of becoming aware that its *margin of solvency* has fallen below its *required margin of solvency*:

- (1) notify the *FSA*; and
- (2) submit a plan for restoration which explains:
 - (a) why the *insurer's margin of solvency* has fallen below its *required margin of solvency*; and

(b) demonstrates how, if at all, and by when, the *insurer* will adequately restore it.

...

App 2.8
(title)

Submission of a scheme of operations or a plan for restoration

...

App 2.8.3G

The period to be covered by, and the details to be included in, the plan for restoration required by *SUP* App 2.3.3R will depend on the circumstances of the *insurer*, why its *margin of solvency* has fallen below its *required margin of solvency* and the degree of risk that that fall will be repeated, even if the *insurer* restores its *margin of solvency* in accordance with its plan.

Annex B

Amendments to the Training and Competence Sourcebook

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

Exemption from the approved examination

- 2.5.5R
- (1) Except as described in (2) and (3), if a *firm* is 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) had not previously been required to comply fully with the relevant examination requirements as stipulated in *TC 2.4.5R (2)*; and
 - (c) has passed the relevant regulatory module of an *approved examination*;
- then the requirement to have passed each module of the appropriate *approved examination* in *TC 2.4.5R (2)* does not apply for that *employee*.
- (2) ~~*TC 2.5.5 R(1)*~~ Paragraph (1) does not apply for an *employee* engaging in the following activities:
- (a) *advising on investments* which are *packaged products*, if that advice is given to *private customers*;
 - (b) the activity of a *broker fund adviser*;
 - (c) *advising on syndicate participation at Lloyd's*;
 - (d) the activity of a *pension transfer specialist*.
- (3) Paragraphs (1)(b) and (c) do not apply for an *employee* who would perform:
- (a) the *investment adviser function*; or

(b) the corporate finance adviser function; or

(c) the investment management function;

but for the 30 day rule, unless the individual is advising private customers on packaged products or is a broker fund adviser.

(4) In (3), the '30 day rule' means the provisions of:

(a) SUP 10.10.7R(3); or

(b) SUP 10.10.13R(2); or

(c) SUP 10.10.20R(2);

as appropriate.

Annex C

Amendments to the Supervision Manual

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

16.1.2G The only categories of *firm* to which no section of this chapter applies are:

...

(2) an *incoming EEA firm* or *incoming Treaty firm*, unless it is:

(a) a *firm* of a type listed in SUP 16.1.3R as a type of *firm* to which SUP 16.6, ~~SUP 16.7~~ or SUP 16.9 applies; or

...

16.1.3R Table Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<u>SUP 16.8</u>	...	...
<u>SUP 16.9</u>	<u><i>Firm with permission to advise on investments; arrange (bring about) deals in investments; make arrangements with a view to transactions in investments; or arrange safeguarding and administration of assets</i></u>	<u>Entire section</u>

...

16.3.2G This chapter has been split into ~~five~~ six sections, covering:

(1) annual controllers reports (*SUP 16.4*);

- (2) annual close links reports (*SUP* 16.5);
- (3) compliance reports (*SUP* 16.6);
- (4) financial reports (*SUP* 16.7); ~~and~~
- (5) persistency reports (*SUP* 16.8); and
- (6) annual appointed representatives reports (*SUP* 16.9).

16.3.3G The annual controllers, annual close links, ~~and~~ persistency and annual appointed representatives reports sections are the same for all categories of *firm* to which they apply.

...

After *SUP* 16.8 (Persistency reports from insurers), insert the following new section:

16.9 Appointed representatives annual report

Application

16.9.1G The effect of *SUP* 16.1.1R is that this section applies to every *firm* with a *Part IV* permission to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.

Purpose

16.9.2G The purpose of the *rules* and *guidance* in this section is to ensure that, in addition to the notifications made under *SUP* 12.7 (Appointed representatives: notification requirements), the *FSA* receives regular and comprehensive information about the *appointed representatives* engaged by a *firm*, so that the *FSA* is in a better position to pursue the *regulatory objective* of the protection of *consumers*.

Report

- 16.9.3R (1) A *firm* must:
- (a) submit a report to the *FSA* annually, containing the information in (2); and

(b) submit the report in (1) to the *FSA* within four *months* of the *firm's accounting reference date*.

(2) The report in (1) must contain a list of all the current *appointed representatives* of the *firm* as at the *firm's accounting reference date*.

(3) The report in (1) is not required if:

(a) the *firm* has no *appointed representatives* as at the *firm's accounting reference date*; and

(b) this is reflected in the relevant extract from the *FSA Register*.

16.9.4G The *FSA Register* is maintained under section 347 of the *Act* (The record of authorised persons, etc.) and may be viewed at the *FSA's* website at www.fsa.gov.uk/register/.

16.9.5G The information required by *SUP* 16.9.3R or *SUP* 16.9.4R should be provided in the form of an amended copy of the relevant extract from the *FSA Register*.

16.9.6G If a *group* includes more than one *firm*, a single annual *appointed representatives* report may be submitted on behalf of all *firms* in the *group*. Such a report should contain the information required from all the *firms*, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their *FSA* firm reference numbers. The requirement to provide a report, and the responsibility for the report, remains with each *firm* in the *group*.

...

Schedule 2 Notification requirements

2 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<i>SUP</i> 16.8	<u>Details of</u>	<u>A list of all the</u>		

<p><u>SUP 16.9.3R</u></p>	<p><u>appointed representatives.</u> <u>Every firm with a Part IV permission to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets</u></p>	<p><u>current appointed representatives of the firm as at the firm's accounting reference date.</u> A report is not required if a <u>firm has no appointed representatives as at the firm's accounting reference date</u> and this is reflected in the relevant extract from the <u>FSA Register.</u></p>	<p><u>Annually</u></p>	<p><u>Four months</u></p>
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Annex D

Amendments to the Authorisation Manual

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

AUTH 5 Ann 3G

Application of the Handbook to Incoming EEA Firms

2 Table

(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
<p>...</p> <p><i>SUP</i></p>	<p>...</p> <p><u><i>SUP 16 (Notifications to the FSAReporting requirements)</i></u></p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>...</p> <p>(d) a <i>trustee</i> of an <i>AUT</i>; or</p> <p>(e) an <i>insurer</i> with permission to <i>effect</i> or <i>carry out life policies</i>; or</p> <p>(f) a <i>firm</i> with <i>permission to establish, operate or wind up a stakeholder pension scheme</i>; <u>or</u></p> <p><u>(g) a firm with permission to <i>advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.</i></u></p> <p>(<i>SUP 16.1</i>)</p> <p>...</p>	<p>...</p> <p><u><i>SUP 16 (Notifications to the FSAReporting requirements)</i></u></p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>...</p> <p>(d) a <i>trustee</i> of an <i>AUT</i>; or</p> <p>(e) an <i>insurer</i> with permission to <i>effect</i> or <i>carry out life policies</i>; or</p> <p>(f) a <i>firm</i> with <i>permission to establish, operate or wind up a stakeholder pension scheme</i>; <u>or</u></p> <p><u>(g) a firm with permission to <i>advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.</i></u></p> <p>(<i>SUP 16.1</i>)</p>

**ENFORCEMENT MANUAL (CANCELLATION OF PERMISSION)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 December 2002.

Amendments to the Enforcement manual

- C. The Enforcement manual is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Enforcement Manual (Cancellation of Permission) Instrument 2002.

By order of the Board
21 November 2002

Annex

Amendments to the Enforcement manual

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

5.3.2G Section 45 of the *Act* empowers the *FSA* to vary, or alternatively to cancel, a *firm's Part IV permission*. The general statutory grounds for exercising those powers are the same. They are set out in section 45(1) Cases A to C (see *ENF* 3.3.2G). The *FSA* also has a duty, once it is satisfied that it is no longer necessary to keep the *permission* in force, to cancel a *firm's Part IV permission* when it has varied a *firm's Part IV permission* to such an extent that there are no longer any *regulated activities* for which the *firm* has a *Part IV permission*.

...

5.5.5G 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 (see *ENF* 5.3.2G ~~5.3.3G(2)~~).

5.5.6G However, where the *FSA* has cancelled a *firm's Part IV permission*, it is required by section 33 of the *Act* (Withdrawal of authorisation by the Authority) to go on to give a direction withdrawing the *firm's authorisation* (see ~~*ENF* 5.3.2G~~). 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. For example, where the *FSA* needs to supervise an orderly winding down of the *firm's* regulated business (see *SUP* 6.4.22G (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*. For ~~example~~ example, where the *FSA* proposes to impose a financial penalty on the *firm* under section 206 of the *Act* (Financial penalties) (see *ENF* 13).

DECISION MAKING MANUAL (AMENDMENT NO 2) INSTRUMENT 2002

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 (the “Act”):
- (1) section 157(1) (Guidance); and
 - (2) section 395(5) (The Authority’s procedures).

Commencement

- B. This instrument comes into force immediately.

Amendments to the Decision making Manual

- C. The Decision making Manual is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Decision Making Manual (Amendment No 2) Instrument 2002.

By order of the Board
21 November 2002

Annex

Amendments to the Decision making Manual

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

- 1.1.1G This manual gives *guidance* on the *FSA's* decision making and other procedures for giving *statutory notices* listed in *DEC 2 Ann 1G* and *DEC 3 Ann 1G*. This manual also gives *guidance* on the *FSA's* procedure for using its own powers under Part XXIV of the *Act* (Insolvency), Part XXV of the *Act* (Injunctions and restitution) and Part XXVII of the *Act* (Criminal Offences). It also gives guidance on the *FSA's* procedures for using certain similar powers with respect to insolvency and criminal offences under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979 and the Industrial and Provident Societies Act 1965. It is relevant to *firms, approved persons, applicants for Part IV permission, persons for whom an application for approval under section 59 of the Act has been made, and other persons, whether or not they are regulated by the FSA.* The *UKLA's* procedure for giving *statutory notices* under Part VI of the *Act* (official listing) is set out in the *listing rules* and related *guidance*.
- 1.1.2G 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 purpose of the Decision making manual (*DEC*) is to fulfil this obligation. ~~The following constitute the required statement of procedure:~~
- ~~(1) *DEC*; and~~
- ~~(2) the *UKLA's* procedure for giving *statutory notices* under Part VI of the *Act* (Official Listing) arising out of the *FSA's* exercise of its regulatory powers as the competent authority for official listing (see the *listing rules* and related *guidance*).~~
- 1.1.3G *DEC 4.6.1G* and *DEC 4.6.2G* sets out the *FSA's* policy on the procedure to be followed:
- (1) if the *FSA* decides to use its:
- (a) powers to apply to the civil courts for insolvency orders, injunctions and restitution orders; or
- (b) powers under Part XXVII of the *Act* to prosecute criminal offences; and

(2) if the *FSA* decides to discontinue any proceedings begun by the use of these powers.

1.1.4G *DEC 4.6.2AG* and *DEC 4.6.2BG* set out the *FSA*'s policy on the procedure to be followed:

(1) if the *FSA* decides to use its powers to prosecute criminal offences under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979 and the Industrial and Provident Societies Act 1965, in each case as amended; and

(2) if the *FSA* decides to discontinue any proceedings begun by the use of these powers.

...

2.1.1G The *Act* and certain other enactments requires the *FSA*, when proposing to exercise its powers in certain circumstances, to use the *warning notice* and *decision notice* procedure.

...

2 Ann 1G

Statutory notice procedure: Warning notice and decision notice procedure

1 Table (heading) List of warning notices and decision notices under the Act (other than Part VI) and certain other enactments

...			
385(1)/386(1)	...	...	...
Paragraph 19(8)/(12) of Schedule 3	when the <i>FSA</i> is proposing/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>
<u>Section of the Building Societies Act 1986 (Note 5)</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>

<p><u>36A(5)/(5A)</u> (Note 6)</p>	<p>when the <i>FSA</i> is proposing/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)</p>	<p><u>None</u></p>	<p><u>RDC</u></p>
<p><u>46A(1)(a)/(3)(a)</u> (Note 7)</p>	<p>when the <i>FSA</i> is proposing/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 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 (Note 8)*</p>	<p><u>None</u></p>	<p><u>RDC</u></p>
<p><u>46A(1)(b)/(3)(b)</u> (Note 7)</p>	<p>when the <i>FSA</i> is proposing/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*</p>	<p><u>None</u></p>	<p><u>RDC/ executive procedures</u> (Note 9)</p>
<p><u>93(6)</u> (Note 10)</p>	<p>when the <i>FSA</i>, on an amalgamation between <i>building societies</i> each of which has a <i>Part IV permission to accept deposits</i>, notifies the successor society of the terms of its <i>Part IV permission</i></p>	<p><u>None</u></p>	<p><u>RDC/ executive procedures</u> (Note 11)</p>

<u>Section of the Credit Unions Act 1979</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
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 Ann 1G	<i>RDC</i>
<u>Section of the Friendly Societies Act 1992 (Note 5)</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>58A(1)(a)/(3)(a)</u> (Note 12)	<u>when the <i>FSA</i> is proposing/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 than at the request of the society*</u>	<u>None</u>	<u><i>RDC</i></u>
<u>58A(1)(b)/(3)(b)</u> (Note 12)	<u>when the <i>FSA</i> is proposing/deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i>*</u>	<u>None</u>	<u><i>RDC</i></u>
<u>85(4A)</u> (Note 10)	<u>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></u>	<u>None</u>	<u><i>RDC/ executive procedures</i></u> (Note 11)
OEIC Regulations reference	Description	Handbook reference	Decision maker
...
Note 1: ...			
...			
Note 4: The FSA <i>FSA</i> must give a <i>decision notice</i> ...			

Note 5: As amended by the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 (SI 2001/2617).

Note 6: 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*.

Note 7: These powers become exercisable by the *FSA* if a *building society* fails to comply with any of the following requirements imposed by the Building Societies Act 1986: section 5(1)(a) or (b) (purpose or principal purpose and principal office); section 6(1) (the lending limit); and section 7(1) (the funding limit).

Note 8: The *warning notice* and *decision notice* must set out the terms of the direction which the *FSA* proposes/has decided to give. A *decision notice* given under section 46A(3) must give an indication of the society's right, given by section 46A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 46A(3) may only relate to action under the same section of the Building Societies Act 1986 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 46A(1) and a *decision notice* given under section 46A(3).

Note 9: The decision will be made under *executive procedures* if the society has agreed to the giving of the direction and its terms.

Note 10: 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.

Note 11: The decision will be made under *executive procedures* where the terms of the *permission* have been agreed with the successor.

Note 12: The *warning notice* and *decision notice* must set out the terms of the direction which the *FSA* proposes/has decided to give and any specification of when the 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).

...

3.1.5G If the *FSA* decides to give a first *supervisory notice* to a *person*, in accordance with the sections of the *Act* listed in *DEC 3 Ann 1G*, the notice must:

...

(2) inform him when the action takes effect, which may be immediately, on a date specified in the notice or (except for a *supervisory notice* given under section 321 of the *Act*) when the matter is no longer open to review;

...

3.1.5AG Except for a *supervisory notice* given under section 321 of the *Act*, the action may take effect immediately (or on a specified date) only if the *FSA* considers this necessary, having regard to the ground on which it is taking the action.

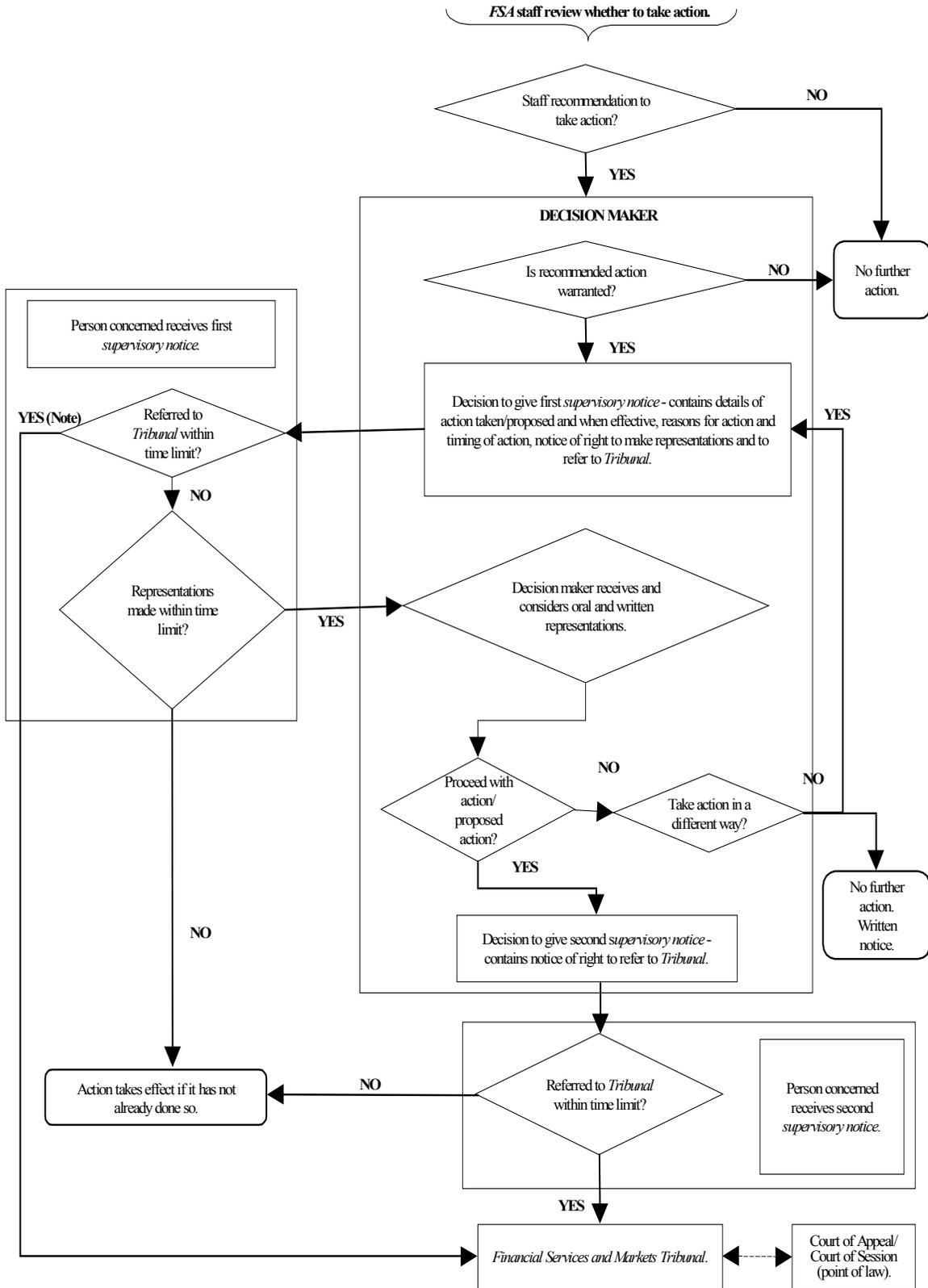
...

3.1.7G The procedures for making representations are set out in *DEC 4.4*. If the *FSA* receives no representations within the period specified in the first *supervisory notice*, the default procedures set out in *DEC 4.4.13AG* apply.

...

3 Ann 2G Delete the flow diagram and replace it with the following flow diagram:

DEC 3 Annex 2G
Supervisory notice procedure



Note: This assumes that there is a reference to the *Tribunal* but no representations are made to the *FSA*.

Specimen first supervisory notice

To: [firm or other person]

...

EFFECTIVE DATE

[The date on which any own-initiative variation of permission, intervention or direction is to take effect (if a direction imposes a requirement under section 257(2)(a) of the *Act* or regulation 25(2)(a) or (b) of the *OEIC Regulations*, state that the requirement has effect until a specified date or a further direction)]

...

...

4.1.4G

...

- (14) to refuse to give a *consent notice* to a UK *firm* wishing to establish a *branch* under an *EEA right*;
- (15) to give a direction under any of the following sections of the Building Societies Act 1986:
- (a) section 36(3), (5), (6), (7) or (10) (power to direct restructuring of business or submission of resolutions for a transfer of society's business to a company when society is failing to comply with principal purpose or the lending or funding nature limits);
 - (b) section 42B(1) (power to direct transfers of engagements or business), other than a direction where the giving of the direction and its terms have been agreed with the society concerned;
- (16) to issue a prohibition order under section 36A of the Building Societies Act 1986;
- (17) to determine the appropriate *Part IV permission* for the successor society on an amalgamation:
- (a) under section 93 of the Building Societies Act 1986 between *building societies* each of whom has a *Part IV permission* to *accept deposits*; or
 - (b) under section 85 of the Friendly Societies Act 1992 between *friendly societies* each of whom has a *Part IV permission*; in a case where it has not been possible to agree the terms of the proposed *permission* with the successor society; and
- (18) to give a direction under any of the following sections of the Friendly Societies Act 1992:
- (a) sections 54 and 55 (power to direct a society to refrain from taking steps where certain activities have become disproportionate);
 - (b) section 90 (power to direct a transfer of engagements).

...

- 4.2.3G The *RDC* is a body outside the *FSA*'s management structure. Apart from the Chairman, none of the members of the *RDC* is an *FSA* employee. The members represent the public interest and comprise:
- (1) current and recently retired practitioners with financial services industry skills and knowledge; and
 - (2) other suitable individuals representing the public interest non-practitioners.

...

- 4.3.16G *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 who are subject to a conflict of interest must declare that interest to the ~~person~~ person to whom they are immediately responsible for the decision. In the case of decisions by a *senior staff committee*, any conflict of interest must be declared to the chairman of the committee (or, if the *person* with the conflict is the chairman, to any member of the *FSA* Chairman's Committee or, if the *person* with the conflict is the chairman of the *FSA* Chairman's Committee, to the Deputy Chairman of the *FSA*. He will also disclose the conflict to the secretariat to the *senior staff committee* (or *FSA* Chairman's Committee)). The individual to whom the conflict of interest is declared may ask another *person* to assist him in considering the potential conflict, and will decide whether that conflict precludes the involvement of the *FSA* staff member in making a decision.

- 4.3.16AG The secretariat to the *senior staff committee*, or to the *FSA* Chairman's Committee, or to the *FSA* Board, as appropriate, will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

...

- 4.4.13G If the *FSA* receives no response or representations ~~by the time a decision is to be made about the giving of the *decision notice* or second *supervisory notice*, within the period specified in a *warning notice*, the decision maker may regard as undisputed the allegations or matters in the *warning notice* or first *supervisory notice*. In such cases, a *decision notice* or second ~~*supervisory notice*~~ will be given accordingly. A *person* who has received a *decision notice* or second ~~*supervisory notice*~~ and has not previously made any response or representations to the *FSA*, may, nevertheless, refer the *FSA*'s decision to the *Tribunal* as described in *DEC* 5.3.~~

4.4.13AG

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 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*.

4.4.14G

In exceptional cases, the decision maker may permit representations from a *person* who has received a *decision notice* (or a second *supervisory notice*) given in accordance with *DEC 2.3* (or *DEC 3.1.8G* to *DEC 3.1.10G*) (or against whom action, detailed in a first *supervisory notice*, has taken effect as described in *DEC 4.4.13AG*), 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 *notice of discontinuance* (*DEC 2.3.8G* to *DEC 2.3.9G*) or a further *decision notice* (or a written notice or a *supervisory notice*).

...

4.5.5G

If the *firm* makes no representations, by the time a decision is to be made about the giving of a *decision notice* FSA staff at the appropriate level of seniority will decide whether to confirm their original decision and, if so, will then give a *decision notice*, then the decision maker may regard the matters in the *warning notice* as undisputed. A *decision notice* will be given accordingly.

...

4.6.2AG

Decisions to prosecute for criminal offences under the legislation listed in *DEC 1.1.4G* may be taken by the procedure described in *DEC 4.6.1G* and *DEC 4.6.2G*, or alternatively may be taken under executive procedures.

4.6.2BG

In determining which procedure should be followed in deciding to prosecute for an offence under the legislation listed in DEC 1.1.4G, the FSA will have regard to the seriousness of the offence involved, the size and profile of the defendant and the complexity of the issues. The less serious the offence and the less complex the issues, the more likely the decision to prosecute will be taken under executive procedures.

...

DEC App 1

1.4.3G

In each appropriate enforcement case (see DEC App 1.4.1G and 1.4.2G), the mediation scheme will be available to the person against whom a *warning notice* is issued. The mediation scheme will be available after the *warning notice* has been issued and before the ~~RDC~~ FSA issues a *final notice*. The relevant *warning notice* will state the circumstances in which mediation is available for that matter under the terms of the scheme.

**COMPLAINTS SOURCEBOOK (COMPLAINTS REPORTING)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers); and
 - (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 (SI 2001/2326).
- B. The rule making powers listed above are specified for the purposes of section 153(2) of the Act (Rule making instruments).

Commencement

- C. This instrument comes into force on 1 December 2002.

Amendments to the Complaints sourcebook

- D. The Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Complaints Sourcebook (Complaints Reporting) Instrument 2002.

By order of the Board
21 November 2002

Annex

Amendments to the Complaints sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

1.5.4R A *firm* must provide the FSA, twice a year, with a report in the format set out in *DISP 1 Ann 1R* which contains ~~ing~~ (for the relevant reporting period) information about:

- (1) the total number of complaints subject to *DISP 1.4 - DISP 1.6* received by the *firm*, broken down according to the categories and in respect of each of the generic product types described ~~in *DISP 1 Ann 1R*~~ which are relevant to the *firm*;
- (2) the total number of complaints subject to *DISP 1.4 - DISP 1.6* 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; and
- (3) the total number of complaints subject to *DISP 1.4 - DISP 1.6* outstanding at the end of the reporting period.

...

DISP 1 Annex 1

Replace *DISP 1 Ann 1R* with the following new annex:



(for FSA use only)

Complaints return

FSA Handbook Reference: *DISP* 1 Ann 1R
This is the report referred to in *DISP* 1.5.4R

1 December 2002

Please read the notes on pages 7 and 8 before completing this return

Firm details and reporting period

Section 1

1.01	FSA firm reference number	<input type="text"/>					
1.02	Name of firm	<input type="text"/>					
1.03	Reporting period	From	<input type="text"/>	<input type="text"/>	To	<input type="text"/>	<input type="text"/>

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Nil return declaration

Section 2

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.

SECTIONS 1, 3, 4 AND 9 MUST STILL BE COMPLETED.

2.01 We wish to declare a Nil Return
(Tick the box if applicable)

Nil return

3.01 Who should the *FSA* contact at the *firm* in relation to this return?

a	Forename	<input type="text"/>	
b	Surname	<input type="text"/>	
c	Title	<input type="text"/>	
d	Job title	<input type="text"/>	
e	Department	<input type="text"/>	
f	Telephone	<input type="text" value="Area code"/>	<input type="text" value="Number"/>
g	Fax	<input type="text"/>	<input type="text"/>
h	E-mail	<input type="text"/>	

This information is required under *DISP* 1.5.11R. This information will be included in the public record and may be used by consumers to contact the firm. The contact point may be a named individual, a job title, or a department (see *DISP* 1.5.12G).

4.01 Contact point for complaints

a	Forename	<input type="text"/>	
b	Surname	<input type="text"/>	
	Title	<input type="text"/>	
c	Job title	<input type="text"/>	
d	Department	<input type="text"/>	
e	Address of firm	<small>Number</small>	<small>Street</small>
		<input type="text"/>	<input type="text"/>
	Locality	<input type="text"/>	
	Town	<input type="text"/>	
	County	<input type="text"/>	
	Country	<input type="text"/>	
		Postcode	<input type="text"/>
		<input type="text"/>	<input type="text"/>
f	Telephone (This may be a helpline number)	<small>Area code</small>	<small>Number</small>
		<input type="text"/>	<input type="text"/>
g	Fax	<input type="text"/>	
h	E-mail	<input type="text"/>	

PRODUCT TYPE	CATEGORY	Over-charging/ Incorrect charges	Delays	Other admin	Unsuitable/ Misleading advice	Failure to carry out instructions	Poor Customer Service	Misleading advertising/ product info	Disputes over sums/ amounts payable	Switching Churning	Breach of contract	Other	TOTAL
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Current Account													
Deposit/Savings													
Loan Secured on Land													
Other Loans													
General Insurance	• Motor												
	• Property												
	• Other												
Other													

If no private individual complaints were received during the period, tick the box and go to Section 6 Grand Total

PRODUCT TYPE	CATEGORY	Over-charging/ Incorrect charges	Delays	Other admin	Unsuitable/ Misleading advice	Failure to carry out instructions	Poor Customer Service	Misleading advertising/ product info	Disputes over sums/ amounts payable	Switching Churning	Breach of contract	Other	TOTAL
FSAVC													
Personal Pension													
Stakeholder Pension													
Mortgage Endowment													
Other Endowment													
Whole of Life													
Permanent Health													
Term Assurance													
PEP/ISA													
Unit Trust/OEIC													
Investment Bond													
Share/Derivative													
Current Account													
Deposit/Savings													
Loan Secured on Land													
Other Loans													
General Insurance	• Motor												
	• Property												
	• Other												
Other													

If no small business complaints were received during the period, tick the box and go to Section 7 **Grand Total**

Complaints closed during reporting period

Section 7

7.01 Number of complaints closed

within 4 weeks

7.02 Number of complaints closed

after more than 4 weeks
but less than 8 weeks

7.03 Number of complaints closed

after more than 8 weeks

Complaints outstanding

Section 8

8.01 Number of complaints outstanding as at reporting period **start** date

8.02 Number of complaints outstanding as at reporting period **end** date

Declaration and signature

Section 9

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 *firm* 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.

I confirm that I have read the notes and that the information given in this return about complaints received by the firm named at Section 1.02 is accurate and complete to the best of my knowledge and belief.

9.01 Name of *person* signing on behalf of the *firm*

9.02 Job title

9.03 Signature

9.04 Date

d d	m m	y y y y
<input type="text"/>	<input type="text"/>	<input type="text"/>

Address for postal submission of returns:

The Financial Services Authority
P O Box 35747
London E14 5WP
United Kingdom

Website: <http://www.fsa.gov.uk>

Notes on completion of this return

This return is the report referred to in *DISP* 1.5.4R and is to be used to notify the *FSA* of the total number of complaints received by a *firm* during the reporting period. Only complaints subject to *DISP* 1.4 – *DISP* 1.6 should be included in this return.

Reporting period

The two annual reporting periods are from 1 April to 30 September, and from 1 October to 31 March (*DISP* 1.5.6R). Returns must be submitted **within one month** of the end of the relevant reporting period.

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 (e.g. 29/02/2002 for 29 February 2002).

Expressions in italics have the meaning given in the *Glossary* to the *FSA's Handbook* (or, if no meaning is given there, the expressions are to be interpreted in accordance with the related expression defined in the *Glossary*).

The *firm* is responsible for the accuracy of the data and completion of the return.

Section 2 – 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 ticking the relevant box on the front of the form. **Sections 1, 3, 4 and 9 must still be completed.**

Section 4 – Complaints contact details

Details of a contact point for complainants must be provided in accordance with *DISP* 1.5.11R 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.

Section 5 – Private individual returns

Records of complaints as received from private individuals subject to *DISP* 1.4 – *DISP* 1.6. *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*.

Firms should report complaints received in the single category that best reflects the main allegation (whether of financial loss, material distress or material inconvenience) as described by the complainant.

DISP 2.4.3R provides further information on the definition of an *eligible complainant*.

Enter the number of complaints for each product according to the category of complaint. **Leave blanks where no complaints have been received.**

Enter a **total** for each product type for which you have received complaints and complete the **grand total** at the bottom of the page.

If no private individual complaints have been received during the period, tick the box at the foot of the page and go to the next section.

Section 6 – Small business returns

Records of complaints subject to *DISP* 1.4 – *DISP* 1.6 received from *eligible complainants* other than private individuals. This section should include complaints from:

- small business customers (with a turnover of less than £1million a year);
- charities (with an income of less than £1million a year); and
- trustees of a trust (with assets of less than £1million);

who are *eligible complainants* as defined in *DISP* 2.4.3R.

Firms should record all complaints received during the reporting period and apply the categorisation that best reflects the original complaint, even where the complaint has not been, or is unlikely to be, upheld by the *firm*.

Please complete as for Section 5.

If no small business complaints have been received during the period, tick the box at the foot of the page and go to the next section.

Section 7 – Complaints closed during reporting period

Indicate the number of complaints, subject to *DISP* 1.4 – *DISP* 1.6, closed during the reporting period shown at Section 1.03 of this form within each of the timescales shown. See *DISP* 1.5.7R for the rules governing when a complaint is considered to be closed.

Section 8 – Complaints outstanding

Give the numbers of complaints subject to *DISP* 1.4 – *DISP* 1.6 outstanding at the **start** of the reporting period and the **end** of the reporting period.

Section 9 – Declaration & signature

The declaration must be signed by an appropriate individual for the *firm*.

Submitting this return

Full details on the acceptable methods of submitting this form may be found in the *FSA Handbook* at *SUP* 16.3 as modified by *DISP* 1.5.10R. Reports may be sent by post to the address below.

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 the NRDM Department** and be delivered to 25 The North Colonnade, Canary Wharf, London E14 5HS.

INTERIM PRUDENTIAL SOURCEBOOK FOR BANKS (AMENDMENT AND CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT 2002

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 February 2003.

Amendments to the Interim Prudential sourcebook for banks

- C. The Interim Prudential sourcebook for banks is amended in accordance with Annex A to this instrument.

Amendments to the Interim Prudential sourcebook for building societies

- D. The Interim Prudential sourcebook for building societies is amended in accordance with Annex B to this instrument.

Amendments to the Authorisation manual

- E. The Authorisation manual is amended in accordance with Annex C to this instrument.

Citation

- F. This instrument may be cited as the Interim Prudential Sourcebook for Banks (Amendment and Consequential Amendments to the Handbook) Instrument 2002.

By order of the Board
19 December 2002

Annex A

Amendments to IPRU(BANK)

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

The Annex is divided into three parts as follows:

Part 1 sets out amendments to Chapter CO section 4 (which is reproduced in its entirety) to set out the procedure for setting, reviewing and monitoring capital ratios.

Part 2 sets out consequential amendments required as a result of Part 1 amendments.

Part 3 sets out amendments to Chapter CO section 1 to update references to certain EC directives.

Part 1

Chapter CO section 4

4 Individual capital ratios ~~Trigger and target ratios~~

This section explains the FSA's policy for the setting, reviewing and monitoring of capital ratios and provides an overview of factors it takes into account in setting the level of the ratios. The first sub-section explains the procedure for the setting of the ratios. The second sub-section deals with their monitoring.

4.1 Setting and reviewing the ratios

4.1.1 Individual capital ratios ~~Trigger ratios~~

- See s2.1 1 The third element of the FSA's capital adequacy framework is the setting of a capital ratio for a certain quantity of risk weighted assets. This is the individual capital ratio (ICR) ~~trigger ratio~~, the minimum capital ratio that the FSA considers a bank should maintain.
- See ch GN (s3) 2 Rule [3.3.13 in Chapter GN] requires a bank to maintain adequate capital resources. In order to meet this requirement the FSA considers that banks should maintain, on a continuing basis, the capital ratios advised by the FSA. In the event that a ratio is not met, the bank should contact the FSA immediately.
- 3 The absolute minimum ICR ~~trigger ratio~~ the FSA considers to be appropriate is 8% as set out in the SRD (now replaced by The Banking Consolidation Directive), but in practice the FSA expects most banks to work to an ICR ~~trigger ratio~~ which is significantly above this figure.

4 The FSA considers that an ICR of 8% (i.e. the minimum) is appropriate only for a well-diversified firm whose business, management, systems and controls are strong and where the risks that it is exposed to are captured adequately by the capital model. For a bank that does not satisfy these conditions, the FSA will use the Individual Capital Ratios Framework (ICRF) to determine an ICR above the 8% minimum (see FSA Policy Statement 'Individual Capital Ratios for Banks', July 2001).

The ICRF is a structured framework which is used by the FSA to identify potential sources of risk not captured - or not captured adequately - by the 8% minimum capital ratio. FSA supervisors gather information on these potential risks, drawing on our primary risk assessment tools as well as other information sources. The ICRF is then used to build up a qualitative risk assessment for the bank and to determine an appropriate capital ratio to help mitigate these risks. The ICRF lists those risk factors where the FSA deems capital to be an appropriate mitigant.

The trigger ratio for a bank is set relative to those assigned to other members of its peer group, with variations to take into account any special characteristics and particular concentrations of risks the individual bank may have. The F factors considered include are:

Banking Book <u>Business Risk</u>	Trading Book <u>Business Risk</u>
<u>Section 1 – Model Fit</u>	<u>Section 1 – Model Fit</u>
<u>Interest rate risk in the banking book</u>	<u>Market risk</u>
<u>Settlement risk</u>	<u>Incremental capital for large exposures</u>
<u>Credit risk</u>	<u>Underwriting</u>
<u>Risks on the liability side</u>	<u>CAD1 & CAD2 models</u>
<u>Interaction between credit and market risks</u>	<u>Legal, Operational and Other business risks</u>
<u>Legal, Operational and Other business risks</u>	
<u>Section 2 – Concentration / Operating Environment</u>	<u>Section 2 – Concentration / Operating Environment</u>
<u>Concentration</u>	<u>Concentration</u>
<u>Access to capital</u>	<u>Access to capital</u>
<u>Consolidation</u>	<u>Consolidation</u>
<u>Infrastructure</u>	<u>Infrastructure</u>
Banking Book <u>Control Risk</u>	Trading Book <u>Control Risk</u>
<u>Section 3 – Control factors</u>	<u>Section 3 – Control factors</u>
<u>Internal controls</u>	<u>Internal controls</u>
<u>Organisation</u>	<u>Organisation</u>
<u>Management</u>	<u>Management</u>

- ~~(a) the character of the bank (size, risk profile, the volatility of its earnings);~~
- ~~(b) the character of the markets in which it operates (political and economic stability, risk, price volatility, liquidity, etc.);~~
- ~~(c) diversification of activities and types of assets;~~

- ~~(d) the degree of concentration of counterparty exposure in a bank's portfolio;~~
- ~~(e) the experience and quality of management and other personnel;~~
- ~~(f) the adequacy of systems and controls;~~
- ~~(g) shareholder/controller support and control;~~
- ~~(h) the degree of supervision by other regulators (especially relevant for subsidiaries of overseas banks); and~~
- (i) if a bank securitises some of its assets, the trigger ratio should reflect the asset quality in the residual balance sheet and any operational risk relating to the assets removed from the supervisory balance sheet.

5 The ICR trigger ratio is reviewed periodically to ensure that it continues to reflect the bank's risk-profile. In the event of a significant deterioration in a bank's risk profile, the FSA may consider that the ratio should be increased to reflect the increased risk; the converse applies to improvements in a bank's risk profile.

4.1.2 **Capital buffers Target ratios**

6 SYSC 3.2.6R requires a bank to take reasonable care to maintain effective systems and controls for compliance with regulatory requirements. This includes compliance with Rule [3.3.13 in Chapter GN]. In doing so a bank should take into account the ICR(s) advised by the FSA. In order to ensure continued compliance with Rule [3.3.13 in Chapter GN], the FSA believes it is appropriate for a bank to maintain a capital buffer above the level of the ICR advised by the FSA. The size of this buffer is at the discretion of the bank. However, if the bank's capital falls below the ratio(s) advised by the FSA, this will call into question the effectiveness of the firm's risk management procedures. In such circumstances, the FSA would have to consider an appropriate regulatory response.

~~The purpose of the target ratio is to act as a "warning light" that the cushion of capital resources normally considered adequate to prevent an accidental breach of trigger is being eroded.~~

- ~~a) The difference between trigger and target ratios for a bank depends upon the nature of its business and its exposure to seasonal variations or changes in the business cycle.~~

4.1.3 **CAD banks**

7 For CAD banks, separate ICRs trigger and target ratios are set for the trading and banking books.

- a) Because the banking book regime is expressed in terms of a ratio in proportion to risk weighted assets, whilst the trading book regime established by the CAD expresses its requirement as capital 'haircuts' (i.e. the level of capital required to support an associated risk), a method

is needed to allow trading book ICRs ~~trigger ratios~~ to be brought into the framework. This is achieved by multiplying the trading book aggregate capital haircut by 12.5 to produce a notional risk weighted asset equivalent which can be multiplied by the trading book ICR ~~trigger ratio~~. This system is purely supervisory and banks should not publish their ratios in this form.

4.2 Monitoring and breaches

4.2.1 *Monitoring*

- 8 For normal reporting purposes, the extent to which a bank exceeds its capital requirements is expressed as a percentage of that capital requirement. So a bank's supervisory capital adequacy position should always be above 100%.
- 9 The monitoring of capital ratios by the FSA normally takes place using the quarterly (solo) and semi-annual (consolidated) BSD3 return. However, in the event of a programme of remedial action being agreed (particularly in the case of breaches of ICR ~~trigger~~) the FSA may request more frequent information.
- 10 A bank must maintain adequate capital on a continuing basis, not just on reporting dates. Where the nature of the activities is such that the capital ratio remains stable, the calculation may be on an appropriate periodic basis. It may, however, be appropriate that a bank is able to monitor its capital ratios daily.
- 11 Any fall, or anticipated fall, below the ICR ~~target or trigger~~ by a bank should be notified to the FSA immediately it becomes known.

~~4.2.2~~ ~~*Planned breaches of target ratio*~~

- ~~12~~ ~~In the event of a planned breach of target ratio, a bank should demonstrate to the FSA's satisfaction that it has both adequate systems to monitor its position in relation to its target ratio on a continuing basis (as with its trigger ratio) and the ability to restore its actual ratio above target.~~

~~4.2.3~~ ~~*Unplanned breaches of target ratio*~~

~~13~~ ~~An unplanned breach of target ratio may indicate that a bank is in danger of becoming capital deficient. The FSA would discuss a programme of remedial action and a specific timetable with a bank in such circumstances.~~

4.2.2 *Breaches of the ICR ~~trigger ratio~~*

- 14 Any breach of the ICR ~~trigger ratio~~ by a bank is a serious matter since it indicates that a bank may have insufficient capital safely to support the risks in its business and might well ~~may therefore~~ be unable to meet the requirements and standards ~~under of the regulatory system Act~~.

4.3 Consolidated ratios

15 The capital ratio set by the FSA on a consolidated basis is normally the same as that set on a solo basis for the principal bank in the group.

See ch CS

a) For further details, see the chapter on consolidated supervision.

Part 2

Chapter CO section 1

CAPITAL ADEQUACY OVERVIEW

...

1.4	How this chapter is organised
7	... Section 4 provides details of the use of <u>individual capital ratios</u> trigger and target capital ratios .

...

Chapter CO section 2

2. THE FSA'S APPROACH TO CAPITAL ADEQUACY

2.1	...
1	The structure of the FSA's capital adequacy framework ... (c) A capital ratio. a) This is a ratio of total capital to risk-weighted assets and thus generates a level of capital for a bank's activities which it should maintain. The structure chosen - which involves <u>individual capital ratios</u> trigger and target ratios is set out below.
...	

...

Chapter CO section 3

3. THE FRAMEWORK FOR CALCULATING CAPITAL REQUIREMENTS

3.1	Introduction
...	...
3	The basic principle is that the framework generates a notional weighted risk asset figure for a bank's risk, which should be multiplied by the bank's relevant <u>individual capital ratio trigger</u> or target capital ratio to generate the level of capital which the FSA considers a bank should maintain.
	...

...

Chapter CO section 5

5 APPENDIX: OPTIMISING THE USE OF CAPITAL IN CAPITAL ADEQUACY CALCULATIONS

...	
3	...
	(b) Calculate trading book capital requirements.
	Trading book <u>ICR trigger</u> = X%
	...
	(c) Calculate banking book capital requirements.
	Banking book <u>ICR trigger</u> = Y%
	...

...

Chapter CA - Section 4

4 ELEMENTS OF A BANK'S CAPITAL BASE

...

4.4 Tier 3 – ancillary capital

...

(a) ...

- (ii) The terms of the debt should provide that if the bank's allowable capital falls below its individual capital ratio ~~target capital requirement~~ the FSA must be notified and the debt repayments must be suspended.

...

Chapter CA - Section 5

5 TIER 1 CAPITAL

...

5.3. ...

...

9 ...

b)...

i) ~~In some cases a bank's calculation of its capital position on this basis might show that it has fallen beneath its target capital requirement. The FSA takes account of the uplift expected to be produced by the subsequent audit of profits in deciding on its supervisory response to this happening. The FSA expects banks to inform it of the effect of this adjustment, as well as of the declaration of the dividends, as soon as it becomes apparent. The FSA does not consider it acceptable for a bank to fall below its *trigger capital requirements* in anticipation of subsequent verification of profits.~~

ii) ~~For the definition of *trigger and target capital requirements* see overview of capital chapter.~~

...

Chapter CA - Section 6

6.6 **Criteria for subordinated debt to be included in Upper Tier 2**

7 ...

(b) ...

b) After five years consent to a net redemption can be given where the FSA is satisfied that the bank will remain above its individual capital ratio ~~target ratio~~ without resort to new capital issues for at least two years. Banks should produce a capital plan showing that they will remain above their individual capital ratio ~~target ratio~~ for at least two years after repayment. For details of what should be included in a capital plan see the section on the repayment of capital.

...

Chapter CA – Section 8

8.2 General conditions

1 ...

(e) Repayment: ...

- b) Prior to agreeing to early repayment the bank should provide the FSA with a capital plan showing that its capital will remain adequate (above its individual capital ratio target ratio) after repayment, and that it is likely to remain so for at least two years. For details of capital plans see section on repayment of capital.

8.5 Issuing debt

8.5.1 *Procedures for issuing subordinated loan capital*

...

18 The debt agreement for issues of Tier 3 subordinated debt should contain a warning to investors that the FSA may require payments of principal or interest to be suspended if the bank's total eligible capital falls below its individual capital ratio target capital requirement. A bank using subordinated debt under an agreement entered into before [date of revised guidance coming into effect] should consider whether the removal of the concept of the target ratio that took effect on that date prejudices the operation of that agreement in such a way that the debt no longer satisfies the conditions in this chapter. However, the FSA expects that most such documents would have been drafted sufficiently widely to accommodate that change.

- a) The individual capital ratio target capital requirement means the individual capital ratio target supervisory capital adequacy ratio as calculated on the Form BSD3, and does not refer only to the trading book individual capital ratio target capital requirement.

...

Chapter CA - Section 9

9.2. Short-term subordinated debt

2 ...

(b) The terms of the debt should provide a *lock-in clause* that if the bank's total eligible capital falls below its individual capital ratio target capital requirement then the FSA should be notified and the FSA may require that interest and principal payments be deferred on Tier 3 debt until the bank's capital position returns above its individual capital ratio target capital requirement. A firm using Tier 3 debt under an agreement entered into before 1 February 2003 should consider whether the removal of the concept of the target ratio that took effect on that date, prejudices the operation of that agreement in such a way that the debt no longer satisfies the conditions in this chapter. However, the FSA expects that most such documents would have been drafted sufficiently widely to accommodate that change.

a) The individual capital ratio target capital requirement means the bank's individual capital ratio target supervisory capital adequacy ratio as calculated on the Form BSD3, and does not refer only to the trading book capital requirement.

...

Chapter CA - Section 12

12.1 Repayment of Tier 1 capital

1 In general a bank should only repay or return Tier 1 capital where it has sufficient remaining Tier 1 to cover 60% of its individual target capital requirement. This test applies to external repayments (but not intra-group capital repayments by FSA-regulated consolidated banking groups) and should be passed at both the solo and the consolidated level.

a) In this context the individual target capital requirement is defined as the bank's individual capital ratio target RAR multiplied by weighted risk

assets, plus supervisory deductions.

- b) The reason for defining the capital requirement in this way (as opposed to simply referring to 60% of the bank's individual capital ratio target RAR) is to ensure that the bank has sufficient Tier 1 to cover 60% of the capital needed to cover all parts of the group, including those where the FSA's supervisory treatment is capital deduction (e.g. life assurance companies) rather than line by line consolidation.

2

...

- (a) Demonstrate that the bank will remain in excess of its (group and solo) capital individual capital ratios target ratios (as defined above) for two years without relying on new capital issues;

...

(c)...

- b) For repayment of intra-group capital it is normally sufficient for a bank to be above its individual capital ratio target ratio immediately after repayment, i.e. the need to remain above the individual capital ratio target ratio for at least two years does not apply.

12.2 Repayment of Tier 2 capital

3

No early repayment of Tier 2 capital should be made without the FSA's prior agreement. The FSA will only agree to early repayment where a bank produces a capital plan, as described in the section on repayment of Tier 1 capital that shows that the bank will remain above its individual capital ratio target ratio for at least two years after the repayment.

- a)As with Tier 1, for repayment of intra-group capital it is normally sufficient for a bank to be above its individual capital ratio target ratio immediately after repayment, i.e. the need to remain above the individual capital ratio target ratio for at least two years does not apply.

...

Chapter TI - Section 4

4 GENERAL MARKET RISK CALCULATION

...

4.1 Introduction

3 ...

- a) However, it recognises that yield curves in some currencies are more volatile and that their markets are less liquid with fewer hedging mechanisms available. When a bank has a portfolio with material interest risk in such currencies, this will be taken fully into account when setting the ~~target and trigger~~ individual capital ratio(s).

...

Chapter LE - Section 8

8.1 Large exposures policy statements

...

3 ...

- (g) the bank's approach to top slicing;
 - a) The FSA still does not condone the practice of top slicing. ... The FSA takes such activity into account when assessing a bank's risk profile and may, as a result, adjust the bank's individual capital ratio(s) ~~risk asset trigger and target ratios~~ accordingly.

...

Chapter LE - Section 9

9.2 Exempt exposures

9.2.6 Parental guarantees

14 ...

(c) ...

d) ...

- ii) A *capital maintenance* agreement is an undertaking by the parent bank to provide sufficient capital to restore the subsidiary bank's risk asset ratio to above its supervisory individual capital ratio ~~target ratio~~ if exposures covered by the agreement subsequently become non-performing. A bank should pre-notify an exposure covered by an agreement but the risk is not transferred to the parent bank.

...

Chapter CS - Section 3

3.1.1 *Capital adequacy*

3 ...

Where a bank fails to meet its consolidated individual capital ratio ~~capital ratio~~ ~~trigger~~, the FSA considers whether this poses a threat to the bank, so requiring it to consider whether to take action.

...

(b) ...

- a) The action needed may be, for example, to pursue the controller for a rectification of the capital position, to raise individual capital ratios ~~trigger and/or target ratios~~, to require better liquidity or to restrict lending to other group companies.

...

Chapter CS - Section 6

6.1.4 *Capital adequacy*

6 ...

The only “*exceptional circumstances*” which are currently considered to be relevant are when a ‘*trading investment firm*’ is found to have a large volume of non-trading assets which appear to have been booked to it in order to circumvent a banking book individual capital ratio ~~trigger~~ - in other words, where the assets should be classified as banking book assets. In such cases, the firm's assets should be split into trading and non-trading - the latter being consolidated line-by-line into the banking book.

...

Chapter CS - Section 7

7.2 **Consolidating using aggregation plus**

...

...

3 Where appropriate in cases 2(a) and (b) above, the notional weighted risk assets should be converted into a capital requirement, by multiplying them by the individual capital ratio ~~trigger ratio~~ applied to the subsidiary (typically 8%). In case 2(c), notional weighted risk assets are converted by multiplying by the trading book individual capital ratio ~~trigger ratio~~ set by the FSA.

...

4 When using aggregation plus and receiving the written agreement of the FSA, a bank may satisfy itself on a daily basis that it meets its individual capital ratio ~~trigger ratio~~ set by the FSA with reference to position limits, as opposed to actual positions.

...

Chapter CS - Section 10

10.5 Appendix E: Calculation of consolidated capital adequacy

...

...

7 Suppose also that the following applies:

Consolidated banking book risk weighted assets: B_A

Trading book notional risk weighted assets: T_A

- consolidated, using line-by-line T_A

- parent bank T_p

- banking subsidiary, using FSA rules: T_{b1}

- banking subsidiary, using host supervisor rules T_{b2}

- investment subsidiary, using FSA rules: T_{i1}

- investment subsidiary, using local supervisor rules T_{i2}

These assumptions assume capital regimes for the trading activities that produce trading both notional risk weighted assets (and not simply a capital requirement).

Banking book individual capital ratio ~~trigger~~ $y\%$

Trading book individual capital ratio ~~trigger~~ $x\%$

...

Chapter SE - Section 4

4.3 Operational risks

5 The FSA takes into account any significant operational risks not related to balance sheet items when setting a bank's minimum ("individual") ("~~trigger~~") capital ratio. In exceptional cases it may wish to apply an explicit capital requirement against this sort of risk.

...

Chapter CD - Section 3

3.3 Other operational risks

4 The FSA takes into account significant operational risks when setting a bank's minimum (or "individual") (or "~~trigger~~") capital ratio, and may in exceptional cases set an explicit capital requirement against such risk.

...

Chapter TV - Section 4

4.1 Introduction

...

2 Accordingly, there are a number of qualitative standards which should be met and these are set out below. The extent to which banks meet the qualitative standards may influence the level at which the FSA will agree the trading book individual capital ratio ~~trigger ratio~~ or the *multiplication factor*.

a) The trading book individual capital ratio ~~trigger ratio~~ is explained in the chapter on the overview of capital adequacy.

...

c) A bank's failure to meet the qualitative standards in full will affect the multiplication factor if the failure is confined to activities subject to the model. If the failure relates to trading book activities in general, then the bank's supervisor will consider it when agreeing the trading book individual capital ratio ~~trigger ratio~~. Failure to meet a qualitative standard in full will not affect both the multiplication factor and the trading book individual capital ratio ~~trigger ratio~~.

...

Chapter TV - Section 11

11.1 Introduction

...

...

4 The aggregate capital requirement for the trading book should then be subject

to the trading book individual capital ratio ~~trigger ratio~~. See the chapter on the overview of capital adequacy.

Chapter NE - Section 4

4.3 Common treatment of collateral in the banking and trading book

4.3.1 *Forms of collateral*

...

15 ...

- a) Top slicing is the practice by which a bank systematically collateralises only the element of the exposure that exceeds the 25% limit to bring it within the limit or collateralises only the element of an exposure that exceeds 10% of the bank's large exposures capital base in order to bring the sum of such exposures below the clustering limit. The FSA takes such activity into account when assessing a bank's risk profile and may, as a result, adjust the bank's individual capital ratio(s) ~~trigger and target risk asset ratios~~ accordingly.

Part 3

Chapter CO section 1

1.2	Legal sources
3	<p>...</p> <p>Two <u>ECU Directives</u> between them set out the main components of the capital adequacy structure:</p> <ul style="list-style-type: none"> • Title V, Chapter 2, Section 1 of The Banking Consolidation Directive (formerly the Own Funds Directive "<u>OFD</u>" - 89/299/EEC) defines what is regarded as a bank's capital resources for supervisory purposes. • Title V, Chapter 2, Section 2 of The Banking Consolidation Directive (formerly the Solvency Ratio Directive "<u>SRD</u>" - 89/647/EEC) assigns weightings to the various classes of assets and establishes the minimum Risk Asset Ratio. • The Capital Adequacy Directive ("CAD", 93/6/EC) and its subsequent amendment (98/31/EC) extends the regime to cover additional aspects of market risk.

1.3	Application
5	...
	c) Overseas banks are not subject to European Directives, but The Banking Consolidation Directive (<u>2000/12/EC</u>) (formerly the OFD and SRD <u>among other directives</u>) follows closely the principles laid down in the 1988 Basel Agreement, and hence are in the main followed by most banks overseas, particularly those in other G10 countries. In concept, these rules have become the internationally accepted standard.

Annex B

Amendments to IPRU(BSOC)

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

VOLUME 1

4 Financial risk management

Annex 4B

...

Chapter CD - Section 3

...

3.3 Other operational risks

4 The FSA takes into account significant operational risks when setting a bank's minimum (or "individual") (~~or "trigger"~~) capital ratio, and may in exceptional cases set an explicit capital requirement against such risk.

...

10 Securitisation

10.1 Introduction

...

10.1.3 G ...

- (3) In paragraph 5 in section 4.3 of chapter SE, the reference to a "bank's minimum (or individual) (~~or "trigger"~~) capital ratio" should be read as "a building society's threshold solvency ratio".

...

SE: Section 4

...

4.3. Operational risks

5 The FSA takes into account any significant operational risks not related to balance sheet items when setting a bank's minimum ("individual") (~~"trigger"~~) capital ratio. In exceptional cases it may wish to apply an explicit capital requirement against this sort of risk.

Annex C

Amendments to AUTH

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

- 3.8.6G An applicant in the prudential category of *bank* or *insurer* should note that the *FSA* will give it individual guidance on its likely capital requirements: for example, the individual capital ratios ~~trigger ratios~~ for a *bank* (see *IPRU(BANK) COB 4.1.1(Individual capital ratios ~~Trigger ratios~~)*) or the capitalisation or solvency margin of an *insurer* (see *IPRU(INS) 2 (Margins of solvency)*) during pre-application discussions (see *AUTH 3.9.2G*).

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(SYSTEMS AND CONTROLS) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 February 2003.

Amendments to the Interim Prudential sourcebook for friendly societies

- C. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Systems and Controls) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Interim Prudential sourcebook for friendly societies

Part I of Annex 3 is amended by inserting the following new paragraph after paragraph 1:

- 1A. A *friendly society* may also wish to have regard to Guidance Note P.3 (Systems and Controls in Insurers) in *IPRU(INS)*. Some of the issues addressed in that Guidance Note are already covered in parts of this sourcebook. Where they are not covered, *friendly societies* should look to the Guidance Note. Not all of the Guidance Note is appropriate for smaller *friendly societies*.

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(MINOR CHANGES) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 31 December 2002.

Amendments to the Interim Prudential sourcebook for friendly societies

- C. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Minor Changes) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Interim Prudential sourcebook for friendly societies

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

Paragraph 8 of Annex 4 (Guidance on margins of solvency and the guarantee fund) is amended as follows:

There are some important modifications contained in Chapter 4 by way of relaxation of the requirements for *friendly societies* which are ~~neither non-directive friendly societies nor incorporated friendly societies~~ in recognition of their different status or much smaller size. These modifications are:

...

- (b) the requirement to have a *minimum guarantee fund* does not apply to a *non-directive friendly society* which is not incorporated ~~*directive and incorporated friendly societies*~~ (rule 4.4);

...

**INTERIM PRUDENTIAL SOURCEBOOK FOR FRIENDLY SOCIETIES
(REPORTING OF FINANCIAL ENGINEERING) INSTRUMENT 2002**

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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 31 December 2002.

Amendments to the Interim Prudential sourcebook for friendly societies

- D. IPRU(FSOC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Friendly Societies (Reporting of Financial Engineering) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Interim Prudential sourcebook for friendly societies

In this Annex, except in the case of the new Form 9A and new Annex 8, underlining indicates new text and striking through indicates deleted text.

Rule 5.6 (Balance sheet) is amended as follows:

- (1) The balance sheet must consist of Forms 9, 9A, 13, 14, 15 and 17 (as appropriate) prepared in accordance with the instructions in Appendix 6.

(1A) Form 9A must be completed by every *directive friendly society* in respect of its *long-term insurance business assets*.

...

Paragraph 12 of Appendix 9 (Abstract of actuarial investigation) is amended as follows:

...

- (2) For each treaty of reinsurance where the *friendly society* is the cedant and under which business is in force at the *valuation date* -
 - (a) the name of the reinsurer;
 - (b) whether the reinsurer is authorised to carry on *insurance business* in the United Kingdom;
 - (c) whether the *friendly society* and the reinsurer are connected;
 - (d) an indication of the nature and extent of the cover given under the treaty, including a description of any material contingencies, such as credit risk or legal risk, to which the treaty is subject;
 - (e) the *premiums* payable by the *friendly society* under the treaty during the period;
 - (f) the amount deposited at the *valuation date* in respect of the treaty under any *deposit back arrangements*;
 - (g) the extent to which provision has been made for any liability of the *friendly society* to refund any amounts of reinsurance commission in the event of lapses or surrender of the contract; and

(h) whether the treaty is closed to new business.

(3) For each 'financing arrangement' -

(a) the amount of any undischarged obligation of the *friendly society* and a brief description of the conditions for the discharge of such obligation; and

(b) a description of how, if at all, all such undischarged obligations have been taken into account in the valuation, including a description of the impact of the arrangement on the reported valuation result and any allowance made for material contingencies, such as credit risk or legal risk, associated with the financing arrangement for the purposes of the return.

(4) In this paragraph -

(a) financing arrangement means any contract entered into by the *friendly society*, in respect of *contracts of insurance* of the *friendly society*, which has the effect of increasing the amount of assets included at line 34 of Form 9, representing assets of the *friendly society* which are available to meet its *required minimum margin for long-term insurance business*, and which includes terms for -

(i) the transfer of assets to the *friendly society*, the creation of a *debt* to the *friendly society* or the transfer of liabilities to *policyholders* from the *friendly society* (or any combination of these), and

(ii) an obligation on the *friendly society* to return (with or without interest) some or all of such assets, a provision for the diminution of such *debt* or a provision for the recapture of the liabilities, in each case, in specified circumstances; and

(b) a reinsurer is connected with a *friendly society* if it is a *related undertaking* of the *friendly society*.

In Appendix 10 (Prudential Reporting Forms), the following new Form 9A is inserted after Form 9 (Statement of solvency):

FSC 1 - FORM 9A

Returns under the Friendly Societies Prudential Rules

Analysis of the effect of financial engineering on long-term available assets

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<input style="width: 80%; height: 20px;" type="text"/>	<input style="width: 80%; height: 20px;" type="text"/>	<input style="width: 80%; height: 20px;" type="text"/>

1 As at the end of the year	2 As at the end of the previous year
-----------------------------	--------------------------------------

Required minimum margin for long term insurance business (Note 2)	11		
Excess (deficiency) of available assets and implicit items over the required minimum margin (Note 3)	12		
Total available assets and implicit items (11+12)	13		
Analysed as follows:			
Value of implicit items (Note 5)	14		
Financial reinsurance – ceded (Note 6)	15		
Financial reinsurance – accepted (Note 7)	16		
Outstanding contingent loans (Note 8)	17		
Any other charges on future profits (Note 9)	18		
Sum of financial engineering adjustments (14+15-16+17+18)	19		
Other assets (13-19)	20		
Total available assets and implicit items (19+20)	21		

FSC1 - Notes to Form 9A

1

Under rule 5.6(1A), Form 9A must be completed by every *directive friendly society* for the total of its *long-term insurance business*.

2

The *required minimum margin* must equal line 41 of Form 9 as at the end of the *financial year*.

3

The excess (deficiency) of available assets and *implicit items* over the *required minimum margin* at line 12 must equal line 44 of Form 9 as at the end of the *financial year*.

4

Any arrangement which is not entered in lines 14 – 18, but which falls within the definition of a financing arrangement in paragraph 12(4) of Appendix 9 (Abstract of actuarial investigation) must be disclosed in a supplementary note to this Form.

5

The entry at line 14 (*implicit items*) must equal the sum of lines 31 to 33 of Form 9.

6

The entry at line 15 must equal the gross amount of any contingent liability to repay a *debt* to or recapture a liability from a reinsurer not already recognised in the balance sheet. The *friendly society* must provide in a supplementary note to this Form the following information on each material reinsurance arrangement:-

- the amount of any reinsurance offset (i.e. the amount of the difference between the *mathematical reserves* at the end of the *financial year* were that reinsurance to be ignored and the amount of the *mathematical reserves* after deducting the *mathematical reserves* reinsured);
- the amount of the contingent liability for payment to the reinsurer; and
- the commutation value at the end of the *financial year* of the reinsurance arrangement.

7

The entry at line 16 must equal the amount of any contingent asset receivable from a cedant not already recognised in the balance sheet. The *friendly society* must provide in a supplementary note to this Form the following information on each material outgoing reinsurance arrangement:-

- the amount of any reinsurance liability (i.e. the amount of the difference between the *mathematical reserves* at the end of the *financial year* including the *mathematical reserves* reinsured 'in', and the amount of the *mathematical reserves* were that reinsurance to be ignored);
- the amount of the contingent asset for payments from cedants; and
- the commutation value at the end of the *financial year* of the reinsurance arrangement.

- 8** The amount to be shown for contingent loans at line 17 must be the amount, including any interest accrued, still to be repaid from future profits under the arrangements, as at the end of the *financial year*, not already recognised in the balance sheet.
- 9** Line 18 must include the potential charge against future profits in respect of any other types of financial engineering not included in lines 14 to 17 where the gross amount of any contingent liability is not already recognised in the balance sheet.
- 10** The *friendly society* must provide an explanation of the nature of the adjustments in lines 17 and 18 in a supplementary note to this Form, together with the amount of the adjustment for each material arrangement. As part of this note, the commutation value of each of the items included at lines 17 and 18, to the extent that value is not already a component of line 13, must be disclosed.
- 11** Details of any promises to *policyholders* conditional upon future profits (other than bonuses not yet declared), or other charges to future profits not already disclosed, must be provided in a supplementary note to this Form.

The following new Annex 8 is inserted after Annex 7:

Annex 8

GUIDANCE ON THE BALANCE SHEET (Forms 9 to 17)

Financial engineering

1. The statement of solvency in **Form 9**, for *directive friendly societies* carrying on *long-term insurance business*, is calculated on the basis of prudent *technical provisions*. These provisions include margins (or economic reserves) which can be released as ‘future profits’. *Firms* can use, to differing extents, a variety of alternative financing techniques based on the release of future profits to meet their *required minimum margin*.
2. **Form 9A** sets out the effects of these arrangements at the *firm* level. This gives an indication of how much solvency relief the *firm* has obtained in the solvency calculation by using its economic reserves. It therefore aims to provide clearer and more directly comparable information on a *friendly society’s* ability to meet its liabilities.
3. **Form 9A** is required to be completed by every *directive friendly society* which carries on *long-term insurance business* (see rule 5.6(1A)) in accordance with the instructions to the Form.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(SYSTEMS AND CONTROLS) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 February 2003.

Amendments to the Interim Prudential sourcebook for insurers

- C. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Systems and Controls) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Interim Prudential sourcebook for insurers

Volume Three

Guidance: FSA Guidance Notes

After Guidance Note P.2, insert the following new Guidance Note:

GUIDANCE NOTE P.3

SYSTEMS AND CONTROLS IN INSURERS

Introduction

1. The Principles for Businesses in the *FSA Handbook* set out the fundamental obligations of a *firm*. Principle 3 requires a *firm* to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
2. Senior Management Arrangements, Systems and Controls (SYSC) in the *FSA Handbook* imposes requirements to set up and maintain proper systems and controls. The rules:
 - encourage *firms' directors* and senior managers to take appropriate practical responsibility for their *firms' arrangements* on matters likely to be of interest to the *FSA* because they impinge on the *FSA's* functions under the *Act*;
 - increase certainty by amplifying Principle 3; and
 - encourage *firms* to vest responsibility for effective and responsible organisation in specific *directors* and senior managers.
3. All the Principles and all aspects of SYSC apply to every regulated *firm*, not just an *insurer*. This guidance is designed to help an *insurer* comply with Principle 3 by amplifying parts of SYSC.
4. What Principle 3 and SYSC mean in practice will depend on the nature, scale and complexity of the *firm's* business. Relatively simple procedures will be enough for a one-person business, while sophisticated systems and controls are likely to be necessary for a complex organisation.
5. The term 'risk management systems' includes all levels of an organisation's management. One approach that can be taken in looking at a *firm's* overall risk management systems is to consider them in four stages:

- setting the *firm's* goals and its strategy for achieving those goals. The **governing body** (as defined in the Glossary of the *FSA Handbook*) should take responsibility for setting the *firm's* strategy and risk appetite. The points in **Annex A** of this Guidance Note about the 'Composition of the 'governing body', its role and effectiveness' will help make sure the *firm* does so;
- identifying and assessing risks. Once the *firm* has identified its strategy and assessed its business operating environment, the 'governing body' should identify and prioritise all the material risks facing the business (see 'risk assessment function' in **Annex B**);
- implementing controls. After identifying the risks, the 'governing body' should ensure arrangements are put in place to control those risks. It is obviously important that *firms* clearly document their risk and control policies (see 'Apportionment and definition of management responsibilities' in **Annex A**). 'Legal risk' - **Annex C** - and 'Outsourcing' - **Annex F** - are examples of how controls can be designed in response to particular risks; and
- monitoring and reporting how the controls are operating. 'Internal audit' (see **Annex D**) or a similar independent function should monitor controls to ensure they are appropriate and effective.

High-level controls

6. SYSC 3.2.2G says 'A *firm's* reporting lines should be clear and appropriate having regard to the nature, scale and complexity of its business. These reporting lines, together with clear management responsibilities, should be communicated as appropriate within the *firm*.'
7. SYSC 3.2.3G says:
 - '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*, appropriate safeguards should be put in place.
 - When there is delegation, a *firm* should assess whether the recipient is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved.
 - The extent and limits of any delegation should be made clear to those concerned.
 - There should be arrangements to supervise delegation, and to monitor the discharge of delegates' functions or tasks.
 - If cause for concern arises through supervision and monitoring or otherwise, there should be appropriate follow-up action at an appropriate level of seniority within the *firm*.'

8. **Annex A** sets out the high-level controls that an *insurer* should consider having in place. Not all of these will be appropriate to smaller *insurers*.

Risk management

9. The ‘governing body’ of the *insurer* will normally delegate day-to-day oversight of risk management to a risk committee. The risk committee, taking into account the risk appetite set by the ‘governing body’, should then consider how much risk the *insurer* is willing to take and the nature of that risk (underwriting, operational, credit, market and legal risk¹). It should do this with reference to the overall business strategy and management expertise in each business unit. The risk committee should also establish the *insurer’s* risk management policies and ensure that the risk strategy is implemented through developing and enforcing appropriate systems and controls.

Risk assessment function

10. SYSC 3.2.10G says: ‘Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to have a separate risk assessment function responsible for assessing the risks that the *firm* faces and advising the ‘governing body’ and senior managers on them. The organisation and responsibilities of a risk assessment function should be documented. The function should be adequately resourced and staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively.’
11. The manner in which the function is set up should reflect the *insurer’s* own business and organisation. Where the small scale of the *insurer’s* activities makes setting up a risk assessment function impractical, senior management should carry out the task.
12. *Insurers* should consider setting up a separate risk assessment function staffed by people with an appropriate mix of skills. The existence of a risk assessment function does not mean that responsibility for risk management is passed to it. Risk management should ultimately be the responsibility of the ‘governing body’ and those performing relevant controlled functions. In addition, line management need to be aware of their day-to-day responsibilities for managing risk in their own areas.
13. To make sure the risk assessment function is effective, *insurers* should consider putting in place some or all of the arrangements detailed in **Annex B**.

Legal risk

14. For *insurers*, legal risk is the risk that the law is proved to operate in a way adverse to the interests or objectives of the *insurer* where the *insurer*:
 - did not consider its effect;

¹ Legal risk is discussed separately in **Annex C**.

- believed its effect to be different; or
 - operated with uncertainty as to its effect.
15. There are several specific systems and controls that *insurers* should consider putting in place to deal with legal risk. These are detailed in **Annex C**.

Internal audit

16. SYSC 3.2.16G gives guidance on internal audit arrangements: ‘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. An 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.’
17. Most *insurers* should have an internal audit function. In some, the function may be undertaken at *group* level for those *insurers* that are part of a larger *group*, or in exceptional cases it may be outsourced to a third party. To make sure the internal audit function is effective, *insurers* should consider putting in place the arrangements detailed in **Annex D**.

Management information

18. SYSC 3.2.11G says that: ‘A *firm’s* arrangements should be such as to furnish its ‘governing body’ with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information. Risks of regulatory concern are those risks which relate to the fair treatment of the *firm’s customers*, to the protection of *consumers*, to confidence in the *financial system*, and to the use of that system in connection with *financial crime*. It is the responsibility of the *firm* to decide what information is required, when, and for whom, so that it can organise and control its activities and can comply with its regulatory obligations. The detail and extent of information required will depend on the nature, scale and complexity of the business.’
19. To make sure management information is effective, *insurers* should consider the detailed points in **Annex E**.

Outsourcing

20. *Insurers* often decide to outsource aspects of their operations to *group* companies, or to independent third parties. Although outsourcing can bring significant benefits to *insurers* and their customers, there is a risk that *insurers* may have reduced control of the outsourced function.
21. So, under Principle 3 of the Principles for Businesses and SYSC (3.2.3G and 3.2.4G), a *firm* should take reasonable care to supervise its outsourced functions. **Annex F**

sets out the steps a *firm* should consider taking to ensure it retains the appropriate degree of control over any outsourcing.

Group risk

22. SYSC 3 requires a *firm* to take reasonable care to set up and maintain such systems and controls as are appropriate to the nature, scale and complexity of its business. If a *firm* is a member of a *group*, it should be able to assess the potential impact of risks arising in other parts of its *group* as well as those resulting from its own activities.
23. In assessing *group* systems and controls, an *insurer* may take into account:
- its position within a *group*;
 - the materiality of the *group* risk to which it is exposed; and
 - the access that it has to the systems and controls of other members of its *group* and any information produced by them.

The nature and extent of the systems and controls necessary to tackle *group* risk will vary according to the materiality of those risks to the *insurer* and the position of the *insurer* within the *group*. If, for example, an *insurer* were the parent of a *group*, it would normally be responsible for ensuring that systems and controls are in place across the *group*. This would enable it to monitor and control potential risks to it because of its membership of the *group*. A small *firm* within a larger *group* should consider if there are appropriate systems and controls in place in other parts of the *group* to control such risks.

24. For *group* risk, **Annex G** sets out the systems and controls the *insurer* should consider.

Annex A (paragraph 8)

HIGH-LEVEL CONTROLS

Composition of the governing body, its role and effectiveness

- A1 The ‘governing body’ should be composed of suitably skilled and experienced individuals who collectively have sufficient knowledge and understanding of all the *firm*’s markets and products.
- A2 The ‘governing body’ should include independent non-executive *directors* with sufficient knowledge and expertise to act as an appropriate challenge to the executive *directors*.
- A3 In managing its affairs, a *firm* should have regard to such generally accepted principles of good corporate governance (including The Combined Code on Corporate Governance where appropriate) as it is reasonable to regard as applicable to it.

Apportionment and definition of management responsibilities

- A4 The management structure should be clearly defined and documented and aligned with the *insurer's* business profile. There should be mechanisms in place for apportioning responsibilities in matrix management structures and for avoiding potential conflicts of interest. There should be a clear apportionment of responsibility for systems and controls in overseas branches and in all *subsidiaries*.
- A5 If the *insurer* is part of a *group*, it should have the means to ensure that its statutory and regulatory responsibilities are effectively carried out, especially where the *group* is subject to matrix management.
- A6 Responsibilities for the *insurer's* obligations under the Principles for Businesses (for example adequate risk management systems, handling of customer complaints, and suitability of advice) should be apportioned appropriately.
- A7 The *firm* should have arrangements to make sure that approved persons in controlled functions meet the continuing requirements for fitness and propriety and have the necessary authority to perform their role effectively.
- A8 There should be proper documentation of delegated authorities and means for ensuring that senior management is able to monitor delegated decisions.
- A9 *Insurers* should have means for ensuring that individuals do not exceed authorities given to them to take decisions or commit the *insurer* to a transaction.

Audit committee

- A10 *Insurers* should have governance arrangements that provide an element of external oversight. This function should relate to internal and external audit independently of the executive *directors* and management. *Insurers* can achieve this in several ways, but most should consider using an audit committee (see SYSC 3.2.15G). For this committee to operate effectively, *firms* should consider putting the following arrangements in place:
- the committee should comprise an appropriate number of non-executive *directors*, one of whom should chair the committee;
 - the committee should report directly to the 'governing body';
 - the committee should have a formal constitution and terms of reference;
 - the committee should have explicit authority to investigate matters within its terms of reference and have access to information and external advice. The terms of reference should include:
 - a role overseeing the development and implementation of a prioritised work plan for internal audit;

- ensuring that approved risk management policies and procedures are being carried out effectively and that internal controls are observed throughout the *insurer*; and
- considering reports from internal audit on issues they have identified which are of material concern;
- the committee should meet at least once a year with the external auditors in the absence of executive management.

Annex B (paragraph 13)

RISK ASSESSMENT FUNCTION

- B1 The risk assessment function is a controlled function (see *SUP* 10.8.3R). The person who leads it should have sufficient expertise and influence in the *firm*. Resources should include people with an appropriate mix of skills, including underwriting, *claims* handling, accounting, actuarial and legal expertise.
- B2 For some *insurers*, the risk assessment function may be integrated within their business units. In these cases the ‘governing body’ should satisfy itself (and monitor) that the responsibilities described below are carried out effectively.

Risk assessment function responsibilities

- B3 The risk assessment function should:
- ensure that changes in the business operating environment, and in key assumptions underlying business strategies and business lines, products and business processes, and the impact of these changes on risks to the *insurer* are evaluated;
 - ensure that significant new risks or material changes in significant risk (including those identified by internal audit² and by management information³) are responded to with appropriate strategies, and initiate the processes/activities to implement new risk management strategies quickly;
 - ensure that the business units comply with the *insurer’s* risk management frameworks through monitoring, reporting and effective communication with those responsible for risk management in the business units;

² See Annex D

³ See Annex E

- report directly to the *insurer's* risk committee on adherence to the *insurer's* market, credit, insurance, operational and legal risk policies; and
- provide the risk committee, management and 'governing body' with meaningful risk reports and more generally ensure there is enough communication and information for the risk committee to decide on risk issues.

Annex C (paragraph 15)

LEGAL RISK

Identification and mitigation of legal risk

- C1 *Insurers* should have processes for identifying which legal risks the business is exposed to, including:
- risks in existing products, including those where the interpretation of contracts could be challenged;
 - the risk that a change in legislation may be overlooked or inadequately responded to;
 - uncertainties surrounding existing or forthcoming court rulings; and
 - risks in enforcing contracts with third parties, particularly *reinsurance* contracts.
- C2 *Insurers* should also have processes for controlling (where possible) the risks that have been identified.
- C3 There should be processes for reporting identified legal risks to the risk assessment function, risk committee, senior management and the 'governing body'.
- C4 There should be processes for raising appropriate provisions against legal risk.
- C5 Regular reviews of legal risk within the business units, including risk relating to new products, investment activities and *reinsurance*, should be undertaken.

Annex D (paragraph 17)

INTERNAL AUDIT

Mandate/terms of reference of internal audit (IA)

- D1 The objectives and responsibilities of IA should be clear and an audit committee or alternative (see below) should approve the terms of reference for IA.

- D2 The scope of IA's remit should be clear and appropriate for the risks run by the *insurer*, including those risks arising from proposed new lines of business or products.
- D3 IA should have access to all the appropriate books and records of the *insurer* it considers are necessary to carry out its responsibilities.
- D4 Any operational work undertaken by IA (such as special projects) should not compromise its independence. IA's relationship with the *insurer's* external auditors should be full, open and frank.

Reporting lines and resources

- D5 IA should have an independent reporting line to the audit committee¹, where one exists. In those cases where the *insurer* does not have an audit committee, the reporting line should be to a non-executive member of the 'governing body' (preferably a non-executive chairman where there is one). IA should have unfettered and regular access to the audit committee (or the non-executive *directors*). Also, IA should have full and regular access to the chairman and CEO of the *insurer*.
- D6 The Head of IA should be a senior and experienced individual who is an employee of the *insurer*, or the *group* of which the *insurer* is a part. This post is a controlled function (see *SUP* 10.8.3R).
- D7 IA should have enough suitably qualified and experienced staff to complete the audit plan, including auditing those areas that require detailed technical or local knowledge. IA staff should be credible with senior management, external auditors and the audit committee. They should be able to act as an effective challenge to the business and support areas.

Audit plan

- D8 The audit committee (or alternative) should approve an audit plan. The plan should include the audit of all appropriate business and control areas within the *insurer*, including the compliance function. There should be a clear, formal, risk-based process (see below) for deciding which areas to include in the plan. The plan should be reviewed at least once a year.
- D9 The plan should allow for (but not be compromised by) other IA responsibilities such as special projects, fraud investigations and new product approval processes.

Methodology

- D10 IA should use risk-based methodologies. There should be clear definitions and rationale for any scoring systems used to support the risk-based approach.

¹ for audit work. For staffing and resource issues, IA can report to another part of the *insurer*.

D11 There should be processes for alerting senior management and the audit committee (or alternative) quickly to higher risk issues uncovered by IA and for responding to incidents, including the setting up of investigations led by IA.

Audit reports and subsequent actions

D12 There should be a process for communicating, and agreeing, IA reports with the business or support areas under review. Issues raised in IA reports should be clear and prioritised for action, and the ‘owner’ of the action point should be identified. Reports should be timely and, where necessary, reports should be graded (for example ‘green’, ‘yellow’, ‘red’). They should be distributed to the appropriate senior management.

D13 There should be processes for ensuring recommendations raised in IA reports are dealt with in a timely fashion and processes for monitoring outstanding exceptions or recommendations. These processes should include external recommendations from auditors or others. There should be an escalation process for recommendations or exceptions that line management have not dealt with.

Outsourcing internal audit

D14 An *insurer* should not normally outsource its IA either to those who produce skilled persons reports for it or its external auditors. However, there may be circumstances where certain IA services are better provided by the external auditors/skilled persons - for example, where specialist technical knowledge is needed to act as an effective challenge to a business or support area. In these cases the following conditions should be met:

- the work should be carried out under the overall supervision and management of the *insurer*’s own internal audit staff; and
- ultimate responsibility for the adequacy and effectiveness of IA should lie with the Head of IA.

Annex E (paragraph 19)

MANAGEMENT INFORMATION

E1 The *insurer* should have management information (MI) which is sufficient to identify, measure and control all the material risks in the business including new products and new business.

E2 MI should be timely to enable prompt action to be taken where necessary.

E3 It should be detailed enough (without being so detailed as to lose impact) for the various levels of management (including the ‘governing body’) that use it.

E4 Where relevant, it should cover the activities of branches or *subsidiaries*.

- E5 MI should not just be about static historical data, but also consider the possible range and variability of potential outcomes. So it should:
- include the results of stress and scenario testing (including the valuation of assets and movements in liabilities) to help the *insurer* identify the financial impact of risks in different scenarios; and
 - measure the ability of the business to withstand adverse conditions over a prolonged period.
- E6 Examples of other types of MI that *insurers* might produce (according to their size and spread of business) include:
- profit and loss, etc. (including technical underwriting results) for significant business/geographic areas or product lines;
 - comparison to budgets and explanation of variances;
 - risk/reward information, capital used and allocation;
 - customer acquisition and loss;
 - customer satisfaction measures and complaints;
 - performance of service providers;
 - market share data;
 - compliance with regulatory requirements (financial and other); and
 - information on all risks facing the business including underwriting, credit, market and operational risks (for example, processing and documentation errors, *claims* handling, business interruption, financial crime) and legal risk.

Annex F (paragraph 21)

OUTSOURCING

Issues to consider when entering into an outsourcing arrangement¹

- F1 Before entering into, or significantly changing, an outsourcing arrangement, an *insurer* should:
-

¹ See **Annex D** for the outsourcing of internal audit

- analyse how the proposed outsourcing will affect its overall risk profile and business strategy, and its ability to continue to meet its regulatory obligations;
- conduct appropriate due diligence of the service provider's financial stability and expertise;
- consider how it will ensure a smooth transition of its operations from its current arrangements to a new or changed outsourcing arrangement; and
- consider any concentration risk implications (such as business continuity implications where several bodies use a single service provider).

The contract with the supplier

F2 In negotiating its contract with the service provider, the *insurer* should consider:

- the reporting or notification requirements it may wish to impose on the service provider;
- the need for information ownership rights, confidentiality agreements and appropriate segregation to protect client and other information;
- the need for and adequacy of any guarantees and indemnities;
- the extent to which the service provider must comply with the *insurer's* policies and procedures (for example, information security);
- the extent to which a service provider will provide business continuity for outsourced operations, and whether exclusivity agreements are needed to protect access to the service provider's resources;
- the management and approval process for changes to the outsourcing arrangement, including:
 - changes in processing volumes, activities and other contractual terms; and
 - the ability of the *insurer* to influence significant changes by the service provider, such as change of ownership or control, and sub-contracting;
- the conditions under which the *insurer* or the service provider can terminate the outsourcing agreement, such as:
 - a change of ownership or control (including insolvency or receivership) at the service provider or *insurer*;
 - significant changes in the business operations (including sub-contracting) at the service provider or *insurer*; and

- inadequate provision of services that may lead to the *insurer's* inability to meet its regulatory obligations; and
- the termination arrangements, including:
 - intellectual property and information ownership rights (including any requirements for the service provider to keep or return relevant work or records); and
 - clarifying the processes that will be followed to ensure the smooth transfer of outsourced activities to either a new third party provider or back to the *insurer*.

F3 Also, the *insurer* should include a requirement that the supplier gives the *insurer's* internal and external auditors the same rights as are given to an auditor by section 341 of the *Act* (see *SUP 2.3.9G*).

Relationship management framework/service level agreement

F4 In implementing a relationship management framework, and drafting the service level agreement with the service provider, the *insurer* should consider:

- the need for an adequate flow of management information from the supplier to the *insurer*;
- the identification of qualitative and quantitative performance targets to assess the adequacy of service provision;
- the evaluation of performance through service delivery reports, periodic self-certification, and/or independent review by the *insurer's* or service provider's internal or external auditors; and
- remedial action and escalation processes for dealing with inadequate performance.

Contingency arrangements

F5 The *insurer* should make sure that it has appropriate contingency arrangements to allow business continuity in the event of a significant loss of services from the service provider. Particular issues to consider include:

- a significant loss of resources at the service provider;
- financial failure of the service provider; and
- unexpected termination of the outsourcing arrangement.

GROUP RISK

Insurer's responsibilities for group systems and controls in general

- G1 The *insurer* should take reasonable care to set up and maintain such systems and controls as are appropriate for:
- monitoring the effect on the *insurer* of its relationship with other members of the *group* and the activities of other members of its *group*;
 - monitoring compliance with the *group* capital reporting requirements where these apply to the *insurer* and with concentration risk requirements;
 - monitoring liquidity within the *group*; and
 - monitoring compliance with *group* risk reporting controls.

Relationships within the group

- G2 The overall governance, high-level controls and reporting lines within the *group* should be clear. The *insurer* should not be subject to material control or influence from other parts of the *group* that is exercised through informal or undocumented channels.
- G3 The linkages between *group* central functions (for example, *group* risk management, capital planning, liquidity, compliance) and the *insurer* should work effectively and the *insurer's* approved persons structure should reflect the extent to which *group* functions influence it.
- G4 Potential conflicts of interest, where other *group* companies undertake activities in areas related to the *insurer*, should be minimised by using, for example, chinese walls, and transactions at *market value*.
- G5 The *insurer* should have procedures in place to make other *group* companies aware of the *insurer's* regulatory obligations.
- G6 The *insurer* should have procedures in place to be informed of events in the *group* (including financial crime, financial weakness, customer mis-selling, failures of controls) that may have an impact on the *insurer's* ability to comply with its regulatory capital or other requirements. The *insurer* should have plans in place to minimise the effect of these events on its own business.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(MINOR CHANGES NO 2) INSTRUMENT 2002**

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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 31 December 2002.

Amendments to the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Minor Changes No 2) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Interim Prudential sourcebook for insurers

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

VOLUME ONE

The definition of *readily realisable* in rule 11.1 is amended as follows:

~~in relation to a *listed* investment means a *listed* investment to which rule 4.8(4) either does not apply or applies by reason only that —~~

- ~~(a) — the listing of the investment has been temporarily suspended following receipt of price sensitive information received by the stock exchange on which the investment is *listed* or the *regulated market* on which facilities for dealing have been granted; or~~
- ~~(b) — the extent of the holding would prevent an orderly disposal of the investment for an amount equal to or greater than 97.5% of market value~~

in relation to an investment:

- (a) an investment which, had negotiations for the assignment or transfer of the investment commenced not more than seven working days before the *relevant date*, it is reasonable to assume could have been assigned or transferred on the *relevant date* for an amount not less than 97.5% of the *market value* to a person other than the *issuer* or an *associate* or *associated company* of the *issuer* or of the *insurer*; or
- (b) a *listed* investment with respect to which (a) does not apply by reason only that -
 - (i) the listing of the investment has been temporarily suspended following receipt of price sensitive information received by the stock exchange on which the investment is *listed* or the *regulated market* on which facilities for dealing have been granted, or

- (ii) the extent of the holding would prevent an orderly disposal of the investment for an amount equal to or greater than 97.5% of market value.

VOLUME THREE

FSA GUIDANCE NOTES

Paragraph B3 of Annex B (Controls over investment managers) of Guidance Note P.1 (Systems and controls over the investments (and counterparty exposure) of insurers with particular reference to the use of derivatives) is amended as follows:

~~In addition, any new corporate manager appointed by the insurer must be notified to the FSA under the approved persons regime. Third party investment managers are likely to be performing a controlled function (see SUP 10.9.12R - the significant management (other business operations) function). If so, the approved persons regime will apply (see SUP 10 (approved persons) and SUP 10.12.4G (in relation to outsourcing, if applicable)) are normally notifiable and will need to pass the appropriate fit and proper tests.~~

Paragraph 3.2 of Guidance Note 4.1 (Guidance for insurers and auditors on the Valuation of Assets Rules) is amended as follows:

Approved/regulated institutions

There are definitions for a number of different types of institution and admissibility limits grade the level of *debt* that can be accumulated with any one institution according to the type of institution. The definitions are normally expressed in terms of criteria and in many cases guidance can be gained by referring to lists published periodically by the FSA (normally on the FSA website) to determine what category applies to a particular institution. The different types of institution in order of credit 'grading' are:

approved financial institutions - are listed in rule 11.1 and are largely European central banks.

approved securities - are limited to government *securities* and deposits with ~~approved financial institutions~~ *approved financial institutions*. Only *securities* backed by governments/public authorities of countries classified as Zone A are included. *Debt securities* issued by certain supra-national authorities are also included. Zone A countries are all countries which are full members of OECD, together with those countries which have concluded special lending arrangements with the International Monetary Fund associated with the General Agreement to Borrow. A current list of these countries can be obtained from the *FSA (Banking Supervision)*. It follows that government *securities* from non Zone A countries are therefore subject to the general *debt* rules.

approved credit institutions - are essentially banks and building societies ~~authorised under~~ recognised or permitted under the law of an *EEA State* to carry on any of the activities set out in Annex 1 to the ~~Banking Consolidation Directive~~ *Banking Co-ordination Directive* 2000/12/EC. Note that an *approved credit institution* is also an *approved counterparty* and also a *regulated institution*. ~~The *FSA* regularly publishes a list of banks authorised in the UK. This list includes UK branches of non-EEA banks which have been authorised directly by the *FSA* and institutions authorised by other *EEA States* but which have a branch in the UK. It does not, however, include institutions authorised by other *EEA States* which do not operate in the UK but which are nevertheless *approved credit institutions* for the purposes of the *Valuation of Assets Rules*. The European Commission from time to time publishes a full list of all credit institutions authorised under the Directive but in practice this tends to be out of date. It is advisable to contact the competent authority in the *EEA State* concerned for the latest list.~~

approved counterparties - are *approved credit institutions* plus certain investment firms authorised to engage in wholesale market activities or derivatives transactions. ~~A list of *approved credit institutions* can be obtained from the *FSA*.~~ For the purposes of calculating aggregate *exposure* for the admissibility limits, the term *counterparty* has been given its own definition. This is dealt with in more detail within section 5.

...

Paragraph 1.6 of Guidance Note 9.1 (Preparation of returns) is amended as follows:

Insurance Fees

The rules in *SUP 20* and *SUP 20 Annex 1R* require *firms* to pay periodic and transaction reporting fees. ~~No later than when depositing the *returns* and other documents referred to above, an *insurer* should separately send a completed insurance fees form to the address shown on the form and, where a fee is due, a cheque in payment. The insurance fees form should be returned even if it only evidences that no fees are payable.~~

Paragraph 7 of Guidance Note 9.1 (Preparation of returns) is amended as follows:

7. **THE RULE 9.30 STATEMENT: ~~SHAREHOLDER~~
CONTROLLERS**

7.1 ...

- (2) Rule 9.30 imposes substantially the same requirements as *SUP 16.4*, ~~and i~~ If a statement under rule 9.30 is has been filed as part of an *insurer's return*, the information provided a separate statement need not be filed again under *SUP 16.4*.

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(REPORTING OF FINANCIAL ENGINEERING) INSTRUMENT 2002**

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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 31 December 2002.

Amendments to the Interim Prudential sourcebook for insurers

- D. IPRU(INS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Reporting of Financial Engineering) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Interim Prudential sourcebook for insurers

In this Annex, except in the case of the new Form 9A and new paragraphs 5.1A and 5.1B in Guidance Note 9.1, underlining indicates new text and striking through indicates deleted text.

VOLUME ONE

Rule 9.6 (Deposit of accounts etc. with the FSA) is amended as follows:

- (1) Subject to (1A), ~~Every~~ every 'account', 'balance sheet', abstract or statement required by rules 9.3, 9.4 and 9.36A and any report of the auditor of the *insurer* made in pursuance of rules 9.5 or 9.36E must be printed, and the 'required copies' must be deposited with the *FSA* within the periods set out in the table below.

<i>financial year ending on or after</i>	deposit period following the <i>financial year end</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

- (1A) For a *financial year* ending on a date from 31 December 2002 to 30 December 2003, the deposit periods for the 'required copies' of **Form 9A** set out in (1) are extended by 1 month.

...

Rule 9.12 (Balance sheet) is amended as follows:

...

- (2) ...

- (2A) **Form 9A** must be completed by every *long-term insurer* in respect of the *long-term insurance business* carried on by the *insurer*.

...

VOLUME TWO

In Appendix 9.1 (Balance Sheet and Profit and Loss Account), the following new Form 9A is inserted after Form 9 (Statement of solvency):

Form 9A

Analysis of the effect of financial engineering on long-term available assets

Name of insurer

Global business/UK branch business/EEA branch business

Financial year ended

Company registration number GL/UK/CM Period ended
 day month year Units

		R9A					£000
			As at the end of this financial year 1	As at the end of the previous year 2	Source		
Required minimum margin for long term insurance business	11				See instruction 2		
Excess (deficiency) of available assets and implicit items over the required minimum margin	12				See instruction 3		
Total available assets and implicit items (11+12)	13						
Analysed as follows:							
Value of implicit items	14				See instruction 5		
Financial reinsurance- ceded	15				See instruction 6		
Financial reinsurance- accepted	16				See instruction 7		
Outstanding contingent loans	17				See instruction 8		
Any other charges on future profits	18				See instruction 9		
Sum of financial engineering adjustments (14+15-16+17+18)	19						
Other assets (13-19)	20						
Total available assets and implicit items (19+20)	21						

Instructions for completion of Form 9A

1. Form 9A must be completed for the total *long-term insurance business* of the *insurer* (see rule 9.12).
2. The *required minimum margin* must equal line 41 of Form 9 as at the end of the *financial year in question*.
3. The excess (deficiency) of *available assets* and *implicit items* over the *required minimum margin* at line 12 must equal line 44 of Form 9 as at the end of the *financial year in question*.
4. Any arrangement which is not entered in lines 14 to 18, but which falls within the definition of financing arrangement in paragraph 12(4) of Appendix 9.4 (Abstract of valuation report) must be disclosed in a supplementary note to this Form.
5. The entry at line 14 (*implicit items*) must equal the sum of lines 31 to 33 of Form 9.
6. The entry at line 15 must equal the gross amount of any contingent liability to repay a *debt* to or recapture a liability from a *reinsurer* not already recognised in the balance sheet. The *insurer* must provide in a supplementary note to this Form the following information on each material *reinsurance* arrangement:-
 - the amount of any *reinsurance* offset (i.e. the amount of the difference between the *mathematical reserves* at the end of the *financial year in question* were that *reinsurance* to be ignored and the amount of the *mathematical reserves* after deducting the *mathematical reserves* reinsured);
 - the amount of the contingent liability for payment to the *reinsurer*; and
 - the commutation value at the end of the *financial year in question* of the *reinsurance* arrangement.
7. The entry at line 16 must equal the amount of any contingent asset receivable from a *cedant* not already recognised in the balance sheet. The *insurer* must provide in a supplementary note to this Form the following information on each material outgoing *reinsurance* arrangement:-
 - the amount of any *reinsurance* liability (i.e. the amount of the difference between the *mathematical reserves* at the end of the *financial year in question* including the *mathematical reserves* reinsured ‘in’, and the amount of the *mathematical reserves* were that *reinsurance* to be ignored);
 - the amount of the contingent asset for payments from *cedants*; and
 - the commutation value at the end of the *financial year in question* of the *reinsurance* arrangement.
8. The amount to be shown for contingent loans at line 17 must be the amount, including any interest accrued, still to be repaid from future profits under the arrangements, as at the end of the *financial year in question*, not already recognised in the balance sheet.
9. Line 18 must include the potential charge against future profits in respect of any other types of financial engineering not included in lines 14 to 17 where the gross amount of any contingent liability is not already recognised in the balance sheet.
10. The *insurer* must provide an explanation of the nature of the adjustments in lines 17 and 18 in a supplementary note to this Form, together with the amount of the adjustment for each material arrangement. As part of this note, the commutation value of each of the items included at lines 17 and 18, to the extent that value is not already a component of line 13, must be disclosed.
11. Details of any promises to *policy holders* conditional upon future profits (other than bonuses not yet declared), or other charges to future profits not already disclosed, must be provided in a supplementary note to this Form.

Paragraph 12 of Appendix 9.4 (Abstract of valuation report prepared by appointed actuary) is amended as follows:

...

- (2) For each treaty of *reinsurance* where the *insurer* is the *cedant* and under which business is in force at the 'valuation date' -
 - (a) the name of the *reinsurer*;
 - (b) whether the *reinsurer* is authorised to carry on ~~insurance business~~ *insurance business* in the United Kingdom;
 - (c) whether the *reinsurer* is a *connected company* of the *insurer*;
 - (d) an indication of the nature and extent of the cover given under the treaty, including a description of any material contingencies, such as credit risk or legal risk, to which the treaty is subject;
 - (e) the premiums payable by the *insurer* under the treaty during the 'report period';
 - (f) the amount deposited at the 'valuation date' in respect of the treaty under any *deposit back arrangements*;
 - (g) the extent to which provision has been made for any liability of the *insurer* to refund any amounts of *reinsurance* commission in the event of lapses or surrender of the contract; and
 - (h) whether the treaty is closed to new business.
- (3) For each 'financing arrangement' -
 - (a) the amount of any undischarged obligation of the insurer and a brief description of the conditions for the discharge of such obligation; and
 - (b) a description of how, if at all, all such undischarged obligations have been taken into account in the valuation, including a description of the impact of the arrangement on the reported valuation result and any allowance made for contingencies, such as credit risk or legal risk, associated with the financing arrangement for the purposes of the return.
- (4) In this paragraph -
 - (a) **financing arrangement** means any contract entered into by the *insurer*, in respect of *contracts of insurance effected by* ~~of~~ the *insurer*, which has the effect of increasing the amount of assets included at line 34 of **Form 9**, representing assets of the *insurer* which are available to

meet its *required minimum margin* for *long-term insurance business*, and which includes terms for -

- (i) the transfer of assets to the *insurer*, ~~or~~ the creation of a *debt* to the *insurer* ~~(or both)~~ or the transfer of liabilities to *policy holders* from the *insurer* (or any combination of these), and
 - (ii) an obligation for the *insurer* to return (with or without interest) some or all of such assets, ~~or~~ a provision for the diminution of such *debt* or a provision for the recapture of such liabilities, in each case, in specified circumstances; and
- (b) paragraphs (1), (2) and (3)(a) of rule ~~9.32~~ 9.28 (which relate to connected persons) have effect for the purposes of this paragraph as they have effect for the purposes of those rules.

VOLUME THREE

In Guidance Note 9.1 (Preparation of annual returns), the following new paragraphs 5.1A and 5.1B are inserted after paragraph 5.1:

5.1 ...

Analysis of the effect of financial engineering on long-term available assets (Form 9A)

- 5.1A (1) The statement of solvency in **Form 9**, for *insurers* carrying on *long-term insurance business*, is calculated on the basis of prudent *technical provisions*. These provisions include margins (or economic reserves) which can be released as ‘future profits’. *Insurers* can use, to differing extents, a variety of financial engineering arrangements based on the release of future profits to meet their *required minimum margin*.
- (2) **Form 9A** sets out the effects of these arrangements at the *firm* level. This gives an indication of how much solvency relief the *insurer* has obtained in the solvency margin calculation by using its economic reserves. It therefore aims to provide clearer and more directly comparable information on an *insurer’s* ability to meet its liabilities.

Completion of the Form

- 5.1B (1) **Form 9A** is required by rule 9.12(2A) to be completed by every *insurer* which carries on *long-term business*.
- (2) The instructions to **Form 9A** in **Appendix 9.1** contain requirements for completion of the Form.

**LLOYD'S SOURCEBOOK
(SYSTEMS AND CONTROLS) INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

Commencement

- B. This instrument comes into force on 1 February 2003.

Amendments to the Lloyd's sourcebook

- C. LLD is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Lloyd's Sourcebook (Systems and Controls) Instrument 2002.

By order of the Board
19 December 2002

Annex

Amendments to the Lloyd's sourcebook

In this Annex, underlining indicates new text.

10.2.3G The *Society* should have regard (and should take reasonable steps to ensure that, where appropriate, *members* have regard) to those provisions of Guidance Note P.3 (Systems and Controls in Insurers) in *IPRU(INS)* which are appropriate for the *Society* and not already covered in *LLD*.

...

10.8.2G *Managing agents*, as authorised persons, are required to comply with *PRIN* and *SYSC*, and should have regard to those provisions of Guidance Note P.3 (Systems and Controls in Insurers) in *IPRU(INS)* which are relevant to the activities of *managing agents*. The *FSA* will monitor the Lloyd's market to satisfy itself that *managing agents*, by complying with the requirements of the *Society* in relation to maintaining effective systems and controls, are in compliance with the relevant requirements of *PRIN* and *SYSC*.

...

10.8.3G (5) The *Society* should also have regard to Guidance Note P.3 (Systems and Controls in Insurers) in *IPRU(INS)* as specified in *LLD* 10.2.3G.